FEDERAL COAL LEASING

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MINES AND MINING

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

FEDERAL COAL LEASING PROGRAM

and

S. 3528

TO AMEND THE MINERAL LEASING ACT OF 1920, AND FOR OTHER PURPOSES

HEARINGS IN WASHINGTON, D.C.

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FEDERAL COAL LEASING

THURSDAY, JULY 25, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MINES AND MINING OF
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Patsy T. Mink (chairman of the subcommittee) presiding.

Present: Representatives Mink, Camp, Roncalio, and Runnels.

Mrs. MINK. The Subcommittee on Mines and Mining will come to order. We are pleased to open our hearings on Federal coal leasing system, and, without objection, I would like to insert my comments at the beginning of these hearings.

The purpose of these hearings today will be to explore the current and projected activities and plans of the Department of the Interior with respect to Federal Coal Leasing Policy No. 1.

There are a number of issues that this subcommittee wants to raise regarding the system; among these issues are:

(1) The Northern Great Plains resources program is engaged in describing and evaluating the social, economic, and environmental impacts on the Northern Great Plains associated with alternate levels of intensity and mix of coal use; e.g., the relative advantages of various mining techniques for Northern Great Plains coal, the financial and environmental costs of water for coal conversion and electricity generation, and the capabilities of potentially impacted localities to accommodate increased demands for public services. Aside from representatives of the Department, this program includes participants from State Government, industry, environmental groups, and citizens.

(2) A second program now underway in the Department is the energy minerals allocation recommendation system (EMARS). According to the Department of the Interior,

> This system will make available certain Federal lands which have been, in effect, environmentally sanatized and the resource tradeoff's made at a district level in the Bureau's general planning system. The system involves three phases. The fifist produces minimum acceptable leasing goals for Federal energy resources by analyzing current coal ownership, resource value, national and regional energy and coal demands, and existing Federal leases. The second phase involves tract selection. The minimum leasing goals are sent to the district levels, within each State, where resource trade-off's through use of the Bureau's planning system are made and public hearings are held. The selected tracts are then referred back to Washington. Once the Secretary has approved the leasing schedule the third phase, leasing, begins. This phase involves the

State Offices, pre-sale evaluations, post sale evaluations and the issuance of the lease. The distict offices must assure there is compliance with lease stipulations and monitor rehabilitation.

(3) Finally, the Department has issued a draft environmental impact statement, proposed Federal coal leasing program. This statement is now under public review. The statement covers: proposed resumption of nationwide coal leasing by the Bureau of Land Management, upon acceptance of final environmental impact statement, utilizing the energy mineral allocation recommendation system. This program primarily involves 85 million acres of identified coal reserves located in the Northern Great Plains and northward along the continental divide from New Mexico and Arizona through Montana.

There are several major issues which have been raised regarding the current Federal coal leasing system.

Among these are:

(1) The need to integrate any coal leasing system with land use planning considerations for the region affected.

(2) The need to assure that the public is receiving an adequate return for the development of the resource. This issue includes the questions of rental and royalty rates, as well as the manner in which leases are issued. It has been recommended that no further coal leases should be issued, except under a competitive bidding system. Such a system could be either through the submission of sealed bids only or by a system of sealed bidding, followed by oral bidding. The latter has been criticized because it reduces the amount of money received by the Department for a lease.

(3) Questions have been raised as to the practice of allowing competitive bidding only on the basis of a bonus, paid at the time of the bid. Alternatives to this system include a royalty bidding system, or system of bonus bidding with a deferred payment provision. This would enable the smaller coal operators to successfully compete with the large energy corporations.

(4) Currently, only about 10 percent of the leases which have been issued by the Department are actively being mined. The vast majority of the leases are held for speculative purposes. A solution to this problem which has been recommended is to insert strict diligent performance requirements into a lease contract.

(5) Presently, coal leases are offered on a permanent basis. It has been suggested that instead of this system, a definite term be placed on the lease, with the provision that it continue as long as production is actually taking place. Related to this issue is the often stated need for a provision for the timely revision of lease terms. One suggested time period has been 10 years.

(6) Finally, there has been considerable interest in amending the Mineral Leasing Act of 1920 to allow the States to spend the 37.5 percent of the revenues which come to them under the existing law for purposes other than schools and roads. Interest in this type of change has also been expressed with respect to revenues from oil shale development. The feeling is that the States will require these funds for a number of social intrastructures projects.

For our opening witness this morning, we are delighted to welcome Mr. Jack Horton, Assistant Secretary for Land and Water Re-

sources, Department of Interior, who will speak on behalf of the Secretary, as I understand it. And you are accompanied by Mr. Frank A. Edwards, Assistant Director, Minerals Management, Bureau of Land Management. You are also accompanied by Mr. Frederick N. Ferguson, Assistant Solicitor, Minerals Office of the Solicitor; and Mr. Russell G. Wayland, Chief, Conservation Division, Geological Survey.

We welcome all four of you.

We have your testimony, and you may proceed in any way you wish.

If you would like me to have this inserted at this time or if you would like to present it, fine. The Chair would prefer to have you present it, because the Chair has not had a chance to go through it before the meeting this morning.

STATEMENT OF JACK HORTON, ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES, DEPARTMENT OF INTERIOR, ACCOMPANIED BY FRANK A. EDWARDS, ASSISTANT DIRECTOR, MINERALS MANAGEMENT, BUREAU OF LAND MANAGEMENT; FREDERICK N. FERGUSON, ASSISTANT SOLICITOR, MINERALS OFFICE OF THE SOLICITOR; RUSSELL G. WAYLAND, CHIEF, CONSERVATION DIVISION, GEOLOGICAL SURVEY

Mr. HORTON. Madam Chairman, we would like to present it in that there are a number of changes.

Mrs. MINK. You may proceed.

Mr. HORTON. Thank you, Madam Chairman.

It is a pleasure for us from the Department of Interior to appear before the Subcommittee on Mines and Mining today, to discuss the public land coal program. We believe that this program is vital to the Nation because of the importance of coal as a major domestic energy source available to the United States in quantities necessary to meet near term national goals. Any coal development has to be done while respecting the integrity of the environment.

Coal occupies this important position because it exists in large quantities and because extraction and use technologies are available. Other energy sources will become available in significant quantities in the 1980's, although coal will still probably be of vital national importance through the year 2000. A large amount of the Nation's low-sulfur coal is in the West and it is reasonable to assume that some of the increase in national coal production will come from these lands, many of which are leased and administered by the Department of the Interior.

In this testimony, we will discuss: first, our current public land leasing program, our coal resource planning system which we have termed EMARS (energy minerals allocation recommendation system), the coal programmatic environmental impact statement presently under public review, and the objectives and status of the Northern Great Plains resource program. Finally, we will discuss our plans for a future coal leasing program.

The Secretary on February 17, 1973, announced a new Federal coal leasing policy with no new leasing (except under certain short-

term relief criteria) until development of a planning system to determine the size, timing and location of future coal leases to meet energy needs more effectively. That policy embodies short and long-term actions all intended to satisfy the Department's mineral leasing goals which are: to assure maximum environmental protection; to provide for orderly and timely resource development; to assure a fair market value return for the resources that are sold.

The short-term actions announced as part of the current coal leasing policy are intended to insure that coal production can continue while longer-term action are being completed. These actions are in accord with criteria intended to resolve the apparent conflict between the need to develop the resource and the need to protect the environment. Under this policy, coal leases are issued under the following conditions: when coal is needed to maintain an existing mining operation, or when coal is needed as a reserve for production in the near future; when the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection and land reclamation; when an environmental impact statement covering the proposed lease has been completed when required under the National Environmental Policy Act.

Since adoption of these criteria the Department has issued only four leases embracing a total of 4,019 acres. In addition, all pending and future applications for prospecting permits are being rejected until a thorough analysis of the current supply/demand situation can be made and until more comprehensive planning of resource use can be accomplished.

The long-term actions announced as part of the current coal leasing policy were: development of an environmental impact statement on the Department's entire coal leasing program, supplementing this as necessary on a regional basis or for individual leases; development of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs most effectively.

The Department has efforts under way to satisfy both of these commitments. The first is the Coal Leasing Programmatic Environmental Impact Statement; the second is the EMARS process to which I earlier referred. We would like to briefly update you on where we stand on these efforts.

EMARS

The Bureau of Land Management is developing a long range planning system we call the Energy Minerals Allocation Recommendation System—EMARS—which is undergoing departmental review. The objective of this system is to make this public land coal resource available for development at an acceptable environmental cost. Coal development on these lands will be balanced with other uses. The system involves three phases:

(1) The first is leasing goals for Federal energy resources will be established by analyzing current coal ownership, resource value, industry nominations and applications, national and regional energy and coal demands, and State policies and goals;

(2) Tracts are selected at the field level, that is, State BLM districts, in response to leasing goals established for each BLM State office and considering resource trade-offs through use of the Bureau's planning system including information gained through public meeting; and

(3) The initiation of leasing which begins when selected tracts are combined into a leasing schedule.

The successful implementation of EMARS requires the completion of the following tasks:

The first task ivolves the identification of areas of particular interest for coal leasing and those areas which are thought to be undesirable for coal development. The necessary information can be acquired through a Federal Register request for information. Such a request is today under preparation.

A second task involves the incorporation into EMARS of data from the Northern Great Plains resource program study. Data from this study will be integrated into the first phase of EMARS and will help in establishing leasing goals. In addition this program will identify additional data needs so that future efforts can be directed to specific problem areas.

A third task, presently underway, is the preparation of surface and mineral ownership management maps. These maps indicate the complex ownership patterns in western coal areas and are of use to both Government and industry in determining owership of the coal resources. These should be complete for known coal leasing areas by November or December of 1974. When they are completed, they will enable the Federal Government to determine for the first time precisely how much coal land its owns and where. This data, coupled with geologic information, will provide us with an inventory of federally owned coal resources.

A fourth task involves a complete analysis of current leases. A preliminary coal lease analysis has been completed and we are concluding work on a final analysis. This analysis is based on data from each leaseholder regarding their particular leases.

A fifth task involves possible changes in regulations and lease stipulations requiring diligent development and continuous operations on existing and new leases to prevent speculative holding of coal resources. We currently are considering the need for such new regulations and stipulations which could include increased royalties and rentals to encourage timely development or actual production requirements.

A sixth task is the completion of the final coal programmatic environmental impact statement. The draft statement is complete and under public review; the statement is scheduled for completion by late fall.

In addition to the above tasks the Bureau of Land Management field offices are identifying possible multiple use and environmental data associated with potential coal lease tracts. This information will be considered in preparing the public land coal leasing schedule if we determine, after completion of the final 102 programmatic environmental impact statement, that EMARS can be fully implemented without unacceptable environmental impacts. EMARS,

therefore, is a system which allows continued identification of specific tracts of federally owned coal through the Department's existing multiple use planning system to meet needs for coal reserves. It is a dynamic system which allows us to rationally lease as much or as little Federal coal as our Nation requires. It also allows us to incorporate new information and studies on reclamation, environmental impacts, social impacts and to be responsive to new situations such as energy embargoes whether they occur next week, next year, or in the next decade.

We have been addressing the issue of how best to assure timely and orderly development of existing leases and of any future leases. Section 7 of the Mineral Leasing Act of 1920 provides that leases shall be conditioned upon diligent development and continuous operations of the mine.

Diligent development is not defined in the Mineral Leasing Act of 1920 and no definition has been included in the leases issued pursuant to the act. The Department is currently considering a definition of diligent development which includes preparing to extract and extracting coal from leased lands in a manner which will promptly lead to the optimum recovery of coal consistent with the necessary protection of other resources.

With respect to timely development of future leases, the Department is considering whether to include requirements for escalating rental and advance cumulative royalties which will encourage timely development of the leases.

With respect to orderly development of both existing and future leases, the Department requires that mining plans be submitted prior to the commencement of operations on all leases. If the mining plans do not indicate that there will be careful development, approval will not be granted.

Programmatic EIS. The draft Departmental environmental statement for Federal coal leasing was released for public review and comment on May 9 of this year.

The statement covers action of revising certain regulations applicable to the leasing and subsequent mining of Federal coal reserves. The regulations under which operations on permits and leases are supervised, is being revised to include provisions specifying the obligations of the permittees or lessees for protection of the environment during their operations and for reclamation of any lands affected by their activities.

The statement covers alternative proposals that would establish a program of competitive coal lease sales from Federal lands.

This draft coal-leasing environmental impact statement has been prepared pursuant to the National Environmental Policy Act of 1969. It is a programmatic statement describing the federally-owned coal resources of the United States, the pattern and impact of the Bureau of Land Management's national coal-leasing program before 1973 and the anticipated environmental impact of competitive coal leasing upon implementation of the EMARS procedures.

This statement includes a description of the existing environment where Federal coal exists and it analyzes the environmental impacts of exploration, development, production, and transportation of coal

resources managed by the Federal agencies and, methods of rehabilitating mined land. This analysis is focuses on the onsite and immediate offsite environmental impacts of coal mining under Federal leases.

This statement is limited to the effects of actions that occur on Federal lands, or where privately owned surface is underlain by Federal coal resources under the administrative jurisdiction of the Bureau of Land Management. It discusses the major primary and secondary effects resulting from mining Federal coal. The impact of onsite coal gasification and of mine-mouth electric generation plants is discussed, but the environmental impact of diminished levels of sulfur dioxide emissions from Midwestern plants using low sulphur Federal coal from the Western States has not been analyzed in any detail. Similarly, a detailed environmental analysis of the impact of coal conversion processes such as coal gasification is beyond the scope of this statement. While in the future such facilities may be located on or near Federal lands, the effects of such processes cannot be assessed until specific proposals for their use at specific sites are made. Impacts on Indian tribal and allotted lands are not considered.

The statement relates to all federally administered lands underlain by coal. It also related to non-Federal lands on which minerals have been reserved to the United States and are subject to leasing under the Mineral Leasing Act of 1920 and the Acquired Land Minerals Leasing Act of 1947. Federal coal reserves are primarily located in the West within the Rocky Mountains to Northern Great Plains Provinces and to some extent the Pacific Coast Province, primarily Alaska. For this reason, the description of the environment and analysis of potential impacts has been directed to these provinces. Federal coal reserves in the East including the Interior, Eastern and Gulf Provinces comprise a very small per cent of the total coal resources.

Five hearings will be held in mid-August at Salt Lake City, Utah; Billings, Mont.; Casper, Wyo.; Denver, Colo.; and Bismark, N. Dak., to receive public comments on the draft environmental statement for Federal coal leasing. The hearing record will be held open to receive testimony until August 31.

An interagency team will meet in Denver in September to evaluate all comments received. The final statement will be released in late fall 1974.

NORTHERN GREAT PLAINS RESOURCE PROGRAM STUDY

There have been many questions about the relationship between the Northern Great Plains resource program study and Federal coal leasing. The primary objective of this study is to provide information and analysis that can be used to place the potential impacts of coal development into perspective on a regional basis and thereby assist the people of the Northern Great Plains and the Nation in the management of the natural and human resources of this region.

Another important objective of this study is to facilitate such management by providing a communication and coordination link among organizations and activities dealing with the future develop-

ment of the region so that they might function more efficiently and effectively.

The study consists of a series of investigations and studies conducted by work groups in seven subject categories: Regional geology; mineral resources; water; atmospheric aspects; surface resources; social economic and cultural aspects, and national energy considerations.

Each work group report includes a regional profile section describing present conditions in its field of interest, a constraints section describing the legal, institutional, and other constraints that will affect future regional energy development, and an impact analysis section describing the changes which are expected to occur as a result of each of three alternate rates of coal development.

We know that data needs will be identified by the study. Obviously, the first step in developing good baseline data is to first identify the data gaps. In anticipation of the question—yes, we think some coal leasing can begin while we are gathering additional data. There is a minimum four to five-year lag between leasing and lease development. But the lease sites would have to be carefully selected and the rate of leasing coordinated with the State governments.

The Northern Great Plains resource program interim report is now being drafted and is scheduled for completion in mid-August. The important coordination role which the Northern Great Plains program has provided will be retained. We expect to maintain certain aspects of the Northern Great Plains program as it now exists.

Finally, we should briefly discuss the Department's progress plan for a future Federal coal leasing program on public lands. When the coal programmatic environmental impact statement has been completed and the Northern Great Plains resources program study report has been reviewed fully, the Department will have completed basic steps necessary to determining whether or not to initiate a leasing program. If the Department decides to initiate a leasing program to increase the contribution of Federal coal to regional and national requirements the program would place emphasis on encouraging the early development of existing coal leases and insuring the effectiveness of new leases in meeting energy requirements at the earliest opportunity.

The increased development of public land coal, however, potentially occupies a key position in the development of a total energy supply for the United States over the next several decades. The rate of development of the program must be phased with new domestic energy sources and with the current and projected availability of foreign energy sources. The Department is working with the Federal Energy Administration in its Project Independence planning for coal and other energy sources. The final planning and implementation of any new coal leasing program will be fully coordinated with Project Independence.

We anticipate that a Presidential energy message will be presented in the spring of 1975. Any new coal programs and policies which are developed through the program discussed above must be an important part of such a message. Threfore, we expect positive

decisions to be made and announced on public land coal leasing by spring 1975.

Madam Chairman, that completes our statement, and Mr. Edwards and I are prepared, along with other members of the Department, to answer whatever questions you or the committee may have.

Mrs. MINK. Thank you very much.

The hearings you have announced, which will take place in mid-August in the Midwest, are those the total number of hearings that you anticipate with regard to the impact statement, or do you plan hearings in Washington, D.C.?

Mr. HORTON. I think we have restricted the hearings to the five States that I have mentioned in the Rocky Mountain West; although, if the Chairwoman would advise, we could reconsider that. It's been the Department's policy as a general rule to hold the hearings in the areas that are impacted by future decisions.

Mrs. MINK. The matter of coal reserves, and particularly as they related to stripable coal in the West, is a matter of serious concern to this subcommittee, as you know. And because the vast majority of the stripable coal reserves exist on Federal lands in the West, we are very much interested in the technique or techniques that have been used, the processes that have been used by the Department in arriving at the determination as to the available stripable resources that exist in the West.

The reason for my interest in this specific matter is the issuance recently by the Department of a new survey, which came to public attention some 2 weeks or so ago, in which for three or four States, the estimates for stripable reserves very dramatically increased. And I would like to pose the question as to how the method of arriving at the estimates differed; why there is, for instance, such a very large difference between the bulletins that we were using for the purposes of our debate and deliberation. For the State of Montana, the stripable reserve was 14 billion short tons. Then, 2 weeks ago, we see an estimate which triples that reserve estimate to 42 billion short tons. Now, I can see where there might be some small variance of estimates, but surely, a large difference, 300 percent requires an explanation, and I'm hopeful that you will be able to provide the committee with that explanation this morning.

Mr. HORTON. Madam Chairman, I have just been given a copy of the report to which you referred. It's by the Bureau of Mines. And in fairness to them, since we don't have a Bureau representative present, I wonder if it will meet with your approval if we would provide the answer to your question in writing. I think it is an excellent question.

Mrs. MINK. We were told by the Bureau of Mines that much of the data was collected by the Geological Survey. And since we have a representative here from the Survey, I was hoping that he might discuss with the committee this morning the process by which the revised estimate was obtained. And for the purposes of the record, this morning we might confine it to the State of Montana. It might be more helpful.

Mr. HORTON. We do have Dr. Wayland with us this morning, Chief of the Conservation Division, but I suspect that he was not a

part of the process in the Bureau of Mines' figures. If that is the case, he might explain that.

Dr. WAYLAND. I would say that our division, Conservation Division of the Geological Survey supplied information with respect to leased lands, but the general overview was definitely done by Geological Division and by the Bureau of Mines with some input by us.

Now, with respect to——

Mrs. MINK. When you say "Geological Division," do you mean the Geological Division in the Bureau of Mines?

Dr. WAYLAND. No, of the Geological Survey.

Mrs. MINK. Of the Survey. So that would be within your particular jurisdiction?

Dr. WAYLAND. Well, except under the Conservation Division of the Geological Survey, we are the ones that work with the Bureau of Land Management in regulatory aspects.

Mrs. MINK. What is the function of, and the responsibility of the Conservation Division?

Dr. WAYLAND. We classify lands as to whether they are coal or noncoal in this regard. We evaluate tracts that are going to be offered for competitive lease by the Bureau of Land Management. We advise on certain aspects of leased terms that will issue, specifically tailored to given leases; and then in particular, after the lease is granted our mining supervisors exercise the regulatory authority over the operations including the instructions to lessees on reclamation of property.

Mrs. MINK. So one of your functions and responsibilities is the ascertaining of the resources that are available insofar as Federal lands are concerned. Is my understanding of your work and function correct?

Dr. WAYLAND. Yes, and when I mentioned the matter of classification of lands, naturally, we take advantage of all information available to the Geologic Division.

Mrs. MINK. Yes. So in line with that statement, then, has there been any new information that has come to your attention, which would lead to the reevaluation of strippable reserves for the State of Montana?

Dr. WAYLAND. As I say, the Bureau of Mines is primarily responsible for the reinterpretation of those figures. I have no difficulty——

Mrs. MINK. I realize that, sir. And what I am asking is not how they were reinterpreted. I am asking whether the raw data submitted to the Bureau of Mines changed in any dramatic way. Obviously, there has been a reinterpretation. What I am seeking to find out for the purposes of this discussion is whether the data changed in such a dramatic way that we might find some rationale for the new interpretation.

Dr. WAYLAND. Well, Secretary Horton will wish to speak to that, too; but let me simply say this: the additional coal crop line mapping and additional interpretation of oil well basins, to name one source, with new geophysical techniques, this enables the identification of more coal land value than were known previously, and there are increases in minable reserve estimates.

Another thing that enters this is the improved technology, whereby a higher stripping ratio of overburden to coal can be han-

dled, and therefore, coal can be mined to a greater depth by stripping means.

Mrs. MINK. Is that analysis a function of your division?

Dr. WAYLAND. On individual leases, it is, yes; because we approve the mining plans after a lease is granted, and we are the ones that consider the off-site problems. And we, of course, discuss the problems that arise in the approval of the mining with all other agencies, especially the Bureau of Land Management.

Mrs. MINK. So what additional reserves were discovered in the State of Montana techniques?

Dr. WAYLAND. That part of that report, I cannot speak to personally. I think as Secretary Horton says, we will have to respond to that in writing in consultation with the Bureau.

I would say with respect to leases that already are existing within the State of Montana, the figures within figures, so that we have 275-million tons of recoverable coal from surface mining operations as our engineers see it in our own division. And that we have only 57-million tons of underground coal reserves recoverable and already under lease.

Mr. HORTON. Madam Chairman, I have just been infomed that the former departmental figures were based on the geological investigations from the Montana State Geological Survey, in the 1930's. These have been currently revised, and I am looking now at a change under the old figures of strippable resource coal reserves of 23-million tons. That is the old one. The new figure has been updated to 42-million tons. Excuse me, that is billion tons.

So it reflects a change in the factual information reaching us from the State goelogical surveys. But I think you pointed to an area in the Department on which is incumbent upon us to respond. That is the revision of standard figures. It is our intent to do this.

Mrs. MINK. Most perplexing, especially when you are attempting to deal with what you believe to be reliable data in the midst of a debate and you become confronted with a problem such as this. I have queried the Department, and have not been given a satisfactory answer. It is most distressing. I think this is really one of the most important inquiries in the coal leasing system. It must be an analysis of what there is available. If we don't know that either, it will be very difficult to have any confidence in the final end product which will merge all of these complicated systems.

Mr. HORTON. We have to appreciate that these figures will continue to change as they become refined, as man begins to learn more about the earth. And everytime we go out for more information, it is expected that the figures will change. But, nonetheless, the Department should have a standard document overall, and it is our intent to produce this. We intend to distribute the Bureau of Mines' figures, Survey figures, the BLM figures, and come out with a composite document for the Congress, so at this point in time, we will be agreed as to what reserves there are that are stripable.

Mrs. MINK. Let me ask this question: in the preparation of the environmental impact statement, on which there will be hearings very shortly, what set of figures were utilized in arriving at the impact of coal leasing in the West? Are we dealing with the new? If we are dealing with the new, have they been taken into considera-

tion, or is there a legitimate question as to the up-to-dateness now of the impact statement? These new figures are larger and would have larger impacts, of course, on everybody. Obviously, it is about a 300 percent increase for one State, the State of Montana.

Mr. HORTON. Madam Chairman, let me respond by three points. The first is neither the figures nor the BLM figures were the older figures. The second is that the EMARS process will allow the incorporation of the new figures as they become available. But most importantly, I believe the impact is not simply a condition or result of the total size of the resources but indeed the technology which is used on any particular coal lease. And while we may know there is a lot more coal there, it doesn't mean that there is going to be a lot of leasing.

The impacts, as you appreciate them are quite specific; and of course, you would have a proportional magnitude of environmental impact if you leased more. Simply because the figures are larger this month than last month doesn't mean we should anticipate a larger leasing program.

Mrs. MINK. I beg to disagree at that point, after which I will discontinue this line of questioning. We are hoping to be able to get someone from the Bureau of Mines to respond. If indeed the new figures are based upon discovery of new deposits, because of new techniques in discovery, and deposits located at great depths, don't you think it is very relevant that the public know what safeguards will be incorporated in the impact statement which has been issued with regard to the size of the deposit, the degree of overburden and the depth of the deposit, the location, above or below the water resources, and all the other factors that must come into consideration? And it troubles me that these factors may be entirely different because new considerations must now be considered, because of new recoverable estimates given by the Department of Interior. I would suspend that line of questioning and hope, if not today, then at the next meeting we could discuss this matter further with the Bureau of Mines.

I yield to my colleague, Mr. Camp.

Mr. CAMP. Thank you, Madam Chairman. I would—I missed the gentleman's name that participated in the conversation a minute ago.

Mr. HORTON. That is Dr. Russell Wayland.

Mr. CAMP. I would like to ask you, in your survey or in your activities in the area of the Geological Survey and so forth, did you make any determination of any Federal lands that might possess coal that would not be stripable or not be minable because of the inability to replace it in any form of any kind as it was before it was mined?

Mr. HORTON. Mr. Congressman, that is the responsibility given to the Bureau of Land Management and not to the Geological Survey. That is an inherent part of the EMARS process and the BLM process. The State director and the area manager of the lands under question look at the projected impact, and in their opinions the cost of the environmental impact, if that exceeds the value of the source in certain areas, then those lands are taken out of any proposed leas-

ing schedule. The Geological Survey is responsible for obtaining the value of the resource of the coal. The proposal and the decision to eliminate certain tracts, certain areas from leasing is a responsibility of theirs.

Mrs. MINK. Will the gentleman yield?

The value of the resource, does it take into account the cost of recovery? Would the value be diminished by the way of emplacement and the character of the deposit?

Mr. HORTON. Yes, it does take into consideration the cost of recovery.

Mrs. MINK. The depth under the surface help make up your value consideration; is that correct?

Mr. HORTON. That is correct, Madam Chairman.

Mrs. MINK. Mr. Camp

Mr. CAMP. I am just curious, if I read your testimony right, it says that since adoption of the criteria the Department has issued only four leases embracing 4,019 acres.

Mr. Wayland, you haven't had very much to do, have you, if you came into the picture after the Department has issued the leases for your activities in regards to such said leases?

Dr. WAYLAND. Mr. Congressman, it is correct that particular function has been quiescent for quite awhile. Our people are engaged in working with existing leases and continuing to classify land. And at the moment we are in support of EMARS by making a concentrated systematic effort to identify additional land where the legal requirement of prior knowledge of the existence of commercial coal is required before competitive leasing can take place. Otherwise the Secretary could not lease such land and could only consider whether or not he wanted to place them in the prospecting permit category. We have been quite busy.

Mr. CAMP. I didn't mean that in a derogatory manner under any circumstances. My whole point was to get on the record that activities, exactly what you're doing.

Mr. HORTON. Mr. Camp, in fairness to Dr. Wayland, in addition to coal, they and BLM have the responsibilities for all of the upland minerals and the entire outer continental shelf leasing program. They have been one of the most active agencies in the last 4 years.

Mr. CAMP. Mr. Horton, can you tell us how many years, months, or whatever it might be, transpired during the time these four leases were issued?

Mr. HORTON. I can give you dates—since 1971, the Department has only granted four new leases under the short-term criteria. The first was a lease in Colorado, October 1973. The second was a tract in Utah, 1,400 acres, March 1974. There was one in Kentucky in January 1974. And there was a sale which was rejected in Alabama. It has been reoffered, and that was held in late 1973.

Mr. CAMP. Then, there has not been any leases offered for sale in Wyoming or Montana say?

Mr. HORTON. That is correct, sir, or North Dakota.

Mr. CAMP. Is there any particular reason why, that the research hasn't been done on Indian land?

Mr. HORTON. I think a great deal of work and geological investigations have gone on in Indian land.

Mr. CAMP. Do I remember the impact on Indian tribal lands are not considered?

Mr. HORTON. No, that simply is not considered in the programmatic statement. But they would be considered in individual impact statements written for projects on the Indian Reservations.

Mr. CAMP. Well, we will though have the knowledge, will we not?

Mr. HORTON. We will have the knowledge, and you can well appreciate the process of observance is very large, and that responsibility is the responsibility of the BIA, that they would be conducting the impact statement on Indians, and BLM would be conducting them on public lands.

Mr. CAMP. I also read from your statement there that there is a minimum of a 4 to 5-year lag in leasing and leasing development.

Mr. HORTON. Correct.

Mr. CAMP. I am sure we have enough coal reserves throughout the United States and private lands to take care of our needs, but is there any reason why it should take this long?

Mr. HORTON. I think it is more of a required warm-up period for industry. That is from the time the Federal Government grants the lease. It takes, for example, something in the order of 2 to 3 years to order some of these large shovels, up to a year to actually construct the shovel on the site of the mine.

Mr. CAMP. In other words, it's the feeling of the Department of Interior that we should produce private lands before we do public——

Mr. HORTON. Mr. Camp, we have not reached a decision on this. That is the part of the Project Independence that is part of the EMARS analysis of the future coal leasing program. It would certainly be taken into account, the coal that we know that now exists on private land. But, I think it would be fair to say, after a Federal coal lease is let, the approximate timeframe required for the start of mining would be the same on state lands and/or Federal lands. Of course, it would require a longer time from the period of application for the lease because on Federal lands we are required to have an environmental impact statement and go through the EMARS analysis. On private lands, that requirement would not prevail.

Mr. CAMP. Now, going back to your hearing that you anticipated in mid-August, in the Western States, for which we should say the Rocky Mountain States, what personnel will make up this interagency team; who will they be?

Mr. HORTON. I attended a hearing conducted by the BLM in Gillette, Wyo., and they had a technical panel composed of representatives from the Fish and Wildlife Service, the Bureau of Land Management, U.S. Geological Survey, Bureau of Mines; and I believe there were State representatives, also invited, and where appropriate representatives from the BIA. It's an integrated professional resource panel of all the disciplines that go into the production of the statement.

Mr. CAMP. Have any of these gentlemen ever had any experience in coal mining?

Mr. HORTON. All of them come from the areas, professionals in the field, BLM, Geological Survey. This is the way they make their living.

Mr. CAMP. I understand. Are they of theory or practical knowledge?

Mr. HORTON. I would think you would have a composite of both. Primarily, you would find people on the ground that had a specific technical knowledge of the process of mining in the case of the Bureau of Mines.

Mr. CAMP. I know when the gentlemen are picked they are very knowledgeable in the industry itself so that for the overall picture and the benefit of all people, their decision that they make will be the kind that will be practical and applicable to the situation.

Thank you, Madam Chairman.

Mrs. MINK. Mr. Roncalio.

Mr. RONCALIO. I appreciate being asked if I have any questions although I am not a member. I am on about six too many subcommittees right now. So I am glad to be back.

I go to Mr. Horton. I would like to ask a question. How can you find the time to go skiing in July, or is that what happened?

Mr. HORTON. I wish it had been skiing. It was tennis.

Mr. RONCALIO. I am sorry. I hope you will be better soon. I appreciate your statement, and I am grateful for it, and I want to repeat again the gratitude of the Chairman and I would thank you on behalf of Wyoming and Colorado on the tremendous job you are doing in developing these resources we are talking about this morning.

The question I have deals specifically with whether or not Mr. Wayland—do you do the work on the leases as contemplated on Federal coal deposits when they're are under non-Federal sources, or does BLM do that?

Dr. WAYLAND. Each of us have a role, Mr. Congressman. Definitely the lease is handled as far as we are concerned almost the same as if it was Federal surface.

Mr. RONCALIO. I see.

Dr. WAYLAND. The consultation with the Bureau of Land Management is there, particularly with the respect to regulation aspects, and we are advised by them and also by our own Water Resources Division and our own Geologic Division as appropriate. And our people are required in connection with the application for approval of mining plans also to consult with local officials.

Mr. RONCALIO. You do this whether the surface is federally or locally owned?

Dr. WAYLAND. Yes, sir.

Mr. RONCALIO BLM, you, Mr. Edwards, do you also deal with the leases when the lease is on the Federal coal but not on BLM lands?

Mr. EDWARDS. Yes, when it's—if it is Federal coal, we deal with the lease whether it is federally owned surface or private surface.

Mr. RONCALIO. I wanted to know, too, Mr. Secretary, did your paper this morning deal with surface mine only, or does it touch on deep mining, also?

Mr. HORTON. I think the primarily thrust was on surface mining. The process of EMARS certainly applies to deep mining as well.

Mr. RONCALIO. Do you feel that you need some—do you feel the administration's policy now is proper and is not a pell-mell rush into massive leasing which might be wrong in the next few years?

Mr. HORTON. There have been allegations that we're proceeding pell-mell, but the voices on the other side, Mr. Roncalio have been much stronger. We have delayed too long. In fact, except for the four leases, the short-term criteria leases that we have mentioned, there have been no leases at all granted. We have terminated our applications and prospective permits, and I think we have come out with a regular, disciplined, systematic way of approaching planning processes, of writing the impact statements, conducting of public hearings. And it is my personal opinion that the deliberation and the great study that has gone into this will allow us a liberal policy that will be balanced between the development of the resource and the protection of the environmental values in that area.

Mr. RONCALIO. That is your policy?

Mr. HORTON. That is the policy of the administration.

Mr. RONCALIO. You have the support of the full committee, also?

Mr. CAMP. I would ask if the gentleman would yield. Let's go back to your inquiry a minute ago in regards to lands that have a different surface and subsurface. What is the feeling Mr. Secretary, that the Department of Interior has in regards to the mining of those lands which the surface has one ownership and subsurface has another under it?

Mr. HORTON. We will be guided certainly by the wisdom that comes from the Conference Committee between the Senate and the House. We have read and studied the committee report on the strip mining bill, and obviously we are in a position to react to whatever the Conference Committee comes out with. But as a practical matter for the owners of the surface, underlaying coal in the Western States, if they're given the authority to either provide their agreement or waiver for the development of the subsurface coal, it would be much more acceptable to the political support for whatever mining happens. I think instead of taking an active position on that, it is pretty much up to the Congress, and we are standing by to react to whatever you decide.

Mr. CAMP. I would thank the gentleman.

Mr. RONCALIO. I, too, thank you. Thank you, Madam Chairman. We happen to be in the middle of this bill today. Thank you.

Mrs. MINK. I thank you, Mr. Roncalio. If you have no further questions, I will continue with the development of further concepts in the testimony.

One of the criticisms that I have noted with regard to the current Federal coal leasing policy is that the leases are issued on a permanent basis. And such being the case, the only factor which would permit termination of these leases is the failure of the lessee to, with due diligence, develop the coal which has been leased. Is that a correct understanding of the current state of terms of the leases?

Mr. HORTON. I would prefer to phrase it as follows, Madam Chairman; that certainly is a fair reflection of past policy. We have now under review various proposed changes to that policy. If you examine the legislation passed by the Senate, to reform the Mineral Leasing Act, you will see that that our administrative position has changed rather dramatically.

Mrs. MINK. Yes, I will certainly note that for the record, and commend the department and the administration for that change,

because I think that it is a very, very essential thing, that the criteria of development and the term of the lease be a better defined one.

However, my inquiry goes to the existing leases. First of all, how many million short tons of stripable coal now exist, based on the most current estimates, on Federal land, including Federal coal on private lands.

Mr. HORTON. Let me give you the following figures, and we can amplify them as you may desire for the record. In the six Western States, we have now 681,000 acres under lease. That constitutes in total 16.1 billion tons of recoverable coal reserves. Of that 16.1 billion tons, it is the judgment of the Bureau of Land Management that 10.6 billion tons can be mined by surface mining methods, and 5.5 billion tons would be mined in their judgment, by underground methods.

Mr. CAMP. Would the gentlelady yield?

Mrs. MINK. Yes.

Mr. CAMP. In other words, about two-thirds of the 16 billion you are talking about would be strip mining, and one-third would be deep mining?

Mr. HORTON. Approximately so. That is correct.

Mr. CAMP. Thank you.

Mrs. MINK. All of these leases are for a permanent period of time; is that correct, that there is no expiration date per se to the leases that have been issued with respect to the 681,000 acres containing 16.1 billion tons of coal.

Mr. HORTON. That is correct. That requirement is provided by statute. Additionally we do review them every 20 years. But the review that has been given in the past has not been with the intent of terminating them, rather than changing the terms and conditions.

Mrs. MINK. Now, the Department made a survey with regard to the coal contained in these lands to update the estimates of recoverable coal. Are they accurate? Is this the updated figure, and can it be related to the new reforms that were issued by the Bureau of Mines?

Mr. HORTON. The answer is yes. A recent survey has been completed as recently as last winter, and the figures I have given you reflect the current information on leases.

Mrs. MINK. This 16.1 billion tons represents what percentage of the total Federal coal recoverable by what method?

Mr. HORTON. The answer to that question is that we believe that we have leased around four percent of the coal under Federal jurisdiction.

Mrs. MINK. No, my question refers to the existing leases. The 16.1 billion tons represents what percentage of the total available recoverable coal in all existing coal leases to date? Is this 90 percent of the coal available on existing leases or is it 50 percent or roughly how much of the coal leases are included in the 16.1-billion-ton figure which you gave us vis-a-vis the seven western States.

Mr. HORTON. The figures that we have, Madam Chairman, of the 16.1 or the total recoverable reserves, and that is a part of the 27 billion tons of coal in place. So it is approximately 60 percent.

Mrs. MINK. So where is the balance of the 40 percent of the Federal coal that has been leased; in what other States?

Mr. HORTON. If I understand the thrust of your question, I believe, they are in the same States, but simply that it is not recoverable. We are talking about the same areas.

Mrs. MINK. I am talking about recoverable coal.

Mr. HORTON. 16.1 billion tons.

Mrs. MINK. The point of my question is that, is the 16.1 almost exclusively in the seven States? Is the 16.1 billion tons almost the total amount of coal in the United States which the Federal Government now has under lease?

Mr. HORTON. We will refine our figure, but it is in the general area of between 80 and 90 percent.

Mrs. MINK. In the seven States, you have 80 to 90 percent.

Mr. HORTON. We call them six States.

Mrs. MINK. Six states. You have 80 to 90 percent of the recoverable coal that is now under lease?

Mr. HORTON. That is correct.

Mrs. MINK. Would you be able to give us any estimate of the increase in the value of these coal deposits which are currently under lease? Do you have any tables, any economic data which, as I understand it, is the responsibility of the conservation division. They must collect economic data and make value estimates of coal deposits. Has there been any marked increase in the value of the coal deposits currently under lease in these six States? Do you have any table to show this?

Mr. HORTON. The figure we have available this morning, Madam Chairman, is that the wholesale price index of coal went up 150 percent between 1969 and 1973.

Mrs. MINK. Yes, in addition to that increase, what I am attempting to get at is the new techniques that have been alluded to that now make it possible to recover at a much lower cost the available reserves in the West. Have all of these facts been taken into account in establishing the percentage increase in value of the coal that has been leased over the years from the initial value that had been given to the coal when it was first leased? Do you have any data that will give us a picture of the increase in property value which has accrued to the lessees by the mere possession of their coal leases?

Mr. HORTON. Madam Chairman, we don't have any cost composite. We will do our best to provide them.

Mrs. MINK. Without objection, those figures will be inserted at this point in the record.

The value of coal is determined by several factors but the most important is the market place. Initial value of a deposit is determined by USGS who makes a recommendation to BLM. This recommendation is in two forms, Minimum Acceptable Bonus Bid for a competitive lease and royalties for both competitive leases and preference right leases. Each deposit is different and therefore evaluated separately based upon specific characteristics, i.e., tonnage, acreage, price, quality, etc., of the individual deposits at the time of evaluation.

To determine increase in value of a coal deposit it is necessary to reevaluate the deposit at current prices and economic conditions. The market place determines present value and therefore current prices over current cost would oe a simple way of determining value. Enclosure 1 gives a mine value index of coal in the U.S. from 1967 to 1972. Enclosure 2 gives cost index for mineral operations from 1967 to 1972. It is necessary then to subtract the increase of sosts from the increases in coal value to determine increase in value as shown in Enclosure 3.

As can be seen from the enclosures the actual increase in value over costs is small. To obtain the present value for a deposit it is necessary to obtain the initial value placed on the deposit then increase this by the increased value index.

ENCLOSURE 1.—*Mine Value Index (1967 base)*

1967	100.0	1970	135.0
1968	101.0	1971	139.0
1969	108.0	1972	150.0

ENCLOSURE 2.—*Cost Index (1967 base)*

1967	100.0	1970	123.0
1968	102.0	1971	138.0
1969	108.0	1972	149.0

ENCLOSURE 3.—*Increase in value over costs (1967 base)*

1967	0	1970	+12.0
1968	−1.0	1971	1.0
1969	0	1972	1.0

Mr. HORTON. One would have to consider not only the economics of scale in the larger scale machinery, but also perhaps increased labor cost, cost of delay, impact statements, higher cost of perhaps getting permission from private people to cross the land. It's not sure in my mind that one could argue that the value of the resource was necessarily higher simply because the costs were lower. We are not certain the cost of coal is lower. We will do our very best to provide you with that.

Mrs. MINK. Can you also provide the committee with an analysis of the recoverable resource in the leases at the time the leases were executed as compared to what is now considered to be recoverable? Is that possible?

Mr. HORTON. We don't want to promise you something we can't produce. It would be my personal guess that in many instances past leases from long ago, those figures weren't available. Maybe there was no escalation before the leases were let. But we will do our best between the Geological Survey and the BLM to get those figures.

Mrs. MINK. In the pending legislation before the Congress, is there any way that an amendment can be drafted to modify the terms and conditions of these existing leases? In other words, was there any escape clause or provision in the leases which have been issued in the past which would make it possible to apply new laws as are enacted? Can we pass a law and make it applicable to these old leases and be able to bring them in line with the new policy decisions and the policies of the administration?

Mr. HORTON. There are two answers. The first, every 20 years, the terms and conditions will be reviewed. But, the better answer is that we are working on ways now that we can provide greater leverage in expanding on existing leases, and we are examining very closely the section of the Mineral Leasing Act that provides advanced royalties in lieu of diligent development. I think it might be helpful to ask Mr. Fred Ferguson, our Assistant Solicitor for Minerals, to discuss the background in his analysis and the Department's present review of this entire matter.

Mrs. MINK. Yes, we would be pleased to hear from Mr. Ferguson.

This is a very important area. We need to know if the pending legislation will or could have any effect on the pending leases.

Mr. CAMP. Would the lady yield on this point? In other words, coal leases are issued for a 20-year period?

Mrs. MINK. No.

Mr. CAMP. Or so long thereafter as there is production?

Mr. FERGUSON. They're issued under the statute for an indeterminate period upon condition of diligent development and continuous operation of the mine. But the lease is subject to a readjustment of terms and conditions at the end of each 20-year period. So, in effect, at the end of a 20-year period, we could impose different conditions. And if the Congress had enacted new legislation, I think we could probably impose those terms and conditions at the end of a 20-year period.

The serious question has been what we can do with existing leases, because——

Mr. CAMP. Just before you get to that, if you did make your investigation after the 20-year period and find out that the mines are not producing any coal, does the lease terminate?

Mr. FERGUSON. Well, we would say there was no diligent development, and there was no continuous operation if nothing was being done with the mine; and therefore, the lease would be subject to cancellation.

Mrs. MINK. Would the gentleman yield at that point?

Do I understand the response to mean that diligent development determination can only occur every 20 years?

Mr. FERGUSON. Well, we have certain continuing responsibilities.

Mrs. MINK. I refer to current law. At what point can you terminate a lease because of failure to provide diligent development?

Mr. FERGUSON. The statute says, as I have said, the lease is for an indeterminate period upon condition of diligent development and continuous operations. The statute also provides that the lessee may, under certain circumstances, be permitted to pay an advanced royalty in lieu of continuous operation.

Mrs. MINK. May I stop you right there. Is the language discretionary with the Secretary as to whether the acceptance of the advanced royalties will in fact be accepted?

Mr. FERGUSON. The statute leaves to the Secretary's discretion, whether to accept advanced royalties.

Mrs. MINK. In how many instances has the Secretary declined to accept the advanced royalties and terminated the existing coal leases?

Mr. FERGUSON. This is something I would like to explain, because the leases that have been issued in the past have always provided for this payment of an advanced royalty. Now, we have been exploring the possibility that the lease form does not grant a lessee an absolute right to pay that annual advanced royalty but merely a right to request the right to pay it each year. We are looking into that, and we are also looking into the fact that this payment of annual advanced royalties would not fulfill the requirement of diligent development.

Mr. CAMP. Madam, would you yield? Who determines what this advanced royalty would be?

Mr. FERGUSON. I would just say——

Mr. CAMP. Does the Survey make that determination?

Mr. FERGUSON. I would point out that unfortunately the lease forms that were used many years ago said that the royalty would be $1 per acre or a fraction thereof. So, it is already written into the lease form that that advanced royalty could be paid in lieu of continuous operations.

Mr. CAMP. In other words, a man can control 10 acres for $10 a year. He could continue to hold his lease.

Mr. FERGUSON. He would be fulfilling the requirements of the continuous operation if the Secretary allowed him to do so.

Mrs. MINK. I have a legal question. If a lease has been issued containing the terms of advanced royalty as part of the lease itself, does that constitute a continuous running in perpetuity exercise of the Secretary's discretion to so permit the payment of royalty in lieu of diligent development?

Mr. FERGUSON. This is what I have been looking into very seriously. This January I came out with the view that I felt that we could say that this was not an absolute exercise of discretion for the remainder of the life of the lease or for the 10 or 20 years, but rather a provision of what would be done if there was an application for this each year. This is really a rather new area in which no one had done any exploration.

Mrs. MINK. So I heartily concur with your interpretation.

Mr. RUNNELS. I would think it is a disgrace that we can issue leases that can stay forever with a peddling dollar an acre instead of actually doing some work on the lease. I think that we should overlook, or look over the lease system or situation and come up and make recommendations to this committee.

Mr. FERGUSON. I think it is true that the Department has not issued any more leases with this term in it.

Mr. RUNNELS. I want to commend the Department for not issuing any more leases.

Let me ask you this: such as owning oil and gas leases, there are limits to what a company or someone can own. Is there any limit as to how many acres or whatever a corporation can own?

Mr. FERGUSON. Yes.

Mr. RUNNELS. How many?

Mr. FERGUSON. 46,000—I think 46,080 acres in each State.

Mr. RUNNELS. 46,000 and what?

Mr. FERGUSON. 46,080.

Mr. RUNNELS. In each State. Would you have any idea why the 80 acres got on this?

Mr. FERGUSON. It is a multiple of 640, the number of acres in a square mile.

Mr. RUNNELS. That is in each State?

Mr. FERGUSON. Yes, there is a provision by which an additional 5,210 acres can be acquired under certain circumstances.

Mr. RUNNELS. What are those circumstances?

Mr. FERGUSON. When the granting of the lease for the additional land is necessary to enable the applicant to carry on business economically and when it is believed to be in the public interest.

Mr. HORTON. Could I answer your first question, that the administration has had before the Congress since 1970, a proposed revision of the Mineral Leasing Act of 1920. The Senate Interior Committee passed that, and it now has passed the Senate, and it will provide a number of revisions. One of which would be a limit as to the duration of the lease itself.

Mr. RUNNELS. Where is this business, in the House side?

Mrs. MINK. Yes, it is here.

Mr. RUNNELS. In this committee?

Mrs. MINK. Yes, it will be our next undertaking, after H.R. 11500 passes.

Mr. RUNNELS. That answers a lot of my questions. Thank you, Madam Chairman.

Mr. CAMP. Madam Chairman, if I may. We haven't talked about this, and I don't think—you did in your briefing this morning to us. When we get to this leasing situation, what is your feeling in regards to how the leases should be presented for sale? Should it be on a bid basis, or should it be on a sealed basis, or should it be by, I believe, Mr. Runnels, in some of our oil business, we have what we call auctions.

What is your suggestion to us as how the legislation should be written as far as the leases in the future?

Mr. HORTON. Our suggestion, Mr. Camp, is contained in our proposals to the Mineral Leasing Act of 1920, which as Madam Chairman said is before you now. That simply would provide for sealed competitive bidding.

Mr. CAMP. In other words, you would make your bid to the Department and you are there. Have you thought at all about what I would classify as an auction bid where you would bring these people in and bid against each other for the leases?

Mr. HORTON. If these are conducted similarly to our Outer Continental Shelf competitive leasing program, they are not auctions in the sense that people compete against one another. The bids come in in closed envelopes.

Mr. CAMP. I was under the impression that some of our off-shore leasing had been done in the past, that was only verbal basis. At the time of the selling of the lease, it's all been sealed bids?

Mr. EDWARDS. Only sealed bids on the Outer Continental Shelf. We do have flexibility. We have conducted some sales in the past on coal by sealed bids followed by oral auctions. Our experience has been, we receive more revenue in terms of the oral auction, but we have fewer bidders when it is sealed bids.

Mr. CAMP. Madam Chairman, if I remember some of our testimony we have had in one of the oil shale leases in Colorado or in the area, that what was maybe a lease price put on or sale put on the lease prior to the time of the sale, that when it did come in with 8, or 10, or 12 times, so much more than what was ever anticipated to start with, was this a sealed bid?

Mr. HORTON. That was a fully competitive sealed bid sale.

Mr. CAMP. My whole point is which is the best approach. I think that the Federal Government should be treated as much as an individual when it comes to leases on Federal land, that we should be

paid a comparable price, a comparable lease price as it would be for private enterprise.

Mr. RUNNELS. Would the gentlemen yield?

Would the gentlemen at the table—I understand off-shore leases and so forth, but let's take the leases on oil and gas, where the Federal Government is conducting a lottery, because you know and I know it's a $10 fee. You put your money in and then turn the crank for an oil and gas lease and draw it out. You think all leases of the Federal Government should be on competitive bids rather than on a lottery basis as they are now conducting the oil and gas leases in the West on most leases. And the reason I say that, you can pick up any kind of magazine you want to, you have brokers all across the United States telling you that you may win fabulous valuable government oil and gas leases, and they are in many instances, but sometimes they are not worth the paper they are written on at this point in time. Do you feel that if it is smart for the Federal Government to have sealed bids, and I agree it is smart to have sealed bids, do you think it should be for everybody or for certain areas of the country to have sealed bids on the mines?

Mr. HORTON. I would think, Mr. Runnels, the general thrust, both in the Congress and the administration, is toward a fully competitive system everywhere. With the Congress and the administration, we are together dealing—we are reviewing the application of the 1920 act. We don't have across the board uniformity. I would guess certainly that the general trend is for competitiveness.

Mr. RUNNELS. Thank you.

Mrs. MINK. How many or how much of the information and data relating to coal deposits is derived from independent Government surveys and exploration and so forth? How much of it is derived from private industry data?

Mr. HORTON. In terms of percentage, we will ask Dr. Wayland to address this.

Dr. WAYLAND. Madam Chairman, with respect to existing coal leases, we went through the exercise on our own this last winter to redetermine and reestimate these figures which you were given today by Secretary Horton. We determined on these 500-plus leases that the 27-billion tons of coal in place includes about 16-million tons of recoverable coal of which two thirds were recoverable by surface mining. This is our word. It is based on, of course, facts derived from observations of our own people in the field and from our studies of drill cores and outcrops. But it is our figure.

Mr. HORTON. An additional source of information is the State geological surveys, information they provide to our own National Geological Survey.

Mrs. MINK. These figures were derived last winter, December of 1973. These are new figures you are presently working with?

Dr. WAYLAND. Yes.

Mrs. MINK. What were the old figures?

Dr. WAYLAND. Madam Chairman, there has never been so much interest as there is now in these figures. We had a declining coal industry for 30 years now, where these old leases were banded under terms of essentially a lack of interest. The turn around in bottoming

out of the coal market was in the late 1960's. The Government's response and determination of further details began essentially then.

Mrs. MINK. Began in December of 1973?

Dr. WAYLAND. Began in the late 1960's.

Mrs. MINK. My question is: if these are new figures, what were the old figures? The last, most recent figures prior to this new data which you are now providing the committee. I would like to see the relationship of increases, and then perhaps ask another question, if there was a dramatic increase.

Mr. HORTON. The former total recoverable reserve under lease, Federal lease, that figure was 16.1 billion, and the old figure was 15.9 billion. There is a high degree of accommodation between those two figures.

Mrs. MINK. So then, these new surveys which you have testified to, Mr. Wayland, cannot be the reason for the readjustment of figures made by the Bureau of Mines. Do we have a spokesman from the Bureau of Mines yet? Is my conclusion correct, since you said the old figure was 15.9?

Mr. HORTON. We are being asked to explain the 15.9 up to 16.1.

Mrs. MINK. That is correct. I am saying there is not much difference; and therefore, your new figure cannot be the basis for the adjusted figures that the Bureau of Mines has come up with in the new analysis.

Mr. HORTON. We have explained that the primary determinate of the new figures comes from the revised figures of the Montana Geological Survey.

Mrs. MINK. The new figure that the Bureau of Mines came up with came from Montana?

Mr. HORTON. We are going to the components of their increased total figures as we looked across the old figures from Montana to the new figures which the Bureau of Mines has just received. We find a primary explanation of why the new information—the old information from Montana was in the 1930's, and it has now been updated to 1974, I guess.

Mrs. MINK. Is that the same explanation for West Virginia's decrease from 11 billion tons to 5 billion, that new data has now been provided to the Bureau of Mines or to the Department from the West Virginia Bureau of Reclamation?

Mr. HORTON. We don't have before us the old figures of West Virginia.

Mrs. MINK. The old figure for West Virginia was 11.23 billion short tons. The new figure from the Bureau of Mines is 5.212 billion tons.

Mr. HORTON. Maybe that was the amount that had been mined from the former time until the present time. We will have to look into that.

Mrs. MINK. I won't pursue that. We will try to get the Bureau of Mines at a later hearing.

I have one final question, and this relates to the diligent development issue which is a very key problem, in my mind at least. Have any of the existing coal leases, say, in the last 20 years, as they came up for periodic review, been terminated?

Mr. HORTON. Mr. Edwards.

Mr. EDWARDS. I don't recall that there have been.

Mrs. MINK. Could we get a definite answer to that question for the record?.

Mr. EDWARDS. We would be happy to supply that for the record.

Mrs. MINK. That would be inserted at this point.

[The answer supplied by Mr. Edwards was that:]

No leases have been terminated for lack of diligent development by the 20th year.

Mrs. MINK. Has the Department terminated any leases in the last 20 years for failure of diligent development outside the 20 year review period?

Mr. EDWARDS. I don't believe so.

Mrs. MINK. May we have a definite answer for the record, also, on that. And that material will be inserted in the record at this point.

[The answer supplied by Mr. Edwards was that:]

No leases have been terminated for lack of diligent development at a time other than the 20-year adjustment period.

Mrs. MINK. Regarding the four leases which you stipulated have been issued recently, were these leases issued this year or last year? Since the moratorium of February 15, 1973, my understanding is there were four leases issued; is that a correct statement of fact?

Mr. HORTON. Most of them were issued either this year or late last year.

Mrs. MINK. Those four leases that were issued, what were the terms and conditions of the leases vis-a-vis the length and the criteria of diligent development?

I would like to see whether the Department is following its recommendations.

Mr. EDWARDS. The terms and conditions of the leases are as the statute provides, indefinite periods of time. They're adjustable every 20 years.

Mrs. MINK. Does the statute require that they be for an indefinite period of time?

Mr. EDWARDS. Yes, ma'am.

Mrs. MINK. How do you set forth the criteria of diligent development in these new leases?

Mr. EDWARDS. In these, we have provided for advanced accumulative royalties to be paid in advance to be started in the sixth year. In other words, they will have to pay advanced royalties on the amount of coal that could be produced.

Mrs. MINK. In lieu of development?

Mr. EDWARDS. Not in lieu of development, on the amount of coal which would have been reasonable to have produced from that lease in that period of time.

Mrs. MINK. Could you tell me what the Department policy would be after the sixth year if there has not been development on these lands?

Mr. EDWARDS. The advanced royalties would accelerate in future years. In other words, what they are paying is a penalty. They are paying royalties on coal that should have been produced that the

are not producing, and the only way to recover their costs on that is to go into production.

Mrs. MINK. What is the advance royalty penalty?

Mr. EDWARDS. They vary on the lease, and they're based primarily on the recommendations of the Geological Survey in terms of what is reasonable to produce from that lease at that point of time.

Mrs. MINK. Could you give us one specific example of the lowest royalty requirement agreed to in one of the four leases?

Mr. EDWARDS. Well, 5 percent is the lowest. Could we furnish some of the actual leases for the record? We would be happy to have these four leases inserted into the record, and you could have a complete discussion of them.

Mr. CAMP. Would the lady yield?

Mrs. MINK. Yes.

Mr. CAMP. When you say 5 percent, 5 percent of what?

Mr. EDWARDS. A 5 percent of the production.

Mr. CAMP. $100,000. Five percent of the $100,000 at so many dollars a ton.

Mr. EDWARDS. Five percent of the value of the coal at the point of the shipment.

Mr. CAMP. At the point of shipment.

Mr. RUNNELS. Would the gentleman yield?

How often do you take into account the fluctuation of coal? Is it a dollar a ton? If it goes up to $5 a ton, how do you keep up with the prices and how often do you upgrade it?

Mr. EDWARDS. Well, as the 5 percent of the coal at the point of shipment increases at the point of shipment. Obviously, the return is more.

Mr. CAMP. On that point, what if you don't have any shipment.

Mr. EDWARDS. Where we have the advanced accumulative royalty in the lease, they are required to pay it whether they ship it or not. If they don't produce, they still have to pay a royalty on what they should have produced.

Mr. CAMP. In other words, the Bureau of Mines determines what their production should be, whether they have any or they don't, and they pay 5 percent on it?

Mr. EDWARDS. The Geological Survey advises us. That is correct.

Mr. RUNNELS. The Bureau fixes the price as to what it should be.

Mr. HORTON. The Geological Survey is the one that determines the value and the amount that should be produced.

Mrs. MINK. What factors go into the determination of the value of the coal at the point of shipment where there is no production?

Dr. WAYLAND. We, of course, do have the value of the like leases; and for evaluating tracts in advance of leasing, we would use a figure which would be projectable.

Mrs. MINK. So you update the market value for that particular coal in specifics of the BTU content and other factors?

Dr. WAYLAND. Yes. The value of coal shipped under lease is dependent on the contract arrangement that the lessee has if he has a long-term contract without an escalation clause, the value goes up slowly if at all. The bulk of these contracts do have escalation clauses, and the result is—our experience over the months in collect-

ing royalties shows an average increase in coal values, therefore an average increase on the royalties collected.

Mrs. MINK. The four leases which have been issued, when will the Government be receiving its first royalty payment?

Mr. HORTON. They would be in the 6 year after the award of the lease. The first one, I guess, would be October 25, 1980.

Mrs. MINK. Do the leases contain a term which specifies that the lessee guarantees the Government due diligent development and production of the coal resource, so that is failure to do so constitutes a breach of that lease agreement?

Mr. EDWARDS. I am sorry, Madam Chairman. I was distracted and did not fully understand the question.

Mrs. MINK. I want to know whether in the lease there is a term which specifies that the lessee guarantees that there will be due diligence to develop and produce coal in the lands being leased for that purpose so that the failure to so develop would constitute a violation of the lease terms.

Mr. HORTON. You must appreciate, we don't have new authorities under the Mineral Leasing Act. We will not have until we get——

Mrs. MINK. The Mineral Act says an indefinite term with due diligence of development. I would assume that the department in its new leases would have carefully provided for a much greater degree of due diligence and a much larger degree of reservation of the Secretary's discretion with regard to acceptance of advanced royalties in lieu of development. I hope I am making my point here.

Mr. EDWARDS. Let me respond to it in this way. Diligent development is not defined either in the statute or in the regulations. What we have tried to do in these leases is to obtain diligent development by requiring the lessees to pay the royalty on coal in advance as if they were producing it, whether they produce it or not. As the royalty, or as the advance royalties and the price of coal increases, there will be a tendency to produce more, because the money is really sunk funds. In order to recoup what they invested in the lease, they are going to have to go into production.

Mrs. MINK. Do you allow an advance royalty to be a credit in the future against anything?

Mr. EDWARDS. The advance royalty paid is credited against production when they go into production.

Mrs. MINK. How does that in any way provide any deterrent against delayed development?

Mr. EDWARDS. If they don't produce it, it costs them to hold it. And the holding cost——

Mrs. MINK. It doesn't cost them if it is a credit, sir, in some future year.

Mr. EDWARDS. But they have to pay the advance royalty in advance, and they do have money invested. The cost of that money is an incentive to get them into production.

Mrs. MINK. You have a list at hand as to who the four lessees are?

Mr. EDWARDS. No, we don't, but we can furnish that for the record.

Mrs. MINK. They will be inserted in the record at this point.

[The information follows:]

Lessee	State	Lease	Date	Acres
Western Slope Carbon, Inc	Colorado	C–17130	Dec. 1, 1973	241.1
Plateau Mining Co	Utah	U–13097	May 1, 1974	1,360
Republic Steel Corp	Alabama	ES12284	June 1, 1974	2,388.24
The Helen Mining Co	Pennsylvania	ES13845	July 1, 1974	50.628

Mr. CAMP. I think the point we are trying to get at is that cost, that 5 percent. Is that enough money to be an incentive to the lease holder to go ahead and mine the land, or can he afford to pay the advance royalties and not develop the lease?

Mr. HORTON. Mr. Camp, you must remember the conditions under which these short-term leases were granted, and I will refer you back to my introductory statement. They are only granted either to maintain an existing mining operation or to provide a reserve for production in the near future. In no instances, are the conditions apparent that would allow for speculative interest to actually compete in these lease sales. It would be either coal now needed to maintain a mine or to allow reserves for very early production in the near future. Otherwise the Secretary would not have granted the leases.

Mr. CAMP. Jack, I agree, and I am just trying to make a point.

Even with these conditions that you set forth on page two, when we talk about dollars and cents, and I am coming back to the experience of my country, with oil and gas leases and so forth, you remember the time when we discovered gas down in that country, and there was no carrier to get rid of it, to get it to the market. So they closed those wells in for a period of years, and they retained them without any royalties, because there was no actual production. There could be sold so that anyone could profit by the exploration, you might say. This is a point I am trying to get at. Is there anything at all in the leases that we might help you with as far as the law would be concerned that would give you the right to take care of a situation of this kind if it would come up in strictly coal?

Mr. HORTON. With respect to the future, the greatest possible assistance could be rendered the Department in acting on our proposal to amend the Mineral Leasing Act. That would make a lease good for 20 years, and it would require competitive bidding, and we would have the authority to change the whole system.

Mr. CAMP. At the present time you are tied with the 1920 laws?

Mr. HORTON. Correct.

Mr. CAMP. You have to live with that, without regard to what your personal feelings are in making a lease to me or someone else in regards to a strip coal mine?

Mrs. MINK. If the gentleman would yield, I don't interpret the situation quite that rigidly. It seems to me the Department now has the discretion to write the kind of leases that you are describing here today as being necessary to encourage development and at the same time safeguard the Government in an adequate recovery of consideration. I don't view the provisions of the act in the restricted manner that you have described. The Secretary has discretion in lieu of royalty provisions in exchange for development, diligent develop-

ment. The diligent development criteria gives the Secretary the right to terminate leases where there is not in his view diligent development. The only difference would be in, I guess, the length of time.

That leads me to my last question—how did you arrive at 6 years?

Mr. EDWARDS. As we stated previously, it generally takes about 5 years to get a mine into production, and we felt that the reasonable period to allow them to get into production, they should be in reasonably full production by the 6th year, and that would be the point where we require them to get into production.

Mr. HORTON. Madam Chairman, with respect to your former point, one of our very best of most able lawyers happens to be with us, and he happens to agree with us. And at this point in time our Department is large. We don't have an official decision or opinion by the Solicitor, and we have no decision by the Secretary. I think we are getting that. It just takes time.

Mrs. MINK. I suspect the reason for that, sir. They would like to see action on the Mineral Leasing Act and have declined to exercise their full description with regard to these leases, which in my opinion they do have the power to terminate under current law.

We really appreciate your coming to the committee this morning and providing us with these insights. I am very greatly encouraged by your statement this morning that an active review of the whole policy is underway, and that by the spring of next year, we will have a new policy with new guarantees of protection of our environment as well as an adequate utilization of those resources that are already leased.

It seems to me that this is a paramount concern of the Congress. Currently in debating strip mining legislation, this is one of the preoccupations of those who believe that the bill is excessively strict. I think many of our critics are unaware of the fact that there are billions of tons of coal reserves that have already been leased but not developed. And my study of this matter indicates that less than 10 percent is currently under development.

Since this is a fact certainly our performance requirements which wer are attempting to impose is of minor consequence compared to this greater problem posed by our Federal coal leasing policy.

Mr. CAMP. Would the lady yield? I, too, would like to compliment the Secretary, Secretary Horton, for your frankness this morning. I think this is healthy to be able to sit as we have this morning and talk about these things, and I think we can be of help to you because this type of colloquy back and forth helps, and I think that—well, it is a two-way street. I think this will accomplish what we all want, and I appreciate very much the remarks, and I would like to do this, if I may. I have four or five questions that were given to me by the staff, and I would like to present them to you, and Madam Chairman.

Mrs. MINK. Without objection, it is so ordered.

[The responses to the questions will be found in the subcommittee files.]

Mrs. MINK. The subcommittee hearings will adjourn for today, and I would like to advise everyone that we intend to pursue the

matter of the recent report issued by the Bureau of Mines, and we will be requesting a representative in the not too distant future to come before the committee to provide us with answers and analysis, justification for the new figures.

If there are no further questions, the subcommittee meeting is adjourned.

Thank you very much, gentlemen.

[Whereupon, at 11:45 a.m., the subcommittee adjourned subject to the call of the chair.]

FEDERAL COAL LEASING

TUESDAY, AUGUST 13, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MINES AND MINING OF
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Patsy T. Mink (chairman of the subcommittee) presiding.

Mrs. MINK. The Subcommittee on Mines and Mining will come to order.

This morning we are going to consider testimony on S. 3528, an act to amend the Mineral Leasing Act of 1920 and for other purposes.

[S. 3528 and the departmental report follows:]

93D CONGRESS
2D SESSION

S. 3528

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1974

Referred to the Committee on Interior and Insular Affairs

AN ACT

To amend the Mineral Leasing Act of 1920, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Coal Leasing Amendments Act of 1974".

SEC. 2. Subsection 2(a) of the Act of February 25, 1920 (41 Stat. 438) as amended (30 U.S.C. 201(a)) is hereby amended to read as follows:

"SEC. 2. (a) (1) The Secretary of the Interior is authorized to divide any of the coal lands or the deposits of coal classified and unclassified, owned by the United States, into leasing tracts of forty acres each, or multiples thereof.

and in such form as, in his opinion, will permit the most economical mining of the coal in such tracts, and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding.

"(2) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land use plan prepared by the Secretary and such sale is consistent with such plan. In preparing such land use plans the Secretary shall consult with State and local governments and the general public and shall provide opportunity for public comment on proposed plans prior to their adoption.

"(3) No competitive lease of coal shall be approved or issued until after the notice of the proposed offering for lease has been given in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.".

SEC. 3. Subject to valid existing rights, subsection 2 (b) of the Act of February 25, 1920 (41 Stat. 438), as amended (30 U.S.C. 201 (b)), is hereby repealed.

SEC. 4. Section 7 of the Act of February 25, 1920 (41 Stat. 439; 30 U.S.C. 207), is hereby amended to read as follows:

"SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually from that lease. The Secretary shall, by regulation, prescribe annual rentals on leases of not less than $1 per acre or fraction thereof. A lease shall require payment of a royalty in such amount as the Secretary shall determine. The lease shall include such other terms and conditions as the Secretary shall determine. Such rents, royalties, and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended by production.

"(b) Where production is prevented by strikes or other circumstances neither caused by nor attributable to the lessee, the Secretary may, if in his judgment the public interest will be served thereby, provide in the lease for payment in advance of a minimum royalty in lieu of continuous production under the lease.

"(c) Within one year after obtaining a coal lease, the lessee shall submit to the Secretary a development and reclamation plan. The development and reclamation plan will set forth, in the degree of detail established in regulations issued by the Secretary, specific work to be performed, the manner in which coal extraction will be conducted and applicable environmental and health and safety standards

will be met, and a time schedule for performance. As promptly as possible after the lessee submits a plan, the Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval: *Provided*, That the Secretary shall delegate authority to the Secretary of Agriculture to approve or disapprove development and reclamation plans involving lands in the national forest system, and the Secretary of Agriculture shall consult with the Secretary of the Interior with respect to significant technical and geological questions and special exploration and development systems. Where the surface of the land involved is in non-Federal ownership, the Secretary shall consult with the surface owner before approving or revising the plan. The Secretary may approve revisions of development plans if he determines that revision will lead to greater recovery of the mineral, improve the efficiency of the recovery operation, or is the only means available to avoid severe economic hardship on the lessee.".

SEC. 5. Section 35 of the Act of February 25, 1920 (41 Stat. 450), as amended (30 U.S.C. 191), is further amended by striking the period at the end of the proviso and inserting in lieu thereof the language as follows: ": *And provided further*, That all moneys paid to any State from

sales, bonuses, royalties, and rentals of coal deposits in public lands may be used by such State and its subdivisions for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services, as the legislature of the State may direct.".

Passed the Senate July 9, 1974.

Attest: FRANCIS R. VALEO,

Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 12, 1974.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on S. 3528, an Act "To amend the Mineral Leasing Act of 1920, and for other purposes."

We would prefer enactment of H.R. 5442, the Administration's proposed "Mineral Leasing Act of 1973" which is a broader bill than S. 3528. However, because it now appears that time will not permit enactment of the broader legislation in the 93rd Congress, we would approve of enactment of S. 3528 if amended as recommended below.

S. 3528 would amend the Mineral Leasing Act of 1920, 41 Stat. 437 as amended, 30 U.S.C. § 181 *et seq.* (1970), as it relates to the development of Coal. It would repeal present authority to issue prospecting permits and preference right leases, it would prohibit lands from being leased unless they are included in a land use plan, it would limit lease terms to 20 years and for as long thereafter as coal is produced, it would require a minimum annual rental of one dollar per acre, it would require lessees to submit a development and reclamation plan within one year after obtaining a lease and it would allow States greater discretion in spending their share of Federal revenues received from coal leases on Federal lands.

We recognize that laws governing the leasing of lands for coal development need revision, but S. 3528 would only address part of a much larger problem. The laws governing the disposition of all minerals from Federal lands are archaic and sorely in need of reform. Accordingly, the Administration has proposed broader legislation, the "Mineral Leasing Act of 1973" (H.R. 5442), which would repeal the Mining Law of 1872, the Mineral Leasing Act of 1920 and other related laws and would create a single statute for the disposal of minerals in Federal lands. It would establish a system of disposal that would encourage efficient mineral development, ensure a fair return to the public, minimize damage to the environment, and give the United States greater control over mineral development on Federal lands. While we prefer enactment of H.R. 5442, we also support S. 3528, if amended as we recommend. Our recommendations appear in the same order as the applicable sections in S. 3528.

Section 2 authorizes the Secretary to lease "coal lands", however neither this section nor the Mineral Leasing Act of 1920 defines "coal lands". We therefore suggest that page 1, lines 9 and 10 be reviewed to read: "thorized to divide any lands subject to this Act,". It would then be clear that the Secre-

tary may lease lands described in section 1 of the Mineral Leasing Act of 1920 (30 U.S.C. §181).

Section 2 of the bill would require that any lands leased for coal be included in a comprehensive land use plan. The Bureau of Land Management has prepared land use plans for most of the lands under its jurisdiction which are considered valuable for coal. The plans have been developed with opportunity for public comment and with participation from State and local governments. We urge that the Committee clarify in its report that these land use plans are the ones contemplated by the bill.

Section 3 of the bill would repeal subsection 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. §201(b)). Subsection 2(b) provides for the issuance of prospecting permits where exploratory work is necessary to determine the existence or workability of coal deposits; if the holder of a prospecting permit discovers coal in commercial quantities, he is entitled to a preference right lease. Under the present section 2(a) of the Mineral Leasing Act of 1920, leases which are not earned under a prospecting permit may be issued competitively and by regulation the Department requires competitive bidding for such leases under all circumstances. Under S. 3528 there would be no provision for prospecting licenses and the Secretary would be authorized to issue competitive leases only.

We agree that the issuance of prospecting permits that can ripen into preference right leases should be discontinued, but we recommend that there be some provision for prospecting. The intent of S. 3528 is that the Secretary would resort to his general land managing authority to issue special land use permits in order to allow people to conduct exploration and testing on lands where the existence of coal is unknown. We would prefer that the bill include section 101(a) of H.R. 5442. The section specifically authorizes the Secretary to issue renewable, nonexclusive prospecting licenses for terms of one year, it describes the activities in which a licensee may engage, and it specifies that a discovery would not entitle a licensee to a lease. Leases would be issued only by competition. We believe that these guidelines defining the tenure of a licensee should be included in the law.

Section 4 of the bill would extend all leases automatically as long as coal is produced annually from the lease. We strongly recommend that extensions be conditioned on annual production *in paying quantities* as defined in section 3(j) of H.R. 5442. A requirement simpy of annual production is often easy to meet, it would allow lands to be tied up indefinitely and it would not necessarily stimulate production which is a major deficiency of the Mineral Leasing Act of 1920. As an added incentive to produce we also suggest that section 4 allow rentals to be credited against royalties.

Section 4 would require a lessee to submit a development and reclamation plan within one year after a lease is issued. The one year deadline is not practical since lessees would not always be in a position to submit development schedules and plans within a year. It is more important that the plan be submitted and approved before any action is taken which might significantly affect the environment. In addition, the bill should provide guidelines for preparing a satisfactory reclamation plan. Subsections 109(a) and (b) of H.R. 5442 contain these important provisions and we recommend that they be added to S. 3528.

Section 5 of the bill would give States greater flexibility in using their share of moneys received under section 35 of the Mineral Leasing Act of 1920 (30 U.S.C. §191). We view the restrictions in section 35 of the Act as no longer necessary and we see no reason to amend them only as to receipts from coal development. Consistent with section 119(a) of H.R. 5442, we therefore recommend that the spending restrictions on the States for all mineral revenues be repealed by deleting from section 35 of the Act the words "for the construction and maintenance of public roads or for the support of public schools or other public educational institutions". Section 119 of H.R. 5442 would give State legislatures complete discretion as to the expenditure of mineral receipts from Federal lands.

Sections 3 and 4 of the Mineral Leasing Act (30 U.S.C. §§203, 204) provide for modifications and additions to leases without competition not to exceed 2,560 acres. S. 3528 would not affect these sections. To be consistent with the repeal of the authorization to issue preference right leases, we recommend that sections 3 and 4 be repealed so that all Federal coal lands would be leased competitively.

Finally, as in section 120 of H.R. 5442, we urge that S. 3528 provide for the consolidation of leases into logical mining units when it is in the interest of conservation or in the public interest. The addition of this section would give both the Secretary and lessees greater flexibility in planning the development of leases so that coal may be produced efficiently and with a minimum impact on the environment. For the same reason we recommend that the sentence ending on page 3, line 3 be continued to read: "or if the lease is part of an approved mining unit, from at least one lease in that unit". This addition, along with our other suggested amendments to section 4 of the bill, would authorize the renewal of a lease if there is production in paying quantities from the lease or from a mining unit that includes the lease.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

Mrs. MINK. I would like to welcome again to the subcommittee Secretary Jack Horton. We have your prepared statement, Mr. Secretary, and you may proceed again as you find convenient.

STATEMENT OF JACK O. HORTON, ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY OTHER REPRESENTATIVES OF THE DEPARTMENT OF THE INTERIOR

Mr. HORTON. Thank you, Madam Chairman.

It is a pleasure once again to be before the subcommittee testifying today on the Mineral Leasing Act as it pertains to coal.

I might, Madam Chairman, introduce the people from the Department that are with me. I have Mr. Dwight Red Patton, the Deputy Assistant Director of the Bureau of Land Management for Minerals Management. With him is Mr. Dale Zimmerman. We have our Assistant Solicitor for Minerals, Fred Ferguson, and Dr. John Morgan, who was before the subcommittee last week, the Assistant Director of Mineral Analysis of the Bureau of Mines.

I am pleased to appear before you today to testify on S. 3528, which would amend the Mineral Leasing Act as it pertains to development of coal. Specifically, it would require that all Federal coal leases be issued competitively. In addition, it would prevent coal development unless the lands have been included in a land use plan by the Secretary, and would require the lessee to submit a development and reclamation plan within a specified time. Changes would also be made in the present law with respect to minimum rentals, and lease terms.

The Department recognizes that laws governing disposition of all minerals from Federal lands are archaic and in need of reform. Accordingly, the administration has proposed the "Mineral Leasing Act of 1973." This would create a single statute for the disposal of minerals in Federal lands. It would establish a system of disposal that would encourage efficient mineral development, ensure a fair return to the public, minimize damage to the environment, and give the United States greater control over the mineral development of Federal lands. S. 3528 would address only a part of the much larger

problem of Federal mineral disposal policy. While we prefer the administration's more comprehensive proposal, H.R. 5442, we support enactment of S. 3528 if amended to reflect the recommendations detailed in our report. We believe these suggested amendments are pertinent to any legislation concerning leasing of lands for coal development regardless of its scope. They would bring S. 3528 into harmony with many of the major provisions of the administration's proposal.

I will now discuss briefly several such changes which are necessary in our judgment to assure efficient development of coal with adequate environmental safeguards, and to permit the States to fully utilize their respective shares of the receipts.

Section 3 of S. 3528 would repeal provisions of the Mineral Leasing Act which provide for the issuance of prospecting permits where exploratory work is necessary and which require issuance of preference right leases upon discovery. Only competitive leases would be authorized under S. 3528 or under H.R. 5442. We agree that issuance of prospecting permits which can ripen into preference right leases should be discontinued. However, some form of license or other authorization for conducting prospecting is necessary in those situations where the existence or workability of coal is unknown. We would prefer that the bill include section 101(a) of H.R. 5442 which specifically authorizes the Secretary to issue nonexclusive prospecting licenses and provides limitations on activities a licensee may engage in. We believe that these guidelines should be included in the law rather than left to general management authority through issuance of a special land use permit.

Section 4 would require a development and reclamation plan within 1 year after a lease is issued. The 1-year deadline is impractical since the leasee would not always be in a position to submit development schedules and plans within a year. Many factors, such as insufficient knowledge of the resources, type of mining method to be employed, labor market, availability of equipment, firm production commitments, and capital, as well as size, location, and the social impacts of individual leases, must be considered in the preparation of a complete exploration, development, production, and reclamation plan. Moreover, it is more important that the plan be approved before actions are taken which would significantly affect the environment. Section 109(a) of the administration's H.R. 5442 contains such a requirement and we recommend that it be substituted for the 1-year time period in S. 3528.

As in section 120 of H.R. 5442, we urge that S. 3528 provide for the consolidation of leases into logical mining units, when it is in the interest of conservation or in the public interest. Instead of imposing detailed requirements for unitization, H.R. 5442 would authorize the Secretary to issue regulations to provide for unitization, including provisions for the relief of unitized leases from acreage limitations and provisions for constructive discovery or production on all leases in the unit when there has been discovery or production on one particular lease in that unit. For example, a unit could consist of one or more Federal leases and could include intervening or adjacent private or State lands insofar as all such lands are under the effective control of a single operator.

The addition of this section would give both the Secretary and lessees greater flexibility in planning the development of leases so that coal may be produced efficiently and with a minimum impact on the environment.

Section 4 of the bill would extend all leases automatically as long as coal is produced annually from the lease. We strongly recommend that extensions be conditioned on annual production in paying quantities from the lease or if the lease is part of an approved mining unit, from one or more leases within that unit.

A requirement simply of annual production is often easy to meet. It would allow lands to be tied up indefinitely and it would not necessarily stimulate production which is a major deficiency of the Mineral Leasing Act of 1920. As an added incentive to produce we also suggest that section 4 allow rentals to be credited against royalties. Consistent with the goal of stimulating production we are planning to publish by September 15 a proposed rulemaking requiring diligent development and continuous production of existing leases.

Finally, Section 5 of S. 3528 would give the States greater flexibility in using their share of the moneys received under section 35 of the Mineral Leasing Act. We agree that the present provision of law which restricts a State's use of these receipts to construction and maintenance of public roads and support of public schools, is no longer appropriate. However, we see no reason for relaxing the restrictions only as to receipts from coal leasing, nor would we replace the old restrictions with new specifications on use of these moneys. We recommend that S. 3528 be amended to repeal the spending restrictions across the board. Section 119 of H.R. 5442 would accomplish this.

S. 3528 prohibits a lease sale unless the lands involved have been included in a comprehensive land use plan prepared by the Secretary and the sale is consistent with the plan. I wish to comment here that the Department through its Bureau of Land Management, has prepared land use plans for most of the lands under its jurisdiction which are considered valuable for coal. The plans have been developed with opportunity for public comment and participation.

In addition, the Bureau is developing a long range planning system the objective of which is to make coal resources on the public lands available for development at an acceptable environmental cost. Under this system called the Energy Minerals Allocation Recommendation System, or EMARS, coal development would be balanced with other uses. EMARS involves three phases: first, the establishment of acceptable leasing goals by analyzing current coal ownership, resource value, industry nominations, national and regional energy and coal demands, including State policies and goals; second, the selection and elimination of tracts after consideration of resource trade-offs through use of the Bureau's planning system and public participation; and third, the initiation of leasing. Thus EMARS along with the Department's existing multiple use planning system permits identification of specific tracts of federally owned coal which are environmentally and otherwise suitable for leasing and development to meet national energy needs. We would hope that any revision of coal leasing laws enacted would clearly permit us to uti-

lize and build on these existing and evolving systems. Therefore we urge that the committee clarify in its report that the Bureau's land use plans are the ones contemplated by S. 3528.

Madam Chairman, that completes our formal presentation to the committee this morning and we are prepared to answer questions.

Mrs. MINK. Thank you very much, Mr. Secretary.

Mr. Hosmer, do you have any questions?

Mr. HOSMER. Not at this time.

Mrs. MINK. Mr. Camp?

Mr. CAMP. Madam Chairman, I would just like to ask Mr. Horton if he would expand a little bit more on page 3 in the middle of the page when you talk about the consolidation of leases into a logical mining unit when it is in the interest of conservation or in the public interest. Would you expand on that a little more?

Mr. HORTON. I think I can present a comment, Mr. Camp, and then perhaps ask the representatives from the BLM to elaborate if you so desire.

The idea, instead of addressing a number of single unit leases that are in the same area, is to view them as part of a unit. That is part of a larger consolidation so that instead of looking at a specific lease and a production from that specific lease you look at a group of leases that go into a larger development unit.

Mr. CAMP. Well, when you use the word "unit" can we say you are talking about unitization of certain areas that would in other words, could be private leases as well as Federal leases and could be put together for purposes of coal mining?

Mr. HORTON. That is correct.

Mr. CAMP. In other words, kind of like we unitize an oil field?

Mr. HORTON. It is a similar concept, yes, sir.

Mr. CAMP. Now, I wonder if any consideration has been given by the Department of what might transpire if you would drop into a certain community, 300, 400 or 500 people in a coal mining operation that would affect the city itself as far as the utilities are concerned or anything along the municipal line that would be affected by an increase in population in that area?

Mr. HORTON. I attended, Mr. Camp, the FEA hearing in Denver this last week and along with the obvious need for expanding domestic supplies of energy, a primary concern expressed in Denver was just exactly that, what impact socio-economic, social and human, would development have on the towns and communities in the area. We intend to provide for this in several ways as far as understanding the impact. Public hearings are held in these localities. For example, in the Department, concerning the programmatic environmental impact statement on Federal coal, hearings have been held in towns in Utah, Colorado, Wyoming, Montana, and North Dakota. In addition to that, the Federal government is assisting the State governments in funding socio-economic analyses which really means what impacts could be expected in these areas in terms of impacts on schools, construction, housing, and health facilities. The administration's regional councils in places like Denver and San Francisco, which are composed of HEW, HUD, EPA, Interior, Labor, and Agriculture, among other departments, are coalescing funds to assist

the States in these types of impact analysis, and also to assist the States in mitigating the impacts.

Mr. CAMP. Was there any consideration given as to when the lease was issued that there would be a responsibility to whoever bought the lease that it would be part of their obligation to take care of some of this increase that has been caused in the community as far as population is concerned, that it would be a part of their obligation?

Mr. HORTON. It is my understanding that in the leases that have been let by the Department in the past there were no provisions as far as spelling out what social responsibilities, public responsibilities, the companies might have.

The issue came up last week in the hearings and I think as a general statement it is clear that the industry companies in the west are prepared to say that they share in the public responsibility of understanding what the human impacts will be and helping to minimize them. It is not articulated anywhere that I know of specifically what these responsibilities by the company should be. But, if only for the national and economic reasons, each company has a very strong vested interest in the conditions, the climate of the community which actually houses its labor. I think what we are seeing as national public attention is being drawn to energy extraction, particularly coal and oil shale, we are seeing a movement to the center between the Federal Government and the State and local communities and industry in what I think is a much more pervasive, cooperative effort in trying to understand and condition the communities' in advance of the impacts that result from energy extraction.

Mr. CAMP. Of course, I think we all realize that there could be brought to a community quite an impact when you start talking about building highways and places for the young adults to go to school, hospitals to take care, and of course, water, gas, fuel, whatever it might be. And we have witnessed in years gone by in our country, we have discovered a new oil field and just overnight a town will spring up. And then of course, this leads to a lot of things that get a little unpleasant for the people that live within the area itself. And my only thought was if any consideration had been given in the area of coal mining and of course oil shale one of these days too, to where a situation of this kind might be taken care of by plans already made prior to the time that it happened?

Mr. HORTON. Well, I think we, in the administration believe that the Federal Government should be in a strong supportive position to the communities and to the States and that if this eventually is a matter of intelligent land use planning with the States and local communities they should have the leading role, but we have an equally important role in helping to assist them to understand what may happen in terms of trying to mitigate whatever those adverse impacts may be. There appear to be ways that we can help both directly and indirectly. For example, as far as the oil shale leases, the prototype leases that have been let by the Secretary in Colorado, the Governor of Colorado can expect a total of $122 million going to him as a result of the State share of the bonus payments by the companies. And it is my understanding that the Governor of Colo-

rado will use these to provide planning, land use planning analysis in the Piceance Basin where the oil shale leases have been let.

$122 million, of course, would not cover the entire tab, but that would certainly be a major step as far as minimizing any adverse human impacts that would result from the letting of those two leases.

Mr. HOSMER. Would the gentleman yield?

Mr. CAMP. Be happy to yield, yes.

Mr. HOSMER. There is a correlative to this and that is the 500 people that the gentleman from Oklahoma talked about, what if we did not go ahead and we just left them where they are? What if any adverse impact would flow from that situation? Are you worried about that too?

Mr. HORTON. That is part I think of the total human look that is being given. No one is saying that all of the impacts are going to be negative. It is trying to understand though what will happen to the people that are there now and what will happen, what sort of climate will exist when additional peoples arrive.

Mr. HOSMER. I am talking about the places from whence those additional people might come and what the situation would be vis a vis their existing residences and communities, whether it would be adversely impacts from them getting out of there or to a greater extent than the new location would be adversely impacted by them getting there. There is always two sides to a coin and everybody bleeds for these pristine areas in which people may go, but people continue to breathe and they have to go someplace. And I think there should be some consideration of negative actions which leave them where they are and deny them the opportunity to move upward.

Mr. HORTON. I think you have an excellent point. The problem of course is obviously we cannot predict the location from which the labor market might derive its people as far as, let us say channeling labor into Gillette, Wyo., or Rock Springs, Wyo., or into Coal Strip, Mont. Obviously the influx into one area would have an economic stimulatn, quid pro quo the other side of the coin you mentioned, there would be a negative impact on the communities from whence they might come. But, it is very difficult to really ascertain where that might be. And it is highly unlikely that, let us say, 500 people would come all from one town.

Mr. HOSMER. Will we finally come to the conclusion that the government does not know all, and there are some unknowns still left? That sometimes in the past things have been resolved in some kind of a satisfactory fashion by the free enterprise system, by the free flow of populations, by the nonimposition of stringent birth control and all things like that?

Mr. HORTON. Well, I think, Mr. Congressman, those considerations are part of the reason that we feel that we are in a supportive position but not in a position of directing the growth, directing the land use planning in these areas. We believe it should be up to the mayor of the city, to the county commissioners of the counties working with the State governor. But, clearly, if there are Federal resources, the Department must have some responsibilities in terms of assisting.

Mr. HOSMER. Yes, but these people cannot be left unrestrained in their decisions as to what their area is going to look like. They live there but they do not own it in the sense that it is sociological and demographic, apolitical and all of the others, since it is part of a total Nation, and they only got there a little bit before somebody else. You know, we have had a lot of complaints about the Indians because they did not have effective immigration laws and enforce them.

Mr. HORTON. I think their immigration laws were slightly different than ours.

Mr. CAMP. To get back to the point the whole point I was trying to make is we have experienced this in the years gone by out in our country and we have some environmental problems too, and we have some rehabilitation problems that are just as great as maybe they might be in Virginia, or Pennsylvania or Ohio. And my thought was what planning by the people involved, and I am talking about now the people that are in the business of mining, the people that are in the business of local government where they could get together and I do not think we ought to have any involvement as far as the Government is concerned as to saying how you are going to do this, what you are going to do in Colorado, or Montana or Wyoming. My whole point is I feel that with the right kind of cooperation among these people in the local communities that a lot of this can be solved and really not work a hardship, particularly on the municipality that is going to have to furnish fuels, going to have to furnish utilities and going to have to furnish a hospital for these people. I think that it too has to come from the private enterprise sector which I include over into that those people that are involved in government in a local community, because they are private enterprises as far as I am concerned.

My whole point was that I knew that you were attending these meetings in Denver and I just wondered if some of these things came out of that meeting, and I think you have pretty well explained it.

Mr. HORTON. I think, Mr. Camp, we are well gratified with the expression of concern and the interest and the open offers of cooperation of a great number of the executives and officials of the energy companies that testified in Denver. They see the problem, and it is simply not energy extraction as a problem, but it is the environmental problems, it is the people and the human problems. We had testimony from one official, Michael Straunge in Colorado, that the energy industries in a particular area actually got a group together in an association to share with the mayor of the town, the community and the counties the projections they had as far as employment levels, extraction rates and the impact on that community, and assisted them. I would hope that private enterprise would share a major initiative in helping to resolve these problems and I think we are seeing that.

Mr. CAMP. Well, some of the information I have and I am going to take Rifle for instance and there is a possibility as we understand, that they may drop about 1,500 people in that area. They have towns on both sides, Grand Junction on one side and Glenwood

Springs I believe it is on the other and at one time there was no effort whatsoever made by private enterprise to make a contact with these people within these communities to really tell them what they thought they were going to have to need in the way of conveniences for the people that were going to come in there to go to work. And I think this is one thing that ought to transpire. And I understand since we were there that this has come about.

Mr. HORTON. Well, it is certainly moving in that direction. I think the singular problem is that some companies are particularly cooperative and other companies are particularly not cooperative and there is no uniform effort being made at the private enterprise level.

But I think we are seeing encouragement in that direction.

Mr. CAMP. I thank you very much, Madam Chairman. And I am sorry I took so much time.

Mrs. MINK. Mr. Steelman.

Mr. STEELMAN. Thank you Madam Chairman.

Mr. Secretary, would you define a little bit better what you mean by unitization. I think you talk about it on page 4 of your statement and I do not quite understand what all would be involved in that unitization process.

Mr. HORTON. I provided, Mr. Steelman, a general concept, at least the principle of unitization. But, we have the chief of the Conservation Division of the U. S. Geological Survey, Mr. Russell Wayland, and for a professional definition I think it would be advisable to have him really define that for the committee.

Mr. WAYLAND. Mr. Congressman, of some of the 500 plus leases that now exist, our engineers consider that almost 400 exist in groupings of approximately 4 leases per group that constitute logical mining units; 129 existing Federal leases are not groupable with other Federal leases and must stand on their own or with adjacent private or state holdings. A modern mine for coal requires considerably more than the 2,600 acres that are in a Federal coal lease because a modern mine is based on long range contracts requiring many millions of tons of guaranteed supply to a facility that is designed for the burning or chemical treatment of that particular coal, and not any other coal. Therefore, we see a very large commitment necessary.

Now, a logical mining unit as our engineers have put it together, consists of, as I say, typically four or more Federal coal leases plus intervening land, state or private, that will be committed towards such a long-term contract. Now these leases of necessity are to be mined in a logical way.

Mr. STEELMAN. Would you repeat that? Four or more?

Mr. WAYLAND. Yes. The statistics on the existing ones indicate that four plus leases, Federal leases, in these 91 logical mining units are minable under a plan which foresees the initial operation on one lease and the progression of the operation into another lease and then another lease and then maybe on to some nonfederal coal lands and then back and forth. It is a slicing operation. The overburden is set aside and then is put back into the hole. But the hole is a long, lean thing that, it it were not systematically planned over a rather large acreage, the result would be an illogical mining of individual

leases which could not have such an effective rehabilitation potential as the mining of these very large units. So, for these two reasons, what we are now facing in this greatly expanded Western coal development is that it is essential, I believe, for everyone to think in terms of not individual leases but in terms of a grouping of leases that will be mined under a single mine development plan and a mine rehabilitation plan.

Mr. STEELMAN. Is this a new concept?

Mr. HORTON. The concept of unitization is not new. It has been applied in oil and gas leases for quite some time.

Mr. STEELMAN. With respect to Federal coal lands I mean.

Mr. WAYLAND. It is not a new concept to us at all, sir. We have consistently been confronted with the necessity of considering mining plans not on a single lease basis but on a lease group basis. Now, for example in the canyon lands of the West where some of the coal exists, a group of leases will be around the outcrop area and effective mining will take this topography into account. In other areas, where the topography is less significant, the dip of the coalbeds into depth of a coal basin must be taken into account so that the logical mining would be along the shallower edges of the coalbed or group of coalbeds that may extent to great depth laterally. So, this is the pattern of development as it already exists, and it certainly is the pattern of development as we foresee it in examining the current holdings of Federal leases, and Indian leases for that matter.

Mr. STEELMAN. OK, Mr. Secretary, let's move to another subject Do you know offhand what the revenues during the past fiscal or over the past 5 fiscal years have been from the sale of leases, total leases?

Mr. HORTON. I believe in 1972 it was in the order of $54 million. But, we will check that and we will provide that for the record if that is an incorrect figure.

Mrs. MINK. Without objection that information will be inserted when provided to the committee.

[The information referrred to will be provided at a later date.[1]]

Mr. STEELMAN. All right. What share of this goes back to the States, what percentage of the dollar goes back to the States for roads and public schools and so forth?

Mr. HORTON. That is 37½ percent.

Mr. STEELMAN. And you are satisfied, I take it from your statement, with that percentage?

Mr. HORTON. Yes. We are not recommending that the percentage itself be changed. We are simply recommending that the present restrictions which now provide that it go to schools and public roads be lifted.

Mr. STEELMAN. OK. You mentioned that land use plans are now virtually complete within the department on all Federal lands that are subject to coal mining. What are the parameters of a land use plan of this order? What kind of things do you take into account?

Have you taken into account, for example, the new surface mining act, and what new requirements it might impose?

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[1] See p. 49.

Mr. HORTON. Until the conferees complete the discussions on the surface mining legislation, of course, we could not have taken it specifically into account. But, we examined particularly the environmental regulations in the department, and we are comfortable now that we have a high degree of correlation between the environmental regulations that the conferees are looking at between the Senate and House versions of the bill and the environmental stipulations we have in the Bureau of Land Management. But, obviously, once the legislation is enacted, we would provide very rapidly an update, a review of the adequacy of our present environmental regulations and stipulations to insure that they complied fully with the act.

Mr. STEELMAN. Well, what kind of things do you take into account in development of a land use plan?

Mr. HORTON. Mr. Steelman, what Mr. Patton will put up with the chairman's permission, on the tripod here is an overview, a diagram showing the entire EMARS system, one third of which goes to the heart of the BLM planning process. This is constructed very substantially with public input, but what they look at is a specific topographical, environmental, geologic, geographic characteristic of the area. They look toward what areas after their analysis should not be developed as well as those areas which should be developed.

Mr. Steelman, I will ask Dr. Dwight Patton, if it is agreeable, to go through a summation of what the EMARS system is in the BLM.

Mr. PATTON. The EMARS system starts at the national level with estimates of the supply and demand situation by regions and nationwide, and the national policies as to what is needed to meet the national and regional requirements. It then takes into account, in addition, the quantity, quality, and location of the resources as we know them through our resource inventories. It takes into account State requirements and what we know from existing coal lease applications and from industry nominations.

After considering these factors, minimum leasing goals are established which then would be sent to the State and district levels of the Bureau of Land Management where these goals interface with the existing planning system of the Bureau of Land Management. In that system, all resources for a planning unit of the public lands have been analyzed in order to develop an optimum plan of development for each resource. Then the optimum plans are analyzed together, and conflicts between these optimum resource plans are identified. This process takes into account regional demands, socioeconomic requirements, and national policies. A plan is made for the unit which best can meet the multiple use requirements of all of the resources.

Now, when these minimum leasing goals are given to the State and district offices, they are studied in the context of the management framework plans. Specific mineral activity plans are developed by going through the tradeoff process, looking at the conflicts with other uses, and through a public hearing process which further takes into account what the impacts on the environment and other uses would be. At the district level, a development and leasing plan is prepared which is sent to the State office and eventually back to the

Washington office where it would become part of a national BLM leasing program. This program would be implemented in the field eventually through presale evaluation, the actual issuance of leases, monitoring, supervision of leases, and feedback for consideration improving the leasing program.

Mr. STEELMAN. Is the supervisor the signoff for this at the district office level?

Mr. HORTON. On which action?

Mr. STEELMAN. On the land-use plan?

Mr. PATTON. No, this would be the District Manager of the Bureau of Land Management, but with close coordination with the Geological Survey and consultation with other involved State, local, and Federal agencies.

Mr. STEELMAN. Do you apply this EMARS system to all of your mineral leases? Would this apply to shale as well?

Mr. HORTON. Well, we have no plans as you know, to expand oil shale development beyond the present prototype lease offerings that the Secretary announced this last year. But, certainly it is designed to apply across the board to all minerals. We are simply looking at coal first.

Mr. PATTON. EMARS is still being developed, but it is an extension of the Bureau of Planning system.

Mr. HORTON. We should re-emphasize here with respect to the environmental analysis, not only has a draft coal programmatic environmental impact statement been prepared but public hearings on the statement started yesterday in Salt Lake City. Additional hearings will be held in Billings, Mont., Casper, Wyom., Denver, Colo., and Bismarck, N. Dak. A final impact statement will be completed we think in November. Subsequent to that, if we find that coal can be leased without unacceptable environmental impacts, specific decisions will be made as to where coal should be leased in fy 1975 or thereafter and individual environmental impact statements would be prepared on those areas where the procedures of NEPA indicate that they are required.

Mr. STEELMAN. In terms of total revenue, how would coal run alongside shale and oil and what other minerals do you lease out of the Department? It would be coal, oil, shale, what else? Copper?

Mr. FERGUSON. The minerals that are subject to the Mineral Leasing Act are oil and gas, oil shale, coal, sodium, phosphate, potassium, and in the two States of Louisiana and New Mexico, only sulphur and then certain asphaltic minerals, tar sands we usually call them.

Mr. STEELMAN. OK, total revenues, then, you said $54 million in fiscal 1972 as a total now, how would you rate that alongside oil and shale?

The shale leases we have let have brought in $400 million so far?

Mr. HORTON. That would be close to it. The largest of those was $211 million for one lease in Colorado and the second one was $117 million.

Mr. STEELMAN. OK, $54 million for coal. How much for oil, does anybody know?

Mr. HORTON. I do not think we have that figure off hand. We certainly can provide it for the record.

[The information follows:]

RECEIPTS FROM MINERAL LEASES—FISCAL YEARS 1972 AND 1973

Resource	Fiscal years 1972	1973
Public Domain (1920 Act)		
Oil and gas	$127,092,793	$130,025,153
Coal	2,151,979	2,724,419
Other (phosphate, potash, etc.)	6,772,964	6,993,378
Total	136,117,736	139,742,950
Acquired Land (1947 Act)		
Oil and gas	$6,235,213	$5,902,927
Coal	95,657	108,183
Other	2,649,795	3,546,929
Total	8,980,665	9,558,039
Outer Continental Shelf		
Oil and gas	$256,347,951	$1,423,254,166
Oil shale	0	0
Total bonuses for fiscal year 1974	448,797,600	

Mr. STEELMAN. Well, would shale, coal, and oil be the big three as far as revenues were concerned?

Mr. FERGUSON. Yes.

Mr. HORTON. Very substantially, yes. Particularly oil and gas. It would be completely a different order of magnitude with the Outer Continental Shelf leasing.

Mr. CAMP. Will the gentleman yield?

Mr. STEELMAN. Yes.

Mr. CAMP. Do I understand, and I am sorry I was called out a minute ago, that your plan will be that your minimum leasing goals will be planned here in Washington, D.C. and then your environmental analysis and your public meetings and all of the rest of it will be held out through or from the District Office and in the issuance of the lease and eventually will come through a State office operation where you have the sale, the competitive sale and so forth?

Mr. HORTON. The issuance of a specific lease, that is correct. But, the decision itself to lease a certain area for certain tonnages would be made by the Secretary through the Director of the BLM.

Mr. CAMP. Well, that would be from Washington, D.C.?

Mr. HORTON. Yes.

Mr. CAMP. Thank you for yielding.

Mr. STEELMAN. We are expecting about $8 billion in receipts from the Outer Continental Shelf, are we not, for the next several years?

Mr. HORTON. Well, there have been various estimates. I think we have gone as high as eight as the optimum.

Mr. STEELMAN. Well, we have been holding some hearings in the Parks Subcommittee on the land and water conservation funds and the prime source of revenue is the Outer Continental Shelf. And I think we have gotten that figure. I guess it was the BLM.

Mr. HORTON. It would.

Mr. STEELMAN. I think they said they were expecting $8 billion and the revenues would rise to that level and remain there for some time. I just thought I might get some confirmation.

Mr. HORTON. Which year was the $8 billion?

Mr. STEELMAN. Fiscal 1975 and they projected it would remain at that level for the next 10 years. So oil would be the largest, shale second, coal third, and then the other down from there?

Mr. HORTON. I think you would have to invert the coal and the oil shale in terms of rental receipts only. I believe it would be the oil and gas, coal, and then oil shale. Remember now, we do not have an active oil shale development program. We have a prototype program of six leases, four of which have been issued. The bonuses for these four leases were $448 million which is a one-shot revenue.

Mr. STEELMAN. So, it would be only in this 1 year for the shale?

Mr. HORTON. That is as far as our present plans are concerned, yes.

Mr. STEELMAN. OK. No further questions, Madame Chairman.

Mrs. MINK. Mr. Hosmer?

Mr. HOSMER. Mr. Horton, you just briefly blessed the overall bill, H.R. 5442, and I kind of see an abandonment. Is there no enthusiasm downtown for a general bill, or do you just want to argue with the committee today, or what?

Mr. HORTON. Well, we have come to say we support the committee's approach, but we would prefer the committee to look at the entire Mineral leasing Act, and not simply at coal.

But, we think it is a step in the right direction. We would prefer to do it all at once, rather than for individual minerals, but we are not dragging our feet, Mr. Hosmer. We think it should be enacted, both the committee's bill, but we prefer that you look at the whole scope.

Mr. HOSMER. Would you prefer that this committee take up H.R. 5442?

Mr. HORTON. I think that would be the judgment of the committee. I think if there were a choice between doing nothing at all and looking at coal, obviously we would support a look at coal.

But, if the committee thought it had time——

Mr. HOSMER. Is this the same general attitude—I remember back in the strip mining bill's early days, you wanted a bill that covered everything and not just coal, and you finally settled for a bill that did cover coal. Is this the same pattern here?

Mr. HORTON. I think it is similar. That is in terms of what we would like to get compared with what we think we will get.

But, politics being the art of the possible, I think we are in a strongly supportive position of the committee's approach to the Mineral Leasing Act with respect to coal.

But, it does place the Burau of Land Management, and the Department in an awkward position having one updated law for coal only, not applying to any of the other minerals under the Mineral Leasing Act.

Mr. HOSMER. Thank you, Madam Chairman.

Mrs. MINK. I have a number of questions.

The Department issued a memorandum from the Assistant Solicitor to the Deputy Under Secretary of Mines, dated May 20, 1974, dealing with suggested amendments which were felt necessary to the regulations dealing with coal leases. Some of these dealt with items that you have mentioned this morning in your testimony, the first being the logical mining unit.

In order to clarify this concept, which you are relying upon to assist the Secretary in determining how extensive the leases should be, I wonder if you might explain to the committee what role the mining supervisor has under your scheme of things in determining the size and location and propriety of lands being included in a mining unit?

Mr. HORTON. I think, Madam Chairman, Dr. Wayland would be the most appropriate person from the Geological Survey.

Mrs. MINK. First of all, who is the mining supervisor, and what is his role in determining the logical mining unit?

Dr. WAYLAND. Madam Chairman, the mining supervisor is an employee of the Conservation Division of the Geological Survey. And by regulation he has certain delegated authorities from the Secretary to supervise operations of lessees after leases have been granted. He does this in consultation with the Bureau of Land Management and other appropriate agencies.

The logical mining unit concept is not built into existing law and regulations and, therefore, it is not a rigid, frozen thing. It is a practical thing.

Mrs. MINK. The logical mining unit is not written into current regulations?

Mr. FERGUSON. No, and there is no specific provision for it under the existing statutes.

Mrs. MINK. So, the recommendation which is embodied in this memorandum dated May 20 has not been promulgated?

Mr. FERGUSON. No, those regulations have not been promulgated. We are working on it.

I showed a copy to Mr. Laughlin just a few minutes ago, and it is somthing we have under active consideration, and it grows out of a desire to see diligent development on existing leases.

Mrs. MINK. Yes, I understand that.

Mr. FERGUSON. And in order to insure diligent development, we feel that it would be necessary also to provide in the regulations for a logical mining unit, so that we will not require diligent development on each individual lease, but rather by mines.

Mrs. MINK. Is it possible in the legislation we are considering, to write in a section which says, with respect to prior issued leases, that unless there has been production within the last 5 years, that due diligent development has not been adhered to by the lessee and these leases shall be therefore canceled?

Mr. FERGUSON. That is a rather difficult problem legally for me to say. I believe that the normal way to cancel leases would be for the Department to determine that there has not been the reasonable diligence which both the existing statute and the lease form require, and, then, if the lessee were given the opportunity to correct that violation of the lease and failed to do so, we would proceed to cancellation.

Mrs. MINK. I understand from testimony at the last hearing that the Department had developed a policy which makes it impossible to terminate these existing leases, because of the advanced royalty system which had been established.

Mr. FERGUSON. Well, there is a provision in the existing statute which says that leases will be issued on condition of diligent development and continuous operation.

Then the same section of the statute says that the Secretary may allow the payment of an annual advanced royalty in lieu of continuous operation. The lease forms that we have been using in recent years, for many years, have provided that there may be the payment of this annual advance royalty in lieu of continuous operation.

However, the lease form does not provide, and the statute does not provide, that the advance royalty will be in lieu of diligent development. So, I believe that we could insist on diligent development, although when the diligent development reached the stage of continuous operation, we might have some inconsistencies.

Mrs. MINK. Are you comfortable that the pending bill would help clarify this situation with regard to diligent development to better protect the assets of the country and to guarantee production?

Mr. HORTON. With respect to new leases, I think we are very comfortable.

Mrs. MINK. Which section of the pending bill would guarantee this new diligent development?

Mr. CAMP. Would the gentlelady yield while they are looking for that?

Mrs. MINK. Yes.

Mr. CAMP. Mr. Runnels, may I ask you a question. This colloquy that has been going on between the gentlelady and the gentleman, this is the same kind of leasing that we used with private people, with landowners, fee owners, in our country as far as oil development. I thank the lady.

Mrs. MINK. Do we have a response?

Mr. HORTON. Yes, Madam Chairman.

The specific section of the legislation is section 7(c).

Mrs. MINK. Well, 7(c) merely says that there has to be a reclamation plan submitted within a year after the lease, but that does not carry forward with it the concept of continuous production.

Mr. FERGUSON. Well, the plan does require a time schedule for performance, that is at the top of page 4. And of course, no action can be taken except under the approved plan.

Mrs. MINK. Who is to determine under the section whether the lessee is complying with the time schedule for production? Would it not be a far better protective measure were the legislation to spell out and to provide notice to prospective lessees that the power to terminate shall be at the discretion, clearly at the discretion of the Secretary, if the time schedule for production were not adherred to?

Mr. HORTON. Madam Chairman, it has been our general procedure to assume that the Secretary would have that authority and he would delegate that to the mining supervisor of the Geological Survey. That is after enactment.

Mrs. MINK. You feel it is not necessary to write such a provision into this section?

Mr. FERGUSON. Of course, when we were writing the general bill, H.R. 5442, we provided that there could be termination of the lease, or cancellation of the lease, for failure to comply with its terms. That provision is in the existing Mineral Leasing Act, and so failure to comply with the development plan, including the time schedule, would, it seems to me, be a violation of the terms of the lease.

Mrs. MINK. A violation of the terms of the lease?

Mr. FERGUSON. Yes, the lease would be issued subject to the statutory provision.

Mrs. MINK. Well, then, how do you answer the question that only 10 percent of the lands that have been leased by the Federal Government are in production?

Mr. FERGUSON. That is because of the fact that in the past there has been no enforcement of this provision about diligent development.

Mrs. MINK. Well, at the last hearing, someone from the Department responded to my inquiry, saying they were not sure they had authority to cancel and terminate these leases. It is in the record.

And I am puzzled that the position has changed, or did I have an unclear understanding, Mr. Horton, of the testimony at the last hearing to the effect that the Department was uncertain as to the discretionary authority on the part of the Secretary, once having issued a lease which provided for advance royalties, whether he could cancel the receipt of these royalties and in lieu thereof demand production, the failure of which would call for the termination of the leases?

Mr. HORTON. I am in doubt, Madam Chairman, as to the specific testimony, the specific language of the testimony last week. We can check that.

But, basically, with the Congress we are going through an entire change in the climate of how the Federal Government views coal leases.

Now, I think doubt has been expressed as to the legal authority of the Secretary to rescind a lease, but our testimony today and last week goes to the effect that we are changing policies, and we are examining the legal authority for that. We are examining the legal authority to get——

Mrs. MINK. That is the very discrepancy that I am trying to get at. Your testimony is that we are changing policy. We have had a different policy in the past and we are going to pursue in our new leases a new determination with regard to the criteria for due diligence and continuous requirements.

On the other hand, we have your statement which says that this has been the policy all along of the Department, and I am puzzled at the difference here. The main concern, of course, in addressing ourselves to this bill is that we make absolutely sure that there is no misunderstanding it is, at least the intent of the chair, and hopefully of the subcommittee to give very clear direction and authority to the Secretary to terminate where production has not been complied with within a reasonable period of time.

Mr. FERGUSON. If there has been a misunderstanding, it is probably due to something I said at a recent hearing. The statute requires

that the lease be issued on condition of diligent development and continuous operation.

Our lease form has for many years, provided that there may be a payment of advance royalties under certain circumstances in lieu of continuous operation. This is authorized by statute, and, therefore, there may be a serious question whether we can, indeed, cancel a lease for failure to engage in continuous operations.

Now, that same provision does not touch on diligent development. As you may remember, I said the statute requires both diligent development and continuous operations. It allows a substitute payment of a royalty in lieu of continuous operation and there is a reference to that in the lease form.

The statute does not allow a substitute payment of advanced royalty in lieu of diligent development.

Now, in the past, the Department has never attempted to cancel a lease, as far as I know, for failure to engage in diligent development. And one reason has been that there has been no definition in the regultaions of what diligent development is.

The lease form itself merely requires reasonable diligence. We are now considering the issuance of regulations which would define diligent development and thereafter it would seem that where a lessee failed to comply with the requirement to exercise reasonable diligence, as set out in the definition of diligent development, he would be violating a lease term.

That is the theory that has been developed in the Department.

Mrs. MINK. Is there, Mr. Secretary, attention on the part of the Secretary to promulgating regulations which define diligent development at this particular time?

Mr. HORTON. The answer, Madam Chairman, is yes. They have been drafted. They have not been decided upon finally, but they are being actively looked at.

Mrs. MINK. Along, then, with the publication of these regulations, is it the decision of the Department and the Secretary that the failure to comply with diligent development will be grounds for termination of the existing leases?

Mr. HORTON. Yes. It would be improper for me to commit him, because he has not specifically signed off on these regulations.

But the entire thrust of the Department's present examination is both on existing leases, particularly those that are not being developed, and on future leases, to insure that we do have orderly, timely development.

Mrs. MINK. Now, getting back to the bill, section 7(a) provides for a term of 20 years.

May I have your comment on the selection of the 20-year base. I know about your criticisms of the later part of the sentence which reads, so long thereafter there is annual production. I agree with your criticism that this is much too loose a language, and would be permissive of abuse.

But, with respect to the term of 20 years, could I have a comment on that?

Mr. HORTON. That, Madam Chairman, was a professional judgment of the Bureau of Land Management in consultation with the

Geological Survey as to what would be a reasonable period. It has a finite end for a lease. And I might ask Mr. Patton to comment more thoroughly on the professional discussions in the Bureau on the 20-year period.

Basically, there was a desire to have a finite length to the lease and that was considered to be a reasonable one.

Mr. PATTON. Well, we feel that 10 years would undoubtedly be too short because of the time it takes to develop a new lease. Therefore, we feel that 20 years will allow for full development of that lease, and for a reasonable production before the end of the primary period.

Dr. WAYLAND. I would add that the Mineral Leasing Act has 20-year limits on other types of minerals, such as sodium, potassium, copper, so that there was a precedent within the existing act with respect to the 20 years.

Madam Chairman, at one point in this hearing and previously you have pointed out correctly that about 10 percent of the leases, coal leases, now in existence are under production, or under planned production. Could I amplify that just a little bit to say that if you break the existing leases down into logical mining units and the 120 leases which defy that breakdown, you will find that of the logical mining units, 91 of them, comprising almost 400 leases, 45 or about half either are in production now or have contracted for production and, therefore, are obligated to get into production in the near future.

Mrs. MINK. Well, could you answer the question as to whether the logical mining units, which you have now tabulated, are presently owned by the same individual, so that it is, in fact, a logical unit, or whether you have simply applied a geological standard, and a production standard to the existing leases, and then determined that these lands, issued by separate leases, should, in fact, be mined as a unit.

Dr. WAYLAND. Our judgments have been based on the physicial facts of proximity to a major extent. It is easy to see in looking down the list of ownerships of the logical mining units identified by us that in a number of cases there is more than one company that currently is in control of the leases.

But, in more cases than not, there is one company that controls all of the Federal leases of the existing logical mining unit.

Mrs. MINK. Could we have your report for the record so that we might see the ownership pattern with regard to the—is it 91 units—that you have researched and collated this information on?

Dr. WAYLAND. Yes.

Mrs. MINK. It would be most helpful in understanding exactly the nature of your concept.

Mr. HORTON. Madam Chairman, the Bureau of Land Management will be reviewing with the Geological Survey and other units of the Department of Interior a very substantive analysis of the existing leases, and we have this now in draft form. We believe we will have it prepared for departmental review in 2 weeks and we hope to provide it to this committee and the full committee in approximately a month.

Mrs. MINK. Well, we will wait, then, for that final report, because it is not the intention of the chairman to report this out until we have concluded action on H.R. 11500.

But, it would be helpful, I think, if you have a draft, just for informational purposes, for the staff and myself and other members interested in looking at it while we are attempting to put together a committee print on the bill. I hope to have this introduced by the middle of September when we return from our recess.

Mr. HORTON. We are happy to provide that analysis for your staff under the obvious condition that the figures and some of the basic assumptions might change.

Mrs. MINK. That is fine. Thank you very much.

Do my colleagues have any questions?

Mr. Runnels?

Mr. RUNNELS. Madam Chairman, may I ask Mr. Horton what is your suggestions on different type leases on Federal land, and I know we have been discussing just coal leases here this morning, but what is your thinking of here is a piece of Federal land, and the Federal Government supposedly owns all of the minerals.

Do you suggest that you issue leases just for one item, one mineral, have one just for coal and another for oil and gas and one for potash and one for sodium, and what have you? What is your thinking on how the Federal Government should go about sorting down the different minerals on a lease basis?

Mr. HORTON. Well, as you correctly point out, the procedures now under existing law are to grant leases for specific minerals, and this is part of our thinking in the preparation of our overall reform of the Mineral Leasing Act, is to have uniform standards for the leasing procedures for all minerals, and not simply for coal.

But, I do not think we would go to the extent now of attempting to combine leases for more than one mineral. As far as I know, none have been applied for, and if they have, in the same area, you would have two specific leases applied for two separate minerals.

For example, oil shale and nahcolite in the Piceance Basin occur in the same place and at some point in time, it may be very desirable for the Secretary to have the authority or to come to the committee in the Congress for the authority to grant leases for multiple minerals.

Mr. RUNNELS. If you do grant for multiple minerals, then what should be the guideline, and who has preference? Let us say you have a coal lease or a potash lease and somebody else has an oil and gas lease on the same piece of land.

How do you reconcile the fact that one person has the right to go after his minerals and the other has the right to go after theirs?

Mr. HORTON. That is the perpetual problem of multiple-use management. We simply cannot look at one resource and one environmental problem. We have to look at the entirety, and all of the resource picture on those lands.

I would point out that in our more general proposal to amend the Mineral Leasing Act, H.R. 5442, in section 107 of that proposal is a section under multiple leases which says that the issuance of a lease for a particular mineral shall not preclude the issuance of leases

covering other minerals in the same lease of land, where the Secretary considers that they are separately minable or extractable, and that operations with respect to such minerals will not reasonably interfere with the lessee that has prior right.

But, I would guess that it would be on a first come, first served basis.

Mr. RUNNELS. Of course, I think we both agree that we are discussing S. 3528 and that H.R. 5442 is more thorough and, in essence, with the time left in this session, I do not know if we would be able to get to 5442.

But I would hope, Madam Chairman, that we could incorporate some of things out of H.R. 5442 into S. 3528.

And let me just insert at this point, to get your thinking. I have been on another committee exploring different things that belong to the Federal government. Do you believe that the Federal government, when it sells or trades a piece of Federal land, should they retain the minerals, and, if so, all of the minerals?

Let us say you are going to swap this piece of land for this piece of land, and the Federal Government already has the minerals on this piece of land. When they trade for another piece of land, should the Federal Government keep all of the minerals, in your opinion?

Mr. HORTON. Well, in my opinion, they should not. That is a personal opinion.

Under present law, of course, they do. I will draw the committee's attention——

Mr. RUNNELS. May I interrupt? Under present law, they do not.

Mr. HORTON. Yes, they do.

Mr. RUNNELS. I have right here in my hand every land swap in the State of New Mexico from 1964 to 1974. Just for your information, on surface only now, under the Taylor Grazing Act, the Forest Service exchanged in New Mexico, the Federal Government gave up 703,595 acres and they got in return 340,859 acres, which means that the people of the Government, of all of America, lost 362,736 acres. That is a better than a 2 for 1 loss. Or better than 566 sections that the Federal Government lost.

Now, we say that on their exchange, where they exchanged surface and minerals, just in the State I represent, New Mexico, the Federal Government gave up 154,551 acres and minerals, and they received 82,241 acres and minerals, so in this exchange of surface and minerals, the Federal Government lost 72,310 acres.

Now, you say, well, they reserved the rights. If the information furnished to me is right for the 10-year swap in my State and I have it for every State in the West, would you believe the Federal Government sometimes reserved coal, oil, and gas. The next time they will only reserve oil and gas. The next time they will reserve oil, gas, potash, and sodium. They do not reserve all of the minerals.

They cut some out, and they are saying which ones they reserve and which ones they do not. And I have asked for further classification as to why the Federal Government, if they are going to reserve minerals, why they do not reserve all of them.

Would you not think that the Federal Government should retain all of the minerals?

Mr. HORTON. Well, let us look at the difficulties, Mr. Runnels, we are having now in this strip mining bill. Going back to 1920, which, with congressional approval, the surface was split off from the subsurface, and it was thought to be a great political victory, and a great impetus to the development of the West, which, of course, it was.

But, we are now reaping the negative fallback from that, because we are having a difficulty in having optimum resource management of the surface and subsurface where we have differing owners. And when you split them off, it would be my personal judgment that you are just asking for difficulties down the road.

Mr. RUNNELS. Let me ask you another thing. Here is the Bureau of Land Management private exchange appraisal reports and so forth. I find that it is ironic that the fair market value on this one, this selected land was $12,200 and the offered land was $12,300.

Do you know whether or not in the Department of Interior we are only using one appraiser to make these trades?

Mr. HORTON. Mr. Runnels, it is my understanding that we use three, but I am not familiar with the specific report that is in front of you, and we would be very happy to comment for the record on that report.

Mr. RUNNELS. Well, I am going to go through all of them. Here is another where they offered lands worth $21,000 and the appraisal says $21,000 and that is a comprehensive deal. They include pictures and all.

But, I just think that it is ironic that when you go to trade that they come within $100 this time and then on the next they are the same, and I am not saying that there is any hanky-panky, I am just wondering if our system is correct, and should be look at the way that we are making exchanges and sales of land?

Mr. HORTON. But, that must indicate that the parties to the exchange are receiving equal value.

Mr. RUNNELS. All I am finding here is that we have one appraiser. And I see that we have the appraisers signature, and this is an employee of the Department of Interior. And I know that there are supposed to be, of course, signatures of state reviewing appraisers and so forth, but I just wonder if we are going into detail enough on these appraisals.

And I just merely ask, while I have the opportunity to as it.

Mr. HORTON. Well, I could not speak professionally, because I think that should be left to the Director of the BLM, because this is a professional appraising set of responsibilities. They are not political decisions or policy decisions.

The framework that was decided there was that there must be appraisers, and they must be professional judgments of the people who know the land and understand the land, but I would be happy to meet with you personally, or before the committee, or before other committees of the full committee, to discuss that situation.

Mr. RUNNELS. Madam Chairwoman, I appreciate it. I would appreciate having a further discussion, if we are going to rehash the Mineral Leasing Act, and where I find sometimes we reserve this one and the next time we don't I just want to know who is making

these decisions and how they make the decisions, because today they may say it is not valuable, but 50 or 75 or a 100 years from now, it may be real valuable.

And if the Government has preempted itself and given it away in a swap deal, I just think we ought to nail it down.

Mr. KAZEN. Will the gentleman yield?

Mr. RUNNELS. Yes.

Mr. KAZEN. It has been my understanding that the only minerals which were not reserved were those that the Department figured would not be profitable to mine, and therefore they just did not reserve them.

Mr. RUNNELS. Well, like you say and this is just a geological guess, what a geologists thinks to day is not valuable.

Mr. KAZEN. Well, the deposit was not there in a sufficient amount to make it worth while.

Mr. RUNNELS. Why did they just reserve part of the minerals, and how do they pick and choose at that point in time to say on this piece of land that it has got some oil and gas under it, or it has some potash or sodium or what have you?

Mr. KAZEN. Let me just say to the gentleman, I agree with you.

Mr. RUNNELS. Yes, sir. And I just think that it is ironic that we have been doing this.

Mr. CAMP. Would the gentleman yield?

Mr. RUNNELS. I yield.

Mr. CAMP. I would like to say a little something about this too. I think you are right.

If we are going to retain minerals, it should say all minerals.

Mr. RUNNELS. Right.

Mr. CAMP. Period.

Mr. RUNNELS. That is right.

Mr. CAMP. I am against the theory of retaining any minerals. It is a little bit different with the Federal Government than it is with the private individual.

But, in my business life I have seen abstracts get so big that it was almost impossible for a person to buy one or three or four acres of land because of the minerals that had been retained when the land changed hands, and it had gone from one party to another party, maybe through death or sale, or whatever it might be, and you are getting yourself where you have a title that was just prohibitive.

Of course maybe I am wrong, but I think we should not. I think when you sell royalty, I mean when you sell a piece of ground, if you retain any minerals, if we are going to retain them for any length of time at all, that there ought to be a termination time and it ought not to be perpetual.

Mr. RUNNELS. May I ask you a question at that point? Would you yield?

Let us take an oil and gas lease and we are talking about coal leases now, you know, and the Federal Government will put up different tracts of land, all in one bid, and then I drill, and I have got all of these different tracts scattered throughout.

Mr. CAMP. Under one lease.

Mr. RUNNELS. Under one lease, and I drill one piddly little old well on one 40-acre tract, and yet I look on a lease map, and it has got HBP, you know held by production. Should we have a time limit that if somebody does not explore, then you drop the rest of those leases?

Mr. CAMP. Yes, sir. Because you can hold your lease, you can hold the whole area with one little well on 40 acres, and you might have a piece overhere 10 miles away.

Mr. RUNNELS. And somebody else would like to drill on that. But I think we need to really go into this thing and in detail, rather than to have the fallacy continuing for many years in this country now.

Mrs. MINK. Mr. Kazen?

Mr. KAZEN. Thank you, Madam Chairman. I only have one question. And this is for my personal knowledge.

How does the Secretary determine the amount of royalty payments on coal?

Mr. FERGUSON. Pardon me, Mr. Kazen, but I do not quite understand.

Mr. KAZEN. How does the Secretary determine the amount of royalty?

Mr. FERGUSON. You mean once the lease provides that a certain amount will be paid, then do you wish to know how we measure the royalty?

Mr. KAZEN. No. No. How do you arrive at the amount of royalty in a particular lease

Dr. WAYLAND. Mr. Congressman, if I could respond in part; when an application is received for a lease, either a competitive lease or a preference right lease, the Geological Survey's mining supervisor has, for many years, under the existing law and regulations, recommended the royalty for the consideration of the Bureau of Land Management for that lease.

And typically the lease issues with this recommended royalty in it. Therefore, the recommendation made by the Geological Survey are pertinent to your question, I believe.

The coal market, as you know, from the twenties down to the mid-sixties was a declining market relative to inflation and, of course, coal was ever cheaper. And it was during this period of time for the benefit of the government to do what the law and regulations permit and that is to recommend coal royalties on the basis of cents per ton.

This figure was varied with the quality of the coal and with the difficulties of mining the coal, because this royalty, once in a lease, protected the Government in a declining market.

When the market ceased declining in the late sixties, we reversed our type of recommendation, and currently all recommendations to the Bureau of Land Management are a percentage of value royalty with not less than so many cents per ton.

And again, it is tailored to the mining conditions and the quality of the coal. But, this may answer your question, sir.

Mr. KAZEN. Well, this is what I want to know. The Secretary is not locked into any particular formula. He goes from lease to lease,

so that the government is protected and gets as much royalty as it possibly can.

Mr. FERGUSON. Yes, sir. Under the existing law, a coal lease is not like noncompetitive oil and gas lease, which must be for 12½ percent, not more than or not less.

Instead, by statute the royalty for coal must be not less than 5 cents per ton. Now, as I understand the present recommendation, it is six percent usually for strip mined coal and not less than 17½ cents per ton for the first 10 years, not less than 20 after that.

Mr. KAZEN. I see. But, the discretion is with the Secretary.

Mr. CAMP. Will the gentleman yield?

Mr. KAZEN. Certainly.

Mr. CAMP. Tell me the reason why it would not be equitable to put ten percent on it or fifteen or whatever the percentage might be, whether you got it at 50 feet in the ground, 5 feet from the top of the ground, or like we do oil and gas leases, why can you not pit?

Now, of course, our standard formula now between individuals is one-eighth. I understand that the Federal Government should get 12½ or something like this, but why can't you do the same way with any other kind of mineral, and then it would be standard throughout and there would not be any argument about one lease against another?

Mr. HORTON. We testified last Thursday with respect to oil shale, and we do not know enough now to know what royalty figure we should set for oil shale to encourage orderly development, because we have not gone far enough.

Now, we have more experience with respect to coal, but many of the conditions in these coal leases do vary. And we believe that the discretion should be left with the Secretary rather than to have a legislative standard rate for all coal.

Mr. CAMP. My only point, and as the gentle lady and I were just talking here a minute ago, why can't we use just one figure? Why does there have to be a variance?

Mr. HORTON. You mean for each mineral?

Mr. CAMP. Sure. Well, I mean as far as coal would be concerned, or as against lead or copper or whatever it might be?

Coming back to what we were talking about in the oil and gas lease, it does not make any difference whether you find oil at 800 feet or 8 feet, or 8,000 feet, you still get one-eighth, you get one-eighth of all oil that is produced and that is produced at the top of the ground.

Now, it is different when we talk about the regulation of gas at the well-head and now you are talking about an altogether different situation. But, we are talking about leases, and it does not make any difference what it is, Mr. Runnels, where you get it from. It all evens out.

Mr. HORTON. I think one consideration would be as follows: If we are trying to maximize the return to the Federal Treasury from Federal resources and if a good part of the revenue were from bonuses that would result from a competitive lease sale, then one would have to consider the influence that a standard royalty rate would have upon the bonus that would be expected from the compet-

itive lease sale and, obviously, there would be an impact if one were looking at coal that was 300 feet deep as opposed to coal that was right on the surface.

Mr. CAMP. Well, why? Tell me the difference, if you have got 10 percent of it at the point of delivery and that is what you do at the present time, I understand, or whatever your royalty figure might be. It is at the point of delivery.

Mr. HORTON. Well, the answer would be that you could certainly logically expect to have much less amounts bid in a competitive sale for deep coal if you had the same royalty for surface coal and deep coal.

In other words, what you would expect from the bonus would be much less for deep coal if you have the same royalty on deep coal that you had on surface coal.

Mr. CAMP. Well, I cannot argue that point. But, again, as far as the moneys return from the royalties, it would be the same, whether it was a 1,000 feet in the ground or 10 feet in the ground.

Mr. HORTON. That is correct.

Mr. CAMP. On the same basis per ton.

Mr. HORTON. But you might produce much less.

Mr. CAMP. I can understand where an old boy pays $50 an acre for the lease and does not mind paying $1,000 because he has to go deeper and would pay less money for it. I can understand this, but this is a normal way of life.

Mr. HORTON. And he also might produce much less if he had per ton a higher royalty payment, so he might produce only the richest coal and not go into the less rich coal because of the higher royalty figure.

Mr. CAMP. Well, we do not find that with a barrel of oil and one-tenth of the bottom of that barrel is asphalty oil and there are all different grades through it, and you produce them all out of the same hole in the ground.

Mr. HORTON. Well, I think the question is a good one. My point is that we have to consider things much broader than simply the royalty. We have to consider the bonus and the total fair market value of the resource, and we cannot project the impact.

For example, we have had bonus sales on the Outer Continental Shelf historically and we are now looking this fall to conducting a royalty lease sale to see if we cannot improve.

Mr. CAMP. You do not mean to tell me that the Federal Government made leases in the Gulf of Mexico with just a bonus payment and no royalty?

Mr. HORTON. No, there still is royalty.

Mr. CAMP. You mean, they have never received any royalty off of the oil produced out of the Gulf of Mexico?

Mr. HORTON. The royalty is the standard for O.C.S. sales at 16⅔ percent.

Mr. CAMP. Okay. But, you also put them up for sale to start with and you had what we call a bonus from them where you got both?

Mr. HORTON. We got both.

Mr. CAMP. Just like we do on dry land?

Mrs. MINK. Will the gentleman yield?

Mr. CAMP. Yes.

Mrs. MINK. I can understand how the cost of production would differ rather extensively, depending upon the nature of the deposit. And I can also understand how the value of the coal might differ, depending upon the B.t.u.'s and other characteristics.

But, all of this would be taken into account when the lessee bids for the coal. And as I understand your proposal, you very strongly support the notion of competitive bidding for these leases, so if these factors would be taken into account by the bidder, it will be reflected in the bid price, which you refer to as a bonus payment, as I understand the language.

All you are saying is that we might not get as much in the bonus bid or in the bid price initially if we are dealing with very deep coal, or coal which was difficult to extract, or which might not have such a high value. But, is that not in the nature of the whole bidding process, that these factors would be taken into account? Would it not establish a far higher degree of stability and openness, and knowledge and competitiveness, if everybody knew down the road that there was, as with O.C.S. oil, a standard rate being charged for the end product insofar as the Government royalties are concerned?

Mr. HORTON. Well, certainly it would standardize it, but the objective, and I think the committee would agree, the objective is not simply the royalty or, indeed, the bonus. The overall objective is to get a fair market value for the Federal resources back into the Federal Treasury, and we have not had enough experience with coal at the present time. We have more experience with the O.C.S. and to the different ways we can maximize that input.

Mrs. MINK. I think, Mr. Secretary, the members of the committee have very clearly expressed their concern with regard to this flexible royalty concept and I would invite your very serious study of this issue. If you would like to forward your additional comments to the subcommittee before we mark up the bill, it would be my perception from the discussion here this morning, and other conversations I have had with the committee members, that these comments might well be an additional factor which we would put into our own committee print at the time we reported out the clean bill.

And so I would hope that you might provide us with some further insight as to why a fixed royalty standard, uniform royalty system, would be destructive of enhanced development of coal. I recall cannot accept that result as a logical consequence of a standard royalty concept.

Mr. HORTON. I think our concern——

Mrs. MINK. It can certainly yield different results in terms of payments, depending upon the cost of production, but it would seem to me it would enhance rather than detract from production. But, we will leave that for your further examination, and if you care to submit any supplementary materials to the committee before the end of the month, we would welcome such.

Mr. HORTON. Well, we appreciate that opportunity. But, just very briefly, for the record, our concern really is not based on principle, because indeed we have a fixed royalty for oil and gas.

Our concern is one of uncertainty or unpredictability as to what this means for overall fair market value return to the U.S. Government. And there are, I think, legitimate concerns.

But, I think we can address these, and we appreciate the opportunity to elaborate on that for the record.

Mrs. MINK. Counsel has asked a further question. Why not simply ask for competitive bids on the basis of royalty, rather than on bonus?

Mr. HORTON. Well, I think that is an excellent suggestion and an alternative that we are actively exploring in terms of Outer Continental Shelf leases. We will hold the royalty O.C.S. lease sale this fall and it will be the pragmatic results from that which will then influence future decisions as to how we lease oil and yas and, perhaps, after decisions are made on our overall program, we should have an experimental royalty sale for coal.

And I think we all might learn a great deal, particularly if we had differing types of coal, differing B.t.u. levels, differing depths in the ground, to simply ask, what, in fact, will happen, if we lease coal under those conditions.

Mrs. MINK. Certainly, the present method of issuing leases is not effective, because it has not assured production and development of and an adequate return from our Federal lands. This is a question which the subcommittee is very keenly interested in.

Mr. HORTON. We have testified to that effect today, and I think the administration is the first to admit that there are major defects that we can improve upon.

Mrs. MINK. Yes. Well, we certainly concur with your view on this matter.

If there are no further questions, we thank you, Mr. Secretary, for your helpful testimony and assistance with regard to this legislation.

I would like to call Mr. Bagge, our next scheduled witness, representing the National Coal Association as president.

We have a copy of your testimony, which we will place in the record. You may proceed.

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION; ACCOMPANIED BY ROBERT STAUFFER, GENERAL COUNSEL

Mr. BAGGE. Thank you, Madam Chairman.

Mrs. MINK. You may proceed in any manner you wish.

Mr. BAGGE. I appreciate very much the opportunity to permit the coal industry to address this proposed bill. I am accompanied, Madam Chairman, by Robert Stauffer, who is general counsel of the National Coal Association.

And I will attempt, in the interests of time, Madam Chairman, to just highlight from my prepared statement, and to feature, if you will, some of the concepts that are of principal concern to us, as we have tried to come to grips with S. 3528.

Beginning at page 3 of my prepared statement, we attempt there to point out that the coal industry opposes any legislation which would substantively or substantially amend the Mineral Leasing Act of 1920.

This law, while perhaps not perfect, has proven to be a useful vehicle to accomplish a desired objective, and an extensive body of law has evolved which provides guidance for those operating on coal leases as well as the Government and the courts. These precedents compensate in large measure for the minor imperfections and whatever vagueness exists in the language of the act.

We believe the basic approach of the 1920 law is sound. It provides a vehicle for development of the Nation's coal resources while at the same time it provides the mechanism for the Department of Interior to develop regulations that would provide for the environmental protection of the public lands.

And I think that in the discussion here and the colloquy with the Secretary this morning, it seems to me that it emphasizes the fact that the present Federal leasing program is being implemented under the 1920 law and we believe has been retarding coal development, and we subscribe, in a large measure, to many of the critical comments that were made by the chairman and by your colleagues this morning.

This policy, we believe, of restriction of coal development, in the light of our current and projected needs for coal production in this country is nothing less than shocking.

The almost unlimited discretion given the Secretary by the Mineral Lands Leasing Act of 1920 amounts to near-total authority over whether or not western coal lands will be developed, irrespective of either the needs of the country or the will of Congress. In this connection, we would like to highlight, if I may, what we think are some of the substantive concerns and some of the concepts, and discuss them just briefly with you.

The use of bonus bidding—and counsel's comment, I think highlights the fact there are alternatives to the present means of front-loading type of bidding—as the sole method of of implementing the statutory requirement of competitive bidding tends to inhibit competition by precluding the entry into western coal production of companies without sufficient cash flow to justify large front ended leasing arrangements.

And speaking on behalf of my constituency, the American Coal Industry, we find one of the basic criticisms of the present method of leasing is the front-end loading. The idea of competitive bonus bidding, we subscribe to the idea I think was suggested in lieu of a concept of uniform royalty, utilizing the royalty mechanism as a means of providing competitive royalty bidding in lieu of the front load bonus bidding, and with respect to the development of coal, because that will permit a more competitive, a broader base and permit coal operators more genuinely concerned with development, and who want to mine the coal and not sit on the coal, to compete with some of the larger economic entities in this country who, we believe, are benefited by the front loading, by reason of the competitive bonus bidding.

And on page 4 and 5 are going into page 6, Madam Chairman, we try to deal with that problem. At the bottom of page 5, we have a specific discussion of the history and we say, the public lands were used to finance the extension of our railroad systems and thereby literally extend the area of the United States.

Similarly, the Mining Law of 1872 provided for the development of natural resources in the context of the technology of the times, and it also encouraged the individual citizen participation in the development of those resources.

And, indeed, the Minerals Policy Act which has recently been enacted by the Congress states specifically that this is still our national goal and preemption and homestead laws had the underlying purpose of extending the area of settlement in the country and creating a class of citizens who own small farms and homesteads.

There has been a recent dramatic turn from the use of the public lands for development as is exemplified by the recent disposition of oil and gas leases on the Outer Continental Shelf. The emphasis now appears to be on the Federal coffers.

This was true, I guess, before the energy crisis, the need at any given time for Federal funding, whether we leased or did not lease, was one of budgetary concern, rather than one of rational resource development. So, when taking another look at that, we think in view of the present energy crisis and our evolving new national goal for indigenous resource development, this seems to me to underscore the need to take another look at means by which we do this.

Under existing Bureau of Land Management practice, competition in bidding for coal leases is limited to a per-acre bonus paid at the time of the bid. The royalty is fixed and is paid as the coal is mined.

The coal industry has been seriously concerned over this emphasis on bonus bidding. We believe that the result is, in fact, and we want to underscore this because we believe this sincerely is, in fact, anti-competitive.

Since the enactment of the statute governing OCS leases, we have witnessed spiraling returns to the Federal Government for the leasing of these resources without any regard to the fact that the economics involved in leasing and development of the resources has necessarily placed these mineral resources at the disposal of only the very large corporations.

Much criticism has been leveled at the inordinate manner and number of leases held by large corporations. And I suspect that was underlying some of your comments earlier and the colloquy here with the Secretary. Bonus bidding effectively precludes the acquisition of leases by small operators.

And when you look at the American coal industry, you are looking essentially at 4,000 economic entities that we say comprise the American coal industry. Numerically, they are small operators and even the very largest of those operators are small in comparison with some of the larger complomerate, economic entities in this country.

S. 3528 would continue the machinery for this over-reliance on bonus bidding in the future, since bonus bidding is competitive, and the Secretary of Interior is directed by Sec. 2(a)(1) to award leases by that criteria.

Mrs. MINK. If I might interrupt you there, how do you arrive at the conclusion that that was necessarily intended by that section 2(a)(1)? Competitive can mean many different things.

Mr. BAGGE. We are hoping, Madam Chairman, we are hoping that this subcommittee, indeed the Congress, will state, will articulate more precisely what is meant. Up to now, competitive bidding has centered around the front loading of the bid, of the so-called bonus bidding. It has not taken the form of competition, which could be, in a number of other ways, the way suggested by counsel for example, of bidding the royalty rate, for example, or bidding even taking into account time within which you would develop for the cash flow.

These other considerations, and there are many other factors which we think could be taken into account, but we think that the Congress ought to spell out that these are the considerations that ought to be emphasized, rather than the front loading of the bonus bidding. And I say, it is not locked into the statute, but I think that it is encumbent upon the Congress, if you agree, that you want to end this what we think is an anticompetitive result, and want to broaden the economic base and increase the number of entities that are involved in bidding, I think in the public interest that you should spell out specifically that something other than what is done today should be articulated in the statute itself.

Now, I say that it is an indirect criticism that it just goes on, that it does not speak to the issue. Let me put it this way, so that my answer, Madam Chairman, is there is nothing in S. 3528 which locks us into law, but on the other hand, it by implication condones what is going on today in terms of bonus bidding, which we think is really in the long-term public interest.

I go on at page 7 and 8 and we suggest, therefore, that Congress look into the advisability of a system by which royalty rates are bid competitively, rather than the present system of bonus bids, and there too suggest that royalty rates could be bid competitively, and that ought to be quantified and taken into account.

Larger operators have an advantage under the bonus bid system in that they are able to tie up large sums in per-acre bonuses, whereas smaller operators are not able to do so. Bidding on royalties to be paid out as the coal is mined would not require the tying up of large sums and would enable small entrepreneurs to compete with larger companies.

We think this is in the public interest.

At page 8, we go into another concept, the concept of negotiated bidding, which right now is clearly spelled out in section 201(a) of the existing Minerals and Mining Act. It provides not only for competitive bidding, but for negotiated bidding, and this is of real concern to us, that by eliminating the provisions which permit the Secretary to engage also in negotiated bidding, this is a real concern. And if I may just deal very briefly with that.

S. 3528 provides only for competitive bidding with respect to the awarding of a lease. Section 201(a) of the current Act allows the Secretary of Interior not only to award leases by competitive leasing, but also "by such other methods as he may by general regulations adopt, to any qualified applicant." This is from the statute.

Essentially, this allows for a negotiated lease with a qualified party. Without this provision, chaos would result.

Take for example a coal producer that has an existing operation on leased land on which operations will be completed during the ensuring 5 years. The leased land abuts additional Federal lands suitable for the continuation of the mining operation.

This operator should be, it seems to us, permitted a preferential right to lease the abutting land. It makes economic sense.

Without such an allowance, the land would fall prey to speculators knowing full well the coal producer must have the land to continue his operation. The price of the land, if subject to competitive bidding, would likely be much higher, with a resulting increase in the price to the consumer. And we think chaos would result.

The Secretary of Interior should be permitted, we think in the public interest, to negotiate, under certain circumstances, with the active producer for expansion of the original lease, taking into consideration the social and economic factors affecting the producer, his employees, the surrounding communities, the state and Federal government.

I might say on behalf of my constituency, this is a very real life problem, which has been brought to my attention on numerous occasions and this is a real concern to us. I would like to underscore this as a legitimate, bonafide concern of people that I have spoken to only as recently as last evening, in as we tried to come to grips and analyze this testimony.

Now, another real concern to us, Madam Chairman, and which I deal with perhaps at length here and over the next three pages, another concept which is of real concern is the elimination of the prospecting permits, and our discussion of that begins at middle of page I, because in the present statute, you would eliminate under S. 3528, 201(b), and may I defend, if I may, the function of the so-called prospecting permit. And this is a real concern to us.

When implemented, the practice of granting prospecting permits has proven extremely beneficial to both coal producer and the Federal Government, and indeed to the public. The current administrative embargo on the granting of permits should be lifted. We have been trying to lift these for the last 3 years.

Most certain the act should not be amended to eliminate the permit system. Section 3 of S. 3528 would repeal subsection 2(b) of the Mineral Leasing Act of 1920, which provides for prospecting permits. Amending the law in this manner would, we respectfully submit, be ill-advised. Rather, the law should be amended to provide for more active prospecting.

The Minerals Leasing Act permits the Secretary of the Interior to issue coal prospecting permits on land only in circumstances in which prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in unclaimed, undeveloped areas, where the U.S.G.S. does not know whether or not there are, in fact, coal resources.

Now, on page 10, I try to highlight the number of cases or administrative determinations that have come down that have made even today the issuance of prospecting permits so restrictive that it is not able to perform the function both for the industry, which I sincerely believe is interested in development, and for the U.S.G.S. And to

provide the data base for a more intelligent determination to be made. This is how we involve the private sector in developing the kind of geological data base that is essential, not only for my industry but for the Government as well.

I think it is tragic the way it has been working, and then to wipe it out, we think is even more tragic.

The application of these interpretations, which we cite here, has been that prospecting permits are practically impossible to obtain and potential lessees have often been forced to bid competitively on lands with no knowledge as to the marketability or even existence of continuing coal beds. Indeed, for over 3 years, Interior has refused to grant any exploration permits for coal leases.

This has seriously undermined the industry's ability and incentive to expand. The Department's policy regarding prospecting must be changed. We think it is incredible to have, in this bill, a provision which would eliminate such a useful device.

We oppose that portion of S. 3528 which would eliminate the issuance of prospecting licenses. However, we do believe this section should be amended to provide that information gathered as a result of such prospecting and provided to the Department of the Interior should be kept confidential for some specific period of time. Otherwise, information gathered at great expense by one company interested in development could be used to its competitive disadvantage by being provided to a competitor for the land in question.

I would like to deal very briefly with public hearings. Our critique of that simply is stated there. I will not go into that.

The other concept that I think is important to us, very important to us, is how you handle in this bill the mining plan, and our discussion runs to page 12.

Under the provisions of section 7(c) of the bill, the lesse must submit a development and reclamation plan within 1 year after obtaining the lease. We do not quarrel with the basic requirement—only the timeframe.

Simply stated, in most instances, it would be impossible to comply with this requirement within 1 year. In addition, it would require a duplication of effort with respect to plans required to be submitted under other laws and regulations.

Both the House and Senate surface mining bills require comprehensive surface mining and reclamation plans. The U.S. Geological Survey requires similar submissions. If such plans are to be given to the Secretary of Interior for his approval, the timing and content should be coordinated with other Federal agencies.

Here is the point and the concern, I think, of the people I represent:

In most instances mining on newly acquired property does not begin immediately. It might take 5 years to acquire a tract of sufficient size to begin development.

Until the total package is assembled, a producer could not possibly complete a detailed mining plan since he would not know the extent of the operation, as he picks up a lease, or there may be private land contiguous to it, and this is a matter that has been discussed by my people with me as a real life problem and we are most deeply concerned about it.

It should also be recognized that land may be leased in anticipation of acquiring a customer at a later date. Only after assuring a market for the coal would development begin. Until this happens, the producer cannot be sure of the volume of coal he will mine, and hence could not draw up an intelligent development and reclamation plan.

We have this particularly, Madam Chairman, in the emerging synthetic fuel industry, and I would like to comment, if I may, on the criticism of the fact that many of these leases have not been developed. Many of my members have committed, even though they are not today developing a mining the coal leases, they have secured, they have committed the entire extent of the reserve to an interstate pipeline company in anticipation of committing that coal reserve to a large synthetic coal gasification plant of the future. And so there is that factor, which I think may be on one hand, and may be said to be retarding development. And on the other hand, it can provide the only logical way which the interstate gas transmission industry, which is now looking to coal as its new feed stock can gather the control and make the major investment required in the new synthetic fuels.

Section 5 of the bill would amend the act to provide that moneys paid to States or political subdivisions thereof—this is another small point, but important—"may" be used for planning, public facilities, and public services.

We believe these funds should be specifically earmarked by the states for public services in the communities adjacent to the mine. Certainly this should be true until such time as the tax base of the locality is expanded through the increased tax collections from the producing mine.

In any event, it is imperative that either through the state or the Federal system, funds be channeled to the local jurisdiction that will support the work force of the mine.

Now, in conclusion, let me simply say that the American coal industry opposes S. 3528 in its present form, but recognizes the needs for certain amendments that would provide for greater policy control and more effective guidelines for administrative discretion from the Congress.

Again, we submit respectively, Madam Chairman, that our quarrel is not with the basic thrust of the act, but rather its implementation to date.

Thank you very much.

[The full prepared statement of Carl E. Bagge follows:]

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION

My name is Carl E. Bagge. I am president of the National Coal Association, which represents the major coal producing and coal sales companies of the nation. We appreciate the opportunity to present this testimony on S. 3528, a bill to amend federal coal leasing procedure. The subject before you is one of crucial importance to our industry.

For more than a century, western coal was a prisoner of geography. It lay too far from major markets. Railroads mined a moderate amount for their own use, but that market died with the steam locomotive. Relatively small amounts were mined for western steel mills and other industrial use. Even in days when the retail market was important in the East, there were not enough homes in the West to keep many miners at work.

Besides the vast distances and ionsequently high freight costs that separated western coal reserves and potential major customers, competing fuels effectively fenced in western coal. The Midwest and East were supplied from closer coal fields where the coal had a higher heat content—the fact that it also had a higher sulfur content did not matter at the time. Oil and gas from the Southwest blocked any southern movement, and southwestern gas captured the California market when the West coast's appetite for fuel outran its supplies. The Pacific Northwest had a abundant hydro-electric power, plus gas from the mountain states and Canada.

But times have changed. The coal industry has undergone a dramatic revival throughout the nation, and nowhere do its prospects look brighter than in the West. In fact, the leasing of federal coal involves to a great degree the ability of the American coal industry to expand to meet energy self-sufficiency.

Big mining operations have come to the West, and from Washington state to Texas, big new power plants are being built to burn coal. The development of huge coal-fired generating plants in the Four Corners area of the Southwest to wheel clean power to major load centers as remote as Los Angeles has dramatized coal's vital role in giving the West power parity with the rest of the nation.

But western coal has more than a regional role to play in energy development. The low-sulfur content of western coal is winning it customers in the Midwest where the traditional coal supplies cannot be burned under existing or pending air pollution regulations.

Beyond the great contribution of western coal to direct power generation lies its promise as an enormous source of synthetic natural gas and oil. The American Gas Association sponsored an engineering survey of potential sites for commercial coal gasification plants which identified at least 176 possible sites, and most of them were in the West. Such a plant, to produce about 250 million cubic feet of gas per day, requires a supply of about 6 million tons of bituminous coal a year, or a larger amount of lower rank coals. For the minimum 20-year life of the plant, this means a block of at least 120 million tons of uncommitted coal reserves, and perhaps as much as 200 million tons.

Coal gasification will certainly not be a western exclusive, but it is hardly surprising that the largely untapped coal deposits of the West have produced so many candidate sites for these big coal gasification plants. In fact, the first plant on this commercial scale could be built near Farmington, New Mexico, where El Paso Natural Gas Company has already asked the Federal Power Commission to approve the construction of a 250 million cubic feet-a-day gasification plant, which would consume 8.8 million tons of subbituminous coal a year.

When coal gasification really takes hold, the coal industry must be ready to expand its production effort prodigiously, and the western coal fields will have to support a big share of that expansion. To do this we must have a realistic and workable coal leasing procedure. We do not believe S. 3528 would contribute to this goal.

AMENDING THE 1920 LEASING LAW

The coal industry opposes any legislation which would substantially amend the Mineral Lands Leasing Act of 1920. This law while perhaps not perfect, has proven to be a useful vehicle to accomplish a desired objective, and an extensive body of law has evolved which provides guidance for those operating on coal leases as well as the government and the courts. These precedents compensate in large measure for the minor imperfections and whatever vagueness exists in the language of the Act.

We believe the basic approach of the 1920 law is sound. It provides a vehicle for development of the nation's coal resources while at the same time it provides the mechanism for the Department of Interior to develop regulations that would provide for the environmental protection of the public lands.

The problem is not with the basic law, but rather with its implementation. The present federal leasing program being implemented under the 1920 law is one of retardation of coal development. There have been relatively few leases granted over the last several years and only one prospecting permit. This policy of restriction is shocking in light of the need for America to achieve evergy self-sufficiency.

The almost unlimited discretion given the Secretary by the Mineral Lands Leasing Act of 1920 amounts to near-total authority over whether or not west-

ern coal lands will be developed, irrespective of either the needs of the country or the will of the Congress. Granted, in many cases the Department of Interior has operated by default in the absence of specific statutory guidelines.

The use of bonus bidding and counsel's comments, I think highlighted the fact there are alternatives to the present means of front loading type of bidding as the sole method of implementing the statutory requirement of competitive bidding tends to inhibit competition by precluding the entry into western coal production of companies without sufficient present cash flow to justify large front ended leasing arrangements. We believe that within the protection of the rights of the people of the United States in whose names these lands are held, there should be some system developed to avoid the anti-competitive effects of the bonus bidding system. This, we believe, could be accomplished within the framework of the present law.

Although the coal industry favors retention of the 1920 leasing act, we do believe that the law should be amended in such a way as to spell out more specifically the guidelines within which the Department should operate and to redefine the leasing program within the need to develop America's indigenous energy resources. Accordingly, we concur with a finding of the Public Land Law Review Commission that "Congress should establish national policy on all public lands by prescribing the controlling standards, guidelines, and criteria, for the exercise of authority delegated to executive agencies."

COMPETITIVE BONUS BIDDING

Historically, the public lands have been used by the federal government for development. Preemption and homestead laws had the underlying purpose of extending the area of settlement in the county and creating a class of citizens who owned small farms and homesteads. The public lands were used to finance the extension of our railroad systems and thereby literally extend the area of the United States. Similarly, the Mining Law of 1972 provided for the development of natural resources in the context of the technology of the times, and it also encouraged the individual citizen participation in the development of those resources.

There has been a recent dramatic turn from the use of the public lands for development as is exemplified by the recent disposition of oil and gas leases on the Outer Continental Shelf. The emphasis now appears to be on the federal coffers. The only policy being given any serious consideration is the economic policy—a policy we see in the Executive Branch, flowing from the Office of Management and Budget, in the concept that there must be a "fair return" for the disposition of any resources—known or supposed—of the public lands. We submit that, although the nation is more sophisticated than in 1920, use of the public lands for development is not outdated. It merely needs refinement.

Under existing Bureau of Land Management practice, competition in bidding for coal leases is limited to a per-acre bonus paid at the time of the bid. The royalty is fixed and is paid as the coal is mined. The coal industry has been seriously concerned over this emphasis on bonus bidding. We believe that the result is in fact anti-competitive.

Since the enactment of the statute governing OCS leases, we have witnessed spiraling returns to the federal government for the leasing of these resources without any regard to the fact that the economics involved in leasing and development of the resources has necessarily placed these mineral resources at the disposal of only the very largest corporations. Much criticism has been leveled at the inordinate number of leases held by large corporations; yet, bonus bidding effectively precludes the acquisition of leases by small operators and S. 3528 would continue the machinery for this over-reliance on bonus bidding in the future, since bonus bidding is "competitive," and the Secretary of Interior is directed by Sec. 2(a)(1) to award leases by that criteria. In short, bonus bidding operates to the distinct disadvantage of coal operators and is severely detrimental to the development of western coal resources on a sound competitive basis.

It is perhaps time to begin a retreat from the approach which puts the amount of cash bonus bid above all other considerations in the disposition of mineral resources in the public lands. We suggest that the Congress look into the advisability of a system by which royalty rates are bid competitively rather than the present system of bonus bids. Larger operators have an advantage under the bonus bid system in that they are able to tie up large sums in

per-acre bonuses whereas smaller operators are not able to do so. Bidding on royalties to be paid out as the coal is mined would not require the tying up of large sums and would enable small entrepreneurs to compete with larger companies.

There is no certainty of fair return to the successful bidder under bonus bidding since he can have no complete idea of the quality of the known mineral prior to the actual mining of it. Some Outer Continental Shelf leases, for which large bonuses have been bid, have proved to be worthless. The only loss to the government in royalty bidding would be the loss of bonanzas for valueless leases.

The royalty bidding system would assure the government a fair return, but would not penalize the individual bidder if, in fact, the mineral resource disposed of did not exist or was of such quality that it was not economic to develop.

Section 7(a) of S. 3528 provides that the Secretary of Interior shall have the discretion to determine royalty rates. We support this concept in light of the varying mining conditions, marketability, and quality of coal that exists throughout the country. At the present time, royalty rates are uniform regardless of the coal produced.

S. 3528 provides only for competitive bidding with respect to the awarding of a lease. Section 201(a) of the current Act allows the Secretary of Interior not only to award leases by competitive leasing, but also "by such other methods as he may by general regulations adopt, to any qualified applicant." This is from the Statute. Essentially, this allows for a negotiated lease with a qualified party. Without this provision chaos would result.

Take for example a coal producer that has an existing operation on leased land on which operations will be completed during the ensuring five years. The leased land abuts additional federal lands suitable for the continuation of the mining operation. This operator should be, it seems to us, permitted what amounts to a preferential right to lease the abutting land. It makes economic sense. Without such an allowance the land would fall prey to speculators knowing full well the coal producer must have the land to continue his operation. The price of the land, if subject to competitive bidding, would likely be much higher with a resulting increase in the price to the consumer. And we think chaos would result. The Secretary of Interior should be permitted we think in the public interest to negotiate under certain circumstances with the active producer for expansion of the original lease, taking into consideration the social and economic factors affecting the producer, his employees, the surrounding communities, the state and federal government.

PROSPECTING PERMITS

When implemented, the practice of granting prospecting permits has proven extremely beneficial to both coal producer and the federal government and indeed to the public. The current administrative embargo on the granting of permits should be lifted. Most certainly the Act should not be amended to eliminate the permit system. Section 3 of S. 3528 would repeal subsection 2(b) of the Mineral Leasing Act of 1920 which provides for prospecting permits. Amending the law in this manner we respectfully submit would be ill-advised. Rather, the law should be amended to provide for more active prospecting.

The Minerals Lands Leasing Act permits the Secretary of the Interior to issue coal prospecting permits on land *only* in circumstances in which prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in unclaimed, undeveloped areas where the U.S.G.S. does not know whether or not there are, in fact, coal reserves. The Secretary has interpreted this to mean (1) that he is without authority to issue a prospecting permit for more detailed exploration on land where coal deposits are known to exist in workable quantity, (*Claude P. Heiner*, 70 I.D. 149 (1963)); (2) that it is not necessary that such detailed information be available concerning coal deposits for a determination to be made with some degree of assurance that a mining operation will be an economic success (*Sincalir Mines, Inc.*, A–27160 (1955), *Morris Kline*, A–27651 (1958)); (3) that a permit cannot be granted so that core drilling can be done to determine the coking qualities of coal, (*Malcolm N. McKinnon, et al.*, A–29588 (1963)); (4) that a permit cannot be granted so that a determination can be made whether the deposits are suitable for the intended development of a power plant calling for an investment of

$100 million or more, (*K. N. Garard*, A–29886 (1963)); and (5) that a prospecting permit cannot be issued to establish the existence of coal sufficient in extent, at mineable depths, and not subject to faulting and fraturing, as to insure feasibility of mining operations. (*Colorado-Ute Electric Association, Inc.*, A–29964 (1964)).

The application of these interpretations we cite here has been that prospecting permits are practically impossible to obtain and potential lessees have often been forced to bid competitively on lands with no knowledge as to the marketability or even existence of continuing coal beds. Indeed, for over three years Interior has refused togrant any exploration permits for coal leases. This has seriously undermined the industry's ability and incentive to expand. The Department's policy regarding propecting must be changed. We think it is incredible to have in this bill a provision which would eliminate such a useful device.

We oppose that portion of S. 3528 which would eliminate the issuance of prospecting licenses. However, we do believe this section should be amended to provide that information gathered as a result of such prospecting and provided to the Department of the Interior should be kept confidential for some specific period of time. Otherwise, information gathered at great expense by one company interested in development could be used to its competitive disadvantage by being provided to a competitor for the land in question.

PUBLIC HEARINGS

Section 2(a)(2) of S. 3528 requires a comprehensive land use plan prepared by the Secretary of Interior in consultation with the state and local governments. In addition, there shall be provided the opportunity for comments from the public.

It is the obligation of the state and local governmtns to speak on behalf of their citizens. If the citizens are opposed to a given lease this view should be communicated to the government officials. These officials, during the consultation phase with the Secretary, should be in a position to express the views of those concerned—either in favor or in opposition. A separate public hearing on each land use plan relating to a new lease would be counter-productive, causing unnecessary delay and expense to all concerned. We do not believe that another hearing would contribute any reasonable benefits.

Under the provisions of Section 7(c) of the bill, the lessee must submit a development and reclamation plan within one year after obtaining the lease. We do not quarrel with the basic requirement—only the timeframe. Simply stated, in most instances it would be impossible to comply with this requirement in one year. In addition, it would require a duplication of effort with respect to plans required to be submitted under other law and regulations.

Both the Senate and House surface mining bills require comprehensive surface mining and reclamation plans. The United States Geological Survey requires similar submissions. If such plans are to be given the Secretary of Interior for his approval, the timing and content should be coordinated with other federal agencies.

Here is the point and concern I think of the people I represent. In most instances mining on newly acquired property does not begin immediately. It might take five years to acquire a tract of sufficient size to begin development. Until the total package is assembled, a producer could not possibly complete a detailed mining plan since he would not know the extent of the operation.

It should also be recognized that land may be leased in anticipation of acquiring a customer at a later date. Only after assuring a market for the coal would development begin. Until his happens the producer cannot be sure of the volume of coal he will mine, and hence could not draw up a intelligent development and reclamation plan.

We concur that such plans should be required. However, we believe that the only time requirement should be that they be approved before production begins.

Section 5 of the bill would amend the Act to provide that moneys paid to states or political subdivisions thereof—this is another small point but important—"*may*" be used for planning, public facilities and public services. We believe these funds should ze specifically earmarked by the states for public services in the communities adjacent to the mine. Certainly this should be true until such time as the tax base on the locality is expanded through the

increased tax collections from the producing min. In any event it is imperative that either through the state or the federal system, funds be channeled to the local jurisdiction that will support th work force of the mine.

SUMMARY AND CONCLUSION

In summary, the coal industry opposes S. 3528 but recognizes the need for certain amendments that would provide for greater policy control and more effective guidelines for administrative discretion from the Congress.

This committee is uniquely endowed by its expertise in energy and public land matters to understand the great importance of western coal to the nation's future. The time has come for us to begin using this region's fantastic coal reserves to the extent necessary to free domestic gas and oil for space heating and transportation, and other uses for which they are especially suited. This would have the additional desirable effect of reducing our dangerous dependence on imported fuels. The time has come when we should be gasifying and liquefying coal in the West, rather than importing LNG from Algeria and transporting crude from Saudi Arabia.

Mrs. MINK. Thank you, Mr. Bagge.

Mr. Runnels, do you have any questions?

Mr. RUNNELS. Madam Chairman, I would like to ask, S. 3528 has no bearing whatsoever on Indian lands, does it?

Mrs. MINK. I cannot answer that question. Can counsel answer it.

Mr. SIGLER. No, it does not.

Mr. WILLIAMS. To my knowledge, no.

Mrs. MINK. It does not.

Mr. RUNNELS. Then, in your reference to the El Paso Gas Plant in the Four Corners area, all of this is on Indian land, I believe, is that not correct?

Mr. BAGGE. I think that the Farmington, the proposed El Paso project at Farmington, I do believe is from leases which Consolidated Coal Co. first secured from Indian lands. I think that is correct, Congressman Runnels.

Yes, sir, but El Paso has exercised its option and El Paso Natural Gas has the entire coal reserve base to back up its proposed gasification plant.

Mr. RUNNELS. May I ask another question about your statement?

On page 7 where you suggest that Congress should look into the availability of a system by which royalty rates are bid competitively rather than the present system of bonus bids, in a few words would you say what you think should be done on the bill by bidding the royalty rates competitively? Should it be sealed bids competitively, or should it be open bids?

Mr. BAGGE. I think consistent with the provisions we would also subscribe to the idea that the Secretary should have discretion to have negotiated bids.

Well, as far as the mechanics, let me say, Congressman, that I am not familiar with the mechanics of how this operates. I never participated in a bidding procedure, whether they are sealed bids or not.

From my former dealings with the Federal Power Commission, I am aware that the Outer Continental Shelf bidding is done with sealed bids, but I am not quite certain as to how the mechanics operate here. But, my point, the substantive point I was trying to make is that in lieu of the bonus bidding arrangement, which I really think retards development and it operates to retard development because it does not permit a number of people I represent, coal opera-

tors who want to get in and lease the coal and make contracts with utilities and mine the land, it effectively precludes them from competing for the leases. And this I think is a tragic result and it is against the public interest. It is anticompetitive.

And here we are trying to say that we would turn to something like the competing with the royalty rate. I mean our operators might be willing to bid more royalty, but they do not have the cash, they do not have the resources to put up millions of dollars in front loading the thing.

Mr. RUNNELS. So you are saying more royalty basis, an override?

Mr. BAGGE. Royalties, yes, but the rate of the royalty, or the rate at which you were to develop, you commitment to development and those other factors.

Mr. RUNNELS. The same as a payment to an individual on an individual lease, forgetting the Government, and maybe the man only wants $50 an acre lease money, but he would take $500 an acre in oil payment, which means that he would reduce the lease money and take the oil payment and would get $500 an acre, spread out for his income purposes over a period of years? Is that what you mean?

Mr. BAGGE. Exactly.

Mr. RUNNELS. All right now. I will ask you another question.

On page 9 you say the operator should be permitted a preferential right to lease the abutting land. Now, do you think coal should be treated different than all other minerals by the person who owns the adjacent lease?

Mr. BAGGE. Congressman, I have not thought through that problem with respect to oil and gas leasing. I have not really thought that through. All I can speak to is the problem that my people are experiencing.

Mr. RUNNELS. But on coal you think the adjacent person should have the right to negotiate on the lease?

Mr. BAGGE. I am suggesting that if this bill would take away the Secretary's discretionary authority, as an alternative under 201(b), to permit a negotiated bid, and then the operator would be at the mercy, particularly if you were going to have this front loading of bonus bidding arrangement, he is going to be at the mercy of any other economic entity that can go in and get continuous adjustment and frustrate what otherwise might have been a perfectly rational mining cycle and this I do not think is in the public interest.

Mr. RUNNELS. OK. In your statement on the last page, page 13, at section 5, where you suggest the funds should be specificially earmarked by the states for public services in the communities adjacent to the mines, are you saying that the Federal Government should tell the States then how they should use their money?

Mr. BAGGE. Yes, I guess that follows as a necessary consequence of our suggestion.

Mr. RUNNELS. OK then, would you go a step further in your suggestion in saying that if a community has oil or gas, production, that all of it should be spent in that community before any of it is shared with any other community that the good Lord did not put any oil or gas in?

Mr. BAGGE. Again, I have not thought through this on anything other than coal.

Mr. RUNNELS. If that be the case, do you think that the Federal Government should give to the States and those local communities their share of the royalty to help that community? The Federal Government is getting a royalty off of it. That is what we are talking about. What should the Federal Government do, bring it to Washington, and use it for some other reason or purpose, or should it stay in that State or that area, or should it say to that State or that area on this royalty that we receive, we will give you back ours to use in that community. Is this your thinking? Do you want to use their part of the bidding amount they are going to get, what do you think the Federal government should do with theirs?

Mr. BAGGE. I have not addressed myself to that. I really have not thought that through.

But, I will say, I might say that that concept underlies, that concept underlies what emerged out of the House surface mining bill with respect to how we are going to fund the financing of the orphan land problem in this country, and that specifically, if I understood the proposal that emerged from the full House bill, to in essence do precisely that, to earmark Federal funds that come from or accrue to the Federal Government from royalty payments OCS and all of the other minerals and earmark for use to the States in that area.

So I do not think that is that novel an approach. But, as to whether or not the Federal royalty should go back, I really do not believe I would like to commit my industry to say we support that concept, Congressman, with respect to it.

Mr. RUNNELS. But you are willing to support that you want the Federal Government to tell the States how they can use their money, but you are not willing to say for the Federal Government how to use their portion of the sam money?

Mr. BAGGE. I guess that follows as a necessary consequence of what I have said.

Mr. RUNNELS. Thank you, Madam Chairman.

Mrs. MINK. Mr. Ruppe, do you have any questions.

Mr. RUPPE. Thank you. Just a question or two of the witness.

Your opposition on bonus bidding is essentially that the small operator is precluded from in effect mining a good number of Federal properties in the West?

Mr. BAGGE. Yes, Congressman Ruppe. I think that it operates in an anticompetitive fashion to prevent not just the small operator, but in the whole industry we are talking about even our medium sized operators would be regarded, I think, by most economic indexes of normal other business as a small operator.

So, my people feel very strongly that in order for them to be able to compete with some of the larger business corporations, that now how have discovered coal and now want to get in the coal business, that this is anticompetitive. We are going to be at a tremendous disadvantage as we try to move into the West, to participate and have a part in the development.

Mr. RUPPE. Are the royalty rates competitively bid, or is the royalty almost an automatic payment in all situations?

Mr. BAGGE. No, we just heard from the Secretary a few moments ago that there are varying royalties, but the royalty is prescribed in

the proposal for the lease. That may vary from lease to lease, but it is——

Mr. RUPPE. The royalty is set when you go out to bid? It is not a negotiated factor?

Mr. BAGGE. Exactly. And the only thing that is really competitive then, the way we are implementing the law today, Congressman Ruppe, is in the bonus bidding, and this is our criticism.

Mr. RUPPE. When these leases are made, the bonus bids are offered, is the amount of coal reserves to be mined well known, well estimated?

Mr. BAGGE. Well, this is another criticism we have of this bill, because without the prospecting permit and without our ability to really quantify not only the nature of the deposite, or rather the extent of the deposit, but the characteristics of the coal, the quality of the coal, that many, many times we are forced to bid, so to speak, in the dark.

Mr. RUPPE. It would seem to me if the amount of coal were relatively known, the Secretary of Interior could either take a bonus bid, or give an option out to an operator to offer perhaps a bonus, but essentially a royalty rate, and he could determine on the basis of the amount of coal involved which was the better return to the Government, the bonus system or possibly the long-term royalty payment system.

And the latter point may actually bring in more money, but I would think at the same time, it would give the medium sized operator a chance to pay as he goes, which he certainly does not have under the bonus bidding system.

Mr. BAGGE. That is correct, and that is our criticism of it.

Mr. RUPPE. There is no way that your people can bonus bid against the huge corporations, because if they borrow the money, they are going to borrow several points higher if they can even get it. They do not have the same ready access to funds and they simply do not have the capacity to bid on as a competitive a basis.

Mr. BAGGE. That is exactly correct.

Mr. RUPPE. Therefore, when it comes to the money and laying out a bonus, the bigger you are the better your chances are, and the less opportunity the smaller or the medium size guy has to touch that coal deposit at all?

Mr. BAGGE. It is precisely that characteristic that underlies our concern in this area.

Mr. RUPPE. I see. Now, I always thought that you were talking about preserving the little coal operator as a means of defeating our mining bill, but it turns out that you really have the man's best interest at heart.

But, I think you are entirely right. I think that unless you can get on a pay-as-you-go basis, there is absolutely no way for the moderate, middle-sized producer to get a piece of the action in the West.

Mr. BAGGE. And I want the record to show that I always had his interest at heart, even with respect to the iining bill.

Mr. RUPPE. A great number of them would agree with you. I thank you very much.

Mrs. MINK. Pursuing that line of questioning, Mr. Wayland, would you respond? My understanding of the Secretary's response

to an inquiry is that the royalty payments were calculated after the bid had been awarded to a lessee and were not prescribed in the lease terms before the bidding had actually taken place.

Am I correct or incorrect? Mr. Wayland?

Dr. WAYLAND. Madam Chairman, that is incorrect. We make a recommendation to the Bureau of Land Management for the terms of the lease, including the royalty provision, before either a preference right lease is issued or a competitive sale is organized.

Mrs. MINK. So that the terms of the royalty are known to the bidder in advance of the bid. I stand corrected.

Mr. RUPPE. If I might ask the gentleman another question or two; I regret having been in another subcommittee. You recommend a royalty figure to the Interior Department before leasing. What is your royalty payment based on? Is it based on the amount of coal, or the characteristics of the deposit that might make it less or more difficult to mine?

Dr. WAYLAND. This is correct. It is based with an eye on commercial practices in the particular basin, for one thing, on the quality of the coal, the difficulty of mining, the access to markets. It really is a regional determination.

Mr. RUPPE. Do you have any measure or estimate as to the amount of recoverable coal reserve available to the operator at the time he places that bid?

Dr. WAYLAND. Yes, sir, we do. On a competitive coal sale lease, we have made such a determination.

Mr. RUPPE. Then you actually could, if you thought there was a billion tons of coal in this particular area to be leased, actually calculate out very simple, mathematically which is the best return to the Federal Government, a bonus system on the one hand, or an increased royalty offer on the other, could you not?

Dr. WAYLAND. Yes, we could do this mathematically readily.

Mr. RUPPE. Actually, as I recall my little knowledge of the oil business, very often the bonus bid is not the important thing, it is the royalty over the long run that can make the biggest contribution to the coffers of the individual selling the lease?

Dr. WAYLAND. With respect to coal leases, I think the figures will show that coal royalties have considerably exceeded coal bonuses in the past. I would point out one problem with royalty bidding, if I may, and that is that it tends to lead towards problems of conservation.

A company that bids a high royalty will ultimately come to the end of its economic life almost, and it will wish to leave coal behind that it might otherwise have taken at a lower royalty rate. The existing Mineral Leasing Act does provide for Secretarial discretion to reduce royalties in order to conserve mineral resources, and that particular provision is not even considered in the present legislation, so presumably it will still exist in the Mineral Leasing Act, and there would be a way of reducing royalties in order to prolong the life of an operation.

Mr. RUPPE. Do you suggest if an operator bids on a bonus basis, he then would have a tendency to leave some of the coal behind the less attractive or minable areas? Or would he consider his payment a lump sum and be mor inclined to take out the entire coal resource?

Dr. WAYLAND. We feel that this particular latter provision that you mention here is especially applicable in oil and gas. With respect to coal, the bids per acre in general have been pretty low, even though $500 per acre is a pretty high bid for coal.

Mr. RUPPE. For bonus?

Dr. WAYLAND. For bonus, and as you know, this is nothing compared with the per acre bid for certain of the OCS leases.

So, therefore, the front end load in the bonus system, in my opinion, has not been a serious deterrent. But, I would say that in the new situation, with a far greater interest in the acquisition of additional coal leases, past experience may not necessarily be a good measure of bonus interest in the future.

Mr. RUPPE. Would it not be smart to give the Department some latitude so that they could, if the bonuses start to get very high, consider which is in the long term best interest of the Department and could use the competitive system; then they could have the availability of either the bonus or royalty system.

Dr. WAYLAND. In my personal opinion, I would agree with you, Congressman.

Mr. RUPPE. Thank you very much.

Mrs. MINK. I have one question for Mr. Bagge.

With regard to the bonus system, we heard in the oil shale hearings that the bonus system included a deferred payment schedule. I believe it was 6 or 5 years spread over a period of years. This legislation contemplates a 20-year lease.

What would be your comment if we had a front end bonus system still intact, but required that it be deferred over the lease period, so that a small operator could bid a bonus in line with the preference of the Department's policy, but still spread it out over a long period of time, so as not to be disadvantaged because they are small as distinguished from a larger operator.

Mr. BAGGE. My reaction to that is that it would be the same substantive effect as the things that we are leading towards here in our formal statement, i.e., for competitive bidding with respect to the royalty, as long as it would have the same substantive effect and provide the same competitive basis for all of the economic entities to compete equally with respect to the development of the resource, and I would say it would have the same substantive effect and, therefore, we would welcome that as well.

Mrs. MINK. Well, I certainly concur with your statement with regard for the necessity for the Federal Government to assure the country that the coal they are leasing is to be produced and not simply held for investment purposes.

How do we guarantee development of this coal under any proposed legislation to make sure that the energy requirements are being met by the coal leases which the Federal Government issues?

Mr. BAGGE. I have not really focussed on that. You are really just hitting me with a question, but I think you can establish some mechanism in the act that would provide for the bonafide to be disclosed.

I mean it is one thing to say we want to start development immediately, and I think in large measure most of the people I represent are willing, ready, willing and able, if they could get a lease from

the Federal Government. We have not had a lease in 2 years to respond to the needs that exist today.

But, on the other hand, we have got to recognize that a bonafide showing can be made that where the coal lease has been committed to many of the large interstate gas transmission pipelines, which are contemplating utilizing the coal not as coal, but as a feed stock for the synthetic gas industry, that there has to be a recognition, I think, some showing of the bonafides and I think that some mechanism in the statute that would provide the Secretary with discretion from time to time to investigate the bonafides of their commitment with respect to what was the term, what was the term of art?

Mrs. MINK. Diligent development.

Mr. BAGGE. Diligent development, looking at from time to time within the 20-year term of the lease at the bonafides, and you might provide such a mechanism, and a showing could be made that there was, in fact, contract between a coal producer who secured the lease and the pipe line companies that are now anxiously development and construction of these synthetic gasification complexes. That, I think, is our concern, and, indeed, the public's interest would be served.

Mrs. MINK. Well, you led the opposition to H.R. 11500 and one of the major points you made repeatedly was the need for coal production.

And now given the fact that there are over 600,000 acres of Federal coal leases in existence, only 10 percent of which are anywhere near the criteria of diligent development, what kind of recommendation can you give this subcommittee with regard to the pending legislation to make sure that the 90 percent holdings of the coal companies will actually end up in production within a reasonable period of time?

Mr. BAGGE. I think I have to refer back to my answer to your earlier statement. I thought that that was a mechanism by which you could determine the bonafides, have a situation in which there was no development and the Department of Interior—I am sorry.

Mrs. MINK. Well, just because you said it is enough to show that there has been a commitment to hold such and such in reserve for a gasification plant, which may or may not be constructed, it seems to me that those kinds of long range plans are really not what we are talking about.

We are talking about an energy crisis that is here. We are talking about coal that is needed here today.

How can we structure legislation which will guarantee full productive returns to our Federal government?

Mr. BAGGE. It seems to me the first way to guarantee production is to permit some leasing.

Mrs. MINK. We have already leased 600,000 acres, and they are not producing. Should we return these lands to the Federal government?

Mr. RUPPE. In leasing the 600,000 acres, were they made without questioning the time commitment of the operator? Were they leased simply to sell the leases? Were the leases made because of the coal gasification plan that might go 3 or 5 years from now?

If those 600,000 acres were leased, were there any time frames in mind as to when the properties would be in production? Was a time placed set to get into production? Were there any criteria under which any of the various bids were accepted?

Mr. BAGGE. Congressman, I have not been privy to any of the leases in the past. I have no personal knowledge of what kind of commitments were made at the time that those leases were made.

But I do know, and I am sorry I do not have it with me, the Department of Interior has issued a public information bulletin that does document that most, if not all, the overwhelming majority of all of these leases are committed now under contract for either utilization in power production and conventional steam generation or for gasification projects.

Mr. RUPPE. But there was a time frame involved in terms of when the coal would be mined and when the production would be flowing from the properties.

I would like maybe the gentleman behind him to give us an idea.

Mrs. MINK. Dr. Wayland, would you care to comment?

Dr. WAYLAND. Well, most of the leases now extant, some 530 were issued in a declining market, and they have no such provisions. The law does not require any such provisions beyond those already discussed here.

The law does provide, in the current version of the law, of course, that if a leaseholder cannot market his product at a profit, he will pay minimal royalty and in the past minimal royalty has been equated to rental, therefore a $1 an acre. And because of these provisions of law and the indefiniteness in the production requirement, which had built into the law its own defeat, these leases, as issued, had no such safeguard

However, the law does provide that every 20 years an existing lease will be reviewed and the terms will be changed. And what we are doing now, and have been doing for about 2 years, after we worked this out with the Bureau of Land Management, is that we determine on an existing lease that is coming up for continuance after the 20-year period, how much coal remains there that is recoverable, and we assume a life for this lease in conjunction with adjacent leases, if it is a logical mining unit, and we assume further that it would be conceivable for the lessees of this lease or this logical mining unit to get into production within, say, 5 years.

If he does not, under our present recommendations, he pays what we call an advanced royalty, which is a higher royalty based on the total reserve, and he cannot get that money back except as a credit against future production. Therefore, almost all Federal coal leases are now facing a situation where when they are adjusted and also under any new leases that might issue, will have such a provision whereby royalties will have been paid on production, whether it is produced or not.

Now, this, of course, is an incentive to produce. Otherwise the money is not recoverable.

Mr. RUPPE. Now, in other words, if I just had this property for 3 or 4 years and I have sat on it, could you come back to me and say,

look, Ruppe, I have given you minimum royalty for 2 or 3 years because you said you couldn't sell the coal, but now we are going back to another royalty figure. Wouldn't that be a pressure to push me to get moving? And I assume the Department has some opportunity now before the 20-year period is up to play with the royalties to encourage these people to meet what Mrs. Mink has indicated is obviously a need to get into production?

Dr. WAYLAND. With the existing regulation and authority delegated to the supervisor, we can raise questions of this nature with an operator.

Mr. RUPPE. You mean, we will have to encourage him to change the regulation too, and push him harder?

Dr. WAYLAND. But, the first real handle that we are getting on here, which will provide the economic incentive to produce, is this advanced royalty concept.

Mr. RUPPE. Would it be possible for you to give us a copy of the regulations for the record?

Dr. WAYLAND. Oh, yes, sir.

Mrs. MINK. We will insert the regulations at this point in the record.

[The information supplied for the record follows:]

PART 211—COAL-MINING OPERATING REGULATION: [1]

Sec.

211.1 Authority and scope of the regulations in this part.
211.2 Orderly and efficient development of publicly owned coal lands and deposits.
211.3 Definitions.
211.3a Jurisdiction.
211.4 Powers and duties of supervisor.

DUTIES AND OBLIGATIONS OF LESSEE

211.5 Observance of lease terms; lessee's liability for damage.
211.6 Production reports and other data.
211.7 Danger in mines to be reported.
211.8 Accidents to be reported to mining supervisor.

WEIGHING OR MEASURING COAL

211.15 Requirements.

GEOLOGIC AND BORE-HOLE REPORTS

211.16 Requirements for reports and completion of drilling.

APPROACHING OIL, GAS, OR WATR WELLS

211.17 Precautions.

SURFACE STRUCTURES; THEIR LOCATION, CONSTRUCTION, AND FIRE PROTECTION

211.18 Building of combustible material within 75 feet of mine opening prohibited.

DEVELOPMENT PLANS

211.19 To be approved in advance of operations.
211.20 To be followed.

MINING WHERE MORE THAN ONE BED OF COAL OCCURS

211.21 Requirements.

[1] 38 FR 10001, Apr. 23, 1973.

Authority: The provisions of this Part 211 issued under sec. 32, 41 Stat. 450, sec. 10, 61 Stat. 915; 30 U.S.C. 189, 359.

Source: The provisions of this Part 211 appear at 3 F.R. 515, Feb. 25, 1938, unless otherwise noted.

§ *211.1 Authority and scope of the regulations in this part.*

(a) The regulations in this part have been issued pursuant to the authority vested in the Secretary of the Interior by section 32 of the act of February 25, 1920 (41 Stat. 450, 30 U.S.C. 189), and section 10 of the act of August 7, 1947 (61 Stat. 915, 30 U.S.C. 359). On and after July 1, 1944, the administration of the regulations in this part, save and except for those provisions in this part, save and except for those provisions dealing with inspections for the safety and welfare of miners engaged in mining operations on land covered by coal leases, licenses and permits shall be vested in the Geological Survey, Department of the Interior.

(b) Effective July 1, 1944, the function of making inspections for the safety and welfare of miners under the regulations in this part providing for such inspections shall be bested in the Bureau of Mines, Department of the Interior.

(c) The enforcement of the regulations in this part will remain the function of the Geological Survey.

[9 F.R. 7746, June 12, 1944]

§ *211.2 Orderly and efficient development of publicly owned coal lands and deposits.*

The purpose of supervision is to assure the orderly and efficient development of publicly owned coal lands and coal deposits, without waste or avoidable loss of coal or damage to coal-bearing formations; to promote the safety, health, and welfare of workmen involved; to obtain a proper record and accounting of all coal produced; to determine rent and royalty liability; and to maintain a record of rent and royalty payments.

§ *211.3 Definitions.*

The following expressions wherever used in the regulations in this part shall have the meaning here indicated:

(a) *Mining Supervisor.*—The Area Mining Supervisor, Conservation Division of the Geological Survey; a representative of the Secretary, subject to the direction and supervisory authority of the Director, the Chief, Conservation Division, Geological Survey, and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part, or any subordinate acting under his direction.

(b) *Secretary.*—The Secretary of the Interior.

(c) *Director.*—The Director of the Geological Survey, Washington, D.C.

(d) *Lessee.* Any person or persons, partnership, association, firm, corporation, municipality, or State which has made application for or to which has been issued a coal-mining lease, permit, or license under the act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 201–209), and amendments thereto, or under the act of August 7, 1947. (61 Stat. 913; 30 U.S.C 351–359)

(e) *Leased land or tract.* Any land or coal deposit owned by the United States and under lease, permit, license, or application for lease, permit, or license, in accordance with the act of February 25, 1920, or the act of August 7, 1947, for the purpose of mining coal therefrom.

(f) *Coal.* Coal of all ranks from lignite to anthracite.

(g) *Mine.* An underground excavation and all parts of the property of a mining plant either on the surface or underground that contribute directly or indirectly to the mining and preparation of coal.

(h) *Stripping operation.* The term "stripping operation" or "strip pit" shall mean a mining excavation or development by means of a surface pit or quarry in which the surface or cover over the coal bed is first removed and the coal itself is then excavated.

(i) *Slope.* An inclined entry in a dipping coal bed or an inclined tunnel to a coal bed.

(j) *Shaft.* A mine opening, the axis of which is approximately vertical, extending from the surface to develop one or more coal deposits.

(k) *Panel.* A unit area in a system of mining by which the mine is divided into areas isolated or surrounded by solid pillars of coal into which a pair of entries are driven for the development of rooms and the extraction of pillars.

(l) *Working place.* Any underground place where the men are assigned to mine or load coal or rock by hand or mechanically.

(m) *Rock dusting.* The distribution or application underground of fine noncombustible dust in such a manner as to prevent, check, control, or extinguish coal-dust explosions.

(n) *Wet coal dust.* Coal dust in a mine shall be considered wet only when the fines contain sufficient water to permit molding by hand pressure.

(o) *Gas.* Used in the sense employed by coal miners to mean "fire damp," or flammable or explosive gas, usually methane. When such gas is mixed with air in cereain proportions the mixture is explosive.

(p) *Gassy mine.* A mine shall be deemed "gassy" if so determined by appropriate State authority, or if a methane cap can be obtained with an approved safety lamp in any working place or places on any 3 days within a period of 30 days, or if the return air from any split contains 0.25 percent or more of flammable gas.

(q) *Black damp.* The excess of nitrogen and carbon dioxide in an oxygen-deficient atmosphere.

(r) *Permissible.* Applied to explosives, safety lamps, electric machinery, rescue apparatus, and other devices, means, apparatus, and materials officially listed as "permissible" by the United States Bureau of Mines and approved as having met its requirements for the respective specified uses.

(s) *Fan.* A revolving machine placed on the surface and used to create a positive air current in a mine.

(t) *Booster fan.* A revolving machine placed underground for increased circulation in the specific airway in which it is placed.

(u) *Auxiliary fan.* A revolving machine used to force air through tubing or ducts for the ventilation of a specific working place or places.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *211.3a Jurisdiction*

Subject to the supervisory authority of the Secretary and the Director, operations for the discovery, testing, development, mining, or preparation of coal, handling and measurement of production, determination and collection of rental and royalty, and in general, all operations conducted on a lease by or on behalf of a lessee are subject to the regulations in this part, and are under the jurisdiction of the Mining Supervisor for any area as delineated by the Director. In the exercise of this jurisdiction, the Mining Supervisor shall be subject to the direction and supervisory authority of the Chief, Conservation Division, Geological Survey, and the appropriate Regional Conservation Man-

ager, Conservation Division, Geological Survey, each of whom may exercise the jurisidction of the Mining Supervisor.

[38 FR 10001, Apr. 23, 1973]

§ *211.4 Powers and duties of supervisor.*

It shall be the duty of the mining supervisor:

(a) *Inspectional supervision.* To visit from time to time leased lands where coal mining or propsecting operations are being conducted or contemplated; and to inspect and supervise such operations and plants connected therewith in order to prevent injury to life, wastage of coal, damage to or from wells drilled through the coal beds, and damage or threatened damage to property or to equipment from fire, oil, gas, or water, or otherwise, and in order to insure that operations are being conducted and that the welfare of the miners is being provided for in accordance with the acts and the regulations in this part.

(b) *Ascertain and report damage to coal deposits; report wastage of coal; make recommendations to the Secretary.* To ascertain and report the nature and amount of damages, if any, to the leased premises or to adjacent property belonging to the Government; to report the amount and value of any coal avoidably lost or wasted; and to make recommendations to the Secretary of the Interior on the action to be taken for insuring compliance with the provisions of the lease and the regulations in this part.

(c) *Production and royalty reports; scaling of mines.* To examine the mines, mine maps, records, and books of the lessee and determine the amount of coal mined from government coal land; to make a report to the Secretary of the Interior each quarter as to lands held under leases and permits and semiannually as to lands held under licenses showing the production and the accrued royalties and rentals; and to place seals at the entrance of leased lands upon the order of the Secretary when the lessee is delinquent in royalty and rental payments.

(d) *Wells or prospect holes through coal beds.* To prescribe or approve the methods of protection from wells or prospect holes drilled for any purpose through the coal measures and mines on leased lands and on coal lands subject to lease, with a view to the prevention of leakage of oil, gas, water, or other fluid substances that might endanger the lives of employees, and to prescribe or approve methods of obtaining the ultimate extraction, so far as practicable, of coal in the vicinity of such wells.

(e) *Abandonment of mine or of unmined portions of mine; survey at lessee's expense.* To specify in writing under what conditions a mine or panel or other section of a mine, from which the coal has or has not been extracted may be abandoned by the lessee, and how a section of a mine so abandoned should be sealed off or otherwise separated from the other parts of the mine, and to cause a survey of operations on leased lands to be made at the lessee's expense upon failure of the lessee to provide accurate maps as required.

(f) *Placing seals on leased lands.* If the operating regulations in this part or the State mining laws are not being complied with, and in the opinion of the mining supervisor, the mine or the lives of workmen are in jeopardy, such supervisor may give notice in writing to stop operations on all or a part of the leased land and may apply Department of the interior seals to the haulage tracks or across the entrance to the strip pit, mine, or section of the mine affected. Should any such notice or seal be violated, the district mining supervisor shall recommend the penalty to be imposed upon the lessee.

(g) *Orders to insure compliance with regulations not in conflict with State laws; appeal, delay in execution of order or notice.*—The mining supervisor may issue such orders and notices in writing as may be appropriate to insure compliance with the regulations in this part, and may order the discontinuance or modification of any operation or method that is causing or likely to cause any endangerment of life or property or is in violation of the provisions of the lease or regulations: *Provided*, That such orders are not in conflict with the laws of the State in which the leased land is situated: *And further provided*, That if any such order or notice issued under the regulations in this part does not contain a statement that immediate danger of loss of life or property is involved, and if the lessee appeals therefrom as provided in part 290 of this chapter, execution of said order or notice may be delayed pending final disposition of the appeal.

[3 FR 515, Feb. 25, 1938, as amended at 11 FR 1615, Feb. 14, 1946; 38 FR 10001, Apr. 23, 1973]

DUTIES AND OBLIGATIONS OF LESSEE

§ *211.5 Observance of lease terms; lessee's liability for damage.*

The lessee shall observe and carry out the terms of the act of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181–263), his lease, the regulations in this part, and the orders and written notices of the Mining Supervisor issued in accordance with the regulations and terms of the lease that are not in conflict with the laws of the State in which the leased land is situated: *Provided*, That if any order or notice does not specify that immediate action must be taken for the protection of life or property, an appeal may be taken as provided in part 290 of this chapter. Upon failure of the lessee to take appropriate action to protect the deposits from damage or threatened damage by fire, water, oil, gas, or subsidence, and upon failure of the lessee properly to protect the property upon abandonment or cancellation of the lease, the lessee shall be liable for the expense of labor and supplies used by the Mining Supervisor for the protection of the property.

[38 FR 10001, Apr. 23, 1973]

§ *211.6 Production reports and other data.*

(a) *Records to be kept by lessees.* Lessees shall keep a correct record of coal produced in such manner that the records readily can be checked, and shall report accurately, on a mine-run basis, within 30 days after the expiration of the period covered by the report, all coal mined from the leased land during each calendar quarter and furnish such other data as may be required on the form provided for quarterly reports; and on the anniversary of the lease shall report the yearly production and such other data as may be required on the form provided for annual reports.

(b) *Records to be kept by permittees and licensees.* Permittees and licensees shall keep a correct record of coal produced in such manner that the records can be checked readily. Permittees shall report monthly, and licensees semiannually unless otherwise authorized or directed in writing by the district mining supervisor, all coal mined from the land held under permit or license, giving the amount of coal mined and the amount disposed of during the period covered by the report, a description of the work done, the cost of the work, the results of prospecting and such other information as may be requested.

(c) *Financial statement by accountant; eligibility.* The lessee shall cause an audit of his books and accounts pertaining to the leased land to be made annually within 30 days after the expiration of the lease year or at such times as he may be directed by the district mining supervisor, to whome he shall furnish, free of cost, a copy of said audit. The eligibility of the accountant making such audit shall be subject to approval by the Secretary of the Interior.

[11 F.R. 1615, Feb. 14, 1946]

§ *211.7 Danger in mines to be reported.*

The lessee shall report promptly to the mining supervisor by telephone or telegraph the occurrence in or about the leased land of fatal accidents, serious outbursts of gas, explosions, inundations, fires, extensive squeezes, collapses of roof, or other serious conditions causing or threatening the loss of life or property.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *211.8 Accidents to be reported to mining supervisor.*

The lessee shall report promptly in writing to the mining supervisor each accident that results in the loss of more than one shift for the injured person, giving the date of the accident, the name, age, and occupation of the injured person, the actual work being performed when the injury occurred, the cause and nature or result of the injury, the probable length of disability, and the name and location of the mine, with outline sketches or maps when pertinent. Copies of reports to the State inspector or industrial commission and outline sketches or maps will fulfill the requirements of this section.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

WEIGHING OR MEASURING COAL

§ *211.15 Requirements.*

(a) *Posting records.* All coal mined shall be accurately weighed or measured, truly accounted for, and recorded by the lessee, including a record of all sales of coal and of coal disposed of otherwise. If the miners are paid either by weight or by measurement, a record of correct daily weights or biweekly measurements shall be posted or displayed in a conspicuous place. Test weights shall be kept at the scales, so that the accuracy of the scales can be tested at any time.

(b) *Weighman to make affiravit for faithful discharge of duties. The* weighman or person appointed to weigh or measure the coal where the miners are paid upon the basis of his figures shall be required before entering upon his duties to subscribe to an affidavit, before a person duly authorized to administer oaths, that he will keep a true record of the coal so weighed or measured and credit each miner accordingly; such affidavit shall be posted at his place of duty.

(c) *Bone or other impurities may be deducted.* Nothing contained herein shall be construed to prevent the lessee from separately weighing and deducting the amount of bone coal or other impurities, loaded by a miner with the coal, from the weight of the coal accredited to the miner.

(d) *Allowance for waste material.* If rock or bone is removed from the coal after weighing, an allowance for such waste material may be authorized by the mining supervisor, provided the cleaning is done with a minimum loss of coal.

(e) *Basis of royalty computation.* If deductions are allowed for impurities in the coal under paragraph (c) or (d) of this section, under no circumstances shall the royalty be based on less than the weight credited to the miners, plus that loaded by day labor, nor shall it be based on less than the shipping weight, plus coal stored, coal used on the premises, and coal otherwise accounted for.

(f) *Penalty for light-weighing coal.* If a lessee records or reports less than the true weight of the coal mined, he shall be subject to a penatly, at the option of the Secretary, of double the amount of royalty on the shortage or the full value of the shortage. Repetition of the showing of a shortage in weight after warning shall be sufficient cause for cancellation of the lease.

GEOLOGIC AND BORE-HOLE REPORTS

§ *211.16 Requirements for reports and completion of drilling.*

(a) *Projected plans.* The lessee shall submit detailed reports upon completion or suspension of any prospect bore hole, prospecting operation, or geologic investigation. The report on each bore hole shall give the location, altitude, and log, including the occurrences of water. In surface prospecting the location and occurrences of coal shall be shown on a map, and copies of geologic reports on the lands leased shall be furnished by the lessee.

(b) *Bore holes to be cemented and filled.* All bore holes made to prospect formations shall upon completion be fully and promptly filled with a mud fluid or cement or filled otherwise, as prescribed by the mining supervisor. While holes are being drilled they shall be properly cased and cemented to prevent migration of oil, gas, or water to the coal-bearing beds, and after serving their purpose they shall be abandoned as prescribed for prospect holes.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

APPROACHING OIL, GAS, OR WATER WELLS

§ *211.17 Precautions.*

When mining operations approach wells or bore holes that may liberate oil, gas, water, or other fluid substances, the lessee shall present his plans for mining the coal in proximity to such holes to the mining supervisor and obtain his approval before proceeding with the work planned. The plans shall provide that the coal be extracted as completely as practicable with safety and in such manner that the well will not be damaged, and that precautions be taken against the sudden liberation of a body of oil, gas, water, or other fluid. The mine ventilation shall be so arranged that any gaseous substance liberated shall enter the return air current and not be circulated through the active

workings of the mine. In approaching such holes, the instructions in § 211.63 shall be followed.

SURFACE STRUCTURES; THEIR LOCATION, CONSTRUCTION, AND FIRE PROTECTION

§ *211.18 Building of combustible material within 75 feet of mine opening prohibited.*

A lessee employing more than 10 men underground shall not construct or maintain on the surface any structure of combustible material within 75 feet of any opening, nor permit such a structure to be connected to any noncombustible building within that distance except as follows:

(a) *Headframe construction and fire doors.* An open timber framework or headframe of timber may be constructed over a shaft, slope, drift, or tunnel. The posts and rafters of any such structure may be of wood if the covering or lining is made of fireproof material, but under no circumstances shall wood flooring be used except in tipples, trestles, and storage bins. Fire doors shall be erected at effective points where smoke or fire from outside sources may endanger men working underground.

(b) *Flammable material at mine opening.* Flammable material shall not be stored or placed within 75 feet of any mine opening except while such material is being sent into o rremoved from the mine and except for a day's supply of oil for lubricating machinery in the surface structure.

(c) *Fireproofing hoist and power plant buildings.* At mines in which more than 50 men are employed underground on any shift, the building or buildings containing the hoisting engine and power plant shall not have floors, ceilings, and side walls or roofs constructed of combustible material, but wood may be used for roof trusses, purlins, and rafters, and for side-wall studs or frames if covered on both sides with noncombustible material.

DEVELOPMENT PLANS

§ *211.19 To be approved in advance of operations.*

After necessary prospecting has been done on any lease and before permanent operating shafts have been sunk or slopes, drifts, or tunnels driven, the lessee shall prepare and submit to the mining supervisor for approval a preliminary plan, together with vertical sections to indicate, so far as known, the position, dip, and thickness of each coal bed. The plan shall be on a scale of not more than 500 feet to the inch and shall shown in outline the principal prospect and proposed entries, airways, shafts, and structures, including fan or fans, and the proposed method of underground development and ventilation, with a description thereof.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *211.20 To be followed.*

The lessee shall develop and mine the coal in accordance with plans approved in advance, so far as natural conditions permit; and, if conditions necessitating radical changes are encountered, he shall immediately submit modified plans, accompanied by an explanation, to the mining supervisor for approval.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 1001, Apr. 23, 1973]

MINING WHERE MORE THAN ONE BED OF COAL OCCURS

§ *211.21 Requirements.*

(a) *Coal pillars in lower beds are to be left until coal in upper beds is extracted.* Where practicable, by reason of either commercial or mining conditions, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined; otherwise, the workings in the upper coal bed shall be kept in advance of the workings in each lower bed. The descision as to practicability rests with the mining supervisor. Where more than one bed of coal is known to exist in the leased lands, the lessee shall not draw or remove the pillars in any lower bed before mining the available coal in each known upper bed of such thickness that it can be mined under the then existing commercial conditions, either alone or in combination with thicker beds. The mining supervisor shall decide whether or not the workings or conditions for subsequent mining in any or all of the upper beds will be seriously injured by the extraction of the pillars in the lower workings.

(b) *Pillars to be arranged vertically under or over pillars in another bed.* Where mining operations are in progress in a bed that lies either below or above another bed in which mining has been or is being carried on, the lessee shall, if the room-and-pillar system is employed, superimpose the pillars in the respective beds. Modifications of this provision may be necessary in steeply dipping beds and may be approved by the mining supervisor where conditions make them advisable.

DEVELOPING THROUGH ADJOINING MINES

§ *211.22 Development on leased tract.*

A lessee may develop a mine on his leased tract from an adjoining mine not on the public domain, or from adjacent leased lands, under the following conditions:

(a) *Mine not on public domain to conform to regulations.* The mine that is not on the public domain shall conform to all sections in the regulations in this part that relate to the safety of the mines and employees.

(b) *Connections between mines.* The only connections between the mine not on public domain and the mine on public domain shall be the main haulageways, the ventilationways, and the escapeways. Substantial concrete frames and fireproof doors that may be closed in an emergency and opened from either side shall be installed in each such connection. Unnecessary connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The mining supervisor may waive such of the requirements in this section when, in his judgment, such waiving does not affect adversely the safety of the employees or entail loss of coal.

(c) *Inspection of Adjacent mines.* Free access for inspection of said connecting mine not on the public domain shall be given at all hours to the mining supervisor or other representative of the Secretary of the Interior.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973 .

§ *211.23 Connecting mine subject to regulations; sealing.*

If a lessee operating on a lease through a mine not on public domain does not maintain the mine in accordance with the operating regulations, operations on the leased land may be ordered stopped or Departmental seals applied by the mining supervisor, and the operations on leased lands shall be stopped.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

PROVISIONS FOR DISPOSAL OF WASTE

§ *211.24 Requirements.*

(a) *Slack and refuse to be disposed of as not to be a nuisance.* The lessee shall dispose of waste, slack, refuse, and water from a mine and waste and sludge of any washery in such a manner as not to cause private or public damage or inconvenience, be a nuisance, or obstruct any stream, right-of-way, or other means of transportation or travel.

(b) *Separately storing slack and waste.* All waste containing practically no coal shall be deposited separately and apart from coal for which no immediate market exists and from waste containing coal in such quantity that it may be later separated from the waste by washing or other means.

(c) *Royalty on slack coal.* Royalty on slack coal accrues when the coal is mined and is due and payable on the next payment date thereafter.

SURVEYS AND MAPS

§ *211.25 Mine-office maps.*

(a) *Surveys to be made and maps extended every 6 months; surveys to be made before abandoning any section of a mine.* Accurate surveys of new workings shall be made at least every 6 months and a map prepared thereof on a scale of 50 feet, 100 feet, or 200 feet to the inch. The mine-office maps of the workings in each coal bed shall be extended to show the advancement of all the mine workings and all other changes of a permanent character that have taken place during the period between successive surveys. Before any mine or stction of a mine is abandoned, closed, or becomes inaccessible, a survey of such mine or section shall be made and recorded on the map.

(b) *Map legend.* In addition to the information required by the lease, maps shall bear the name of the mine, the name of the lessee, and the serial number assigned by the district land office, and shall show the true north or meridian,

the public survey land lines with indication of corners found, the distance and direction from the mine opening to a land corner, the boundary barrier pillars, the scale to which the map is drawn, and an explanatory legend.

(c) *Surface buildings and bore holes to be shown on mine map.* The surface map shall show in outline the location of all structures or buildings and the surface location and depth of each bore hole, appropriately numbered. The map shall also show the altitude at the surface, the altitude and section of each coal bed penetrated by boring, and any other pertinent information, including the angle and direction of prospect drilling where not vertical.

(d) *Coal sections, stoppings, ventilation, etc., to be shown on map.* The mine map shall show at each face the date of extension and at each entry face the coal sections and altitude, also the location of all pillars and the parts of pillars not extracted in pillar work; the position of all fire walls, dams, main pumps, fire pipe lines, permanent ventilating stoppings, doors, overcasts, undercasts, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making latest surveys; fire areas; known bodies of standing water either in or above the workings of the mine; areas containing flammable gas; areas affected by squeezes.

(e) *Profiles of steeply dipping beds; vertical view of workings in bed dipping more than 45°.* Where the dip of the coal bed or beds exceeds 45°, profiles or vertical cross sections parallel with the approximate average direction of the dip and not more than 1,000 feet apart shall be made on the same scale as the mine maps, with appropriately marked reference points, and a vertical view of the mine workings shall be prepared on the same scale as the general mine map to show the mine workings in that bed on a vertical plane parallel with the average strike of the bed or beds, with appropriately marked reference points.

(f) *Blueprints to be furnished annually, or semiannually on request.* Blueprints or reproductions in duplicate of the maps and drawings prescribed in the preceding paragraphs and such other maps as may be required shall be submitted to the mining supervisor annually without his special request, or semiannually on request.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *211.26 Maps made when lessee fails to furnish them.*

(a) *Liability of lessee for expense of survey.* In the event of the failure of the lessee to furnish the maps required, the mining supervisor shall employ a competent mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the lessee.

(b) *Incorrect maps.* If any map submitted by a lessee is believed to be incorrect, the mining supervisor may cause a survey to be made, and if the survey shows the map submitted by the lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the lessee.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

MINING BY STRIPPING

§ *211.27 Requirements and prohibitions.*

(a) *Drainage of stripping operations.* No strip pit will be permitted on the outcrop of any dipping coal bed until the workable coal at lower altitude in that bed and underlying beds has been xtracted, unless there is free natural or artificial drainage from the pit that will prevent seepage underground down the dip.

(b) *Fire prevention.* Accumulations of slack coal or combustible waste that may, if fired, endanger the coal deposit shall not be permitted at or near coal or carbonaceous material in place.

(c) *Overhanging banks.* Overhanging banks or ledges must be shot down promptly to eliminate danger to employees from falling rock or dirt.

(d) *Coal face to be covered in strip pits.* Upon completion or indefinite suspension of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively prevent the coal bed from becoming ignited.

(e) *Underground workings from strip pits prohibited.* The driving of underground working places from the face of a strip pit for the purpose of getting cheap coal is contrary to conservation principles and is prohibited.

PILLARS AND CROSSCUTS

§ *211.48 Method of construction.*

(a) *Pillar thickness between intake and return airways.* The lessee shall separate intake and return airways and any adjacent parallel entries or rooms by not less than 50 feet of coal in place, except when a thinner pillar is permitted by written consent of the mining supervisor, who may also in his discretion require a greater thickness than 50 feet.

(b) *Crosscut or break-through intervals.* The distance apart of crosscuts or break-throughs between parallel entries or rooms shall be not greater than the maximum allowed by the regulations of the State in which the leased land is situated and shall be not more than 100 feet except in entries or tunnels where special arrangements are made to carry an adequate ventilating current to the face of each entry or tunnel, the adequacy of such arrangements to be approved by the mining supervisor. Rooms shall not be turned ahead of the last crosscut nearest the face, nor shall branch entries be started ahead of the last crosscut, except when approved by the mining supervisor to obtain a circuit of air, a second means of egress, or a space for the laying of switches.

(c) *Face not to be advanced more than 30 feet beyond crosscut.* A face shall not be driven more than 30 feet beyond the inby rib of the crosscut until said crosscut is connected to an adjoining airway, and if, in the opinion of the mining supervisor, adequate ventilation does not reach the face, such changes as he may direct shall be made in the ventilation.

(d) *Room neck maximum width and length.* Room necks shall not be wider than 9 feet for the first 18 feet, unless the lessee is given permission in writing by the mining supervisor to make the room necks wider and shorter.

(e) *Chain pillars and stumps.* The coal in chain pillars and room stumps and panel boundary pillars provided under paragraphs (b), (c), and (d) of this section shall be left standing until in the proper course of mining operations the time shall arrive for their removal, after or during the extraction of the room pillars in the adjacent workings.

(f) *Crosscuts to be made at face of rooms and entries before abandonment.* Before abandoning any room, entry, slope, or drift, a crosscut shall be driven and connection made with the adjoining room, entry, slope, or drift at the face thereof, in order to give a boundary airway around workings.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *121.49 Advance workings.*

(a) *Limits for removing coal.* Where the room and pillar or other system of mining requires advance workings in the solid coal, including entries, rooms, and crosscuts, or breakthroughs, the lessee, except with the written consent of the mining supervisor, shall not extract by such advance workings or first-mining more than 60 percent of the total area of the coal bed within any particular tract or panel entered by said advance workings where the cover is less than 500 feet; nor more than 50 percent where the cover is more than 500 feet and less than 1,000 feet; nor more than 40 percent where the cover is more than 1,000 feet and less than 1,500 feet; nor more than 30 percent where the cover is more than 1,500 feet and less than 2,000 feet; nor more than 20 percent where the cover is more than 2,000 feet. A greater percentage may be required to be left where unfavorable roof or floor conditions exist or where the coal bed is or may be affected by mining elsewhere.

(b) *Size of pillars.* The size of pillars shall be in proportion to the thickness of the coal bed, and all pillars shall be systematically mined and removed as rapidly as proper mining will permit.

(c) *Basic for computing percentage of tract mined.* The percentages of the total area mined and unmined in a tract on advance mining shall be figured on the basis of the area and not on the basis of the calculated tonnage mined. The total area of the tract under consideration is to be comprised within lines bounding the faces of advance workings within the tract, excluding the area from which pillars have been systematically removed.

§ *211.50 Pillars left for support.*

(a) *Shaft entry and slope pillars.* A pillar proportionate in size to the depth below the surface and the thickness of coal being excavated shall be left in each coal bed for the support of each shaft, main slope, or egress.

(b) *Shaft pillar size.* Shaft pillars shall be not less in radius than one-half the thickness of cover over the pillar. A pillar, not less in width at any point than one-forth the thickness of cover above it, shall be left on each side of the center line of each main slope or entry. Pillars around shafts shall be not less than 100 feet in radius, and those on each side of slopes shall not be less than 100 feet in width except by written consent of the mining supervisor.

(c) *Openings in shaft and slope pillars.* Shaft and slope landings, siding, and entries for haulage, ventilation, manways, and shops may be excavated in a pillar provided the area of such places does not exceed 15 percent of the area of the pillar and that no rooms or other openings are made therein for the sole purpose of obtaining quick production.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

§ *211.51 Barrier pillars.*

(a) *Mining restrictions.* The lessee shall not, without the prior consent of the mining supervisor, mine any coal, drive any underground workings, or drill any lateral bore holes within 50 feet of any of the outside boundary lines of the leased lands, nor within and greater distance of said boundary lines that the mining supervisor may prescribe. Payment not exceeding $1 a ton or the full value of the coal mined may be required for coal mined within such distances of the boundary without the written consent of the mining supervisor.

(b) *Lessee may be required to mine barrier pillars on adjacent lands.* If the coal on public domain beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations the lessee shall, on the written demand of the mining supervisor, mine out and remove all available coal in such barrier, both in the lands covered by the lease and in the adjoining premises, if it can be mined without hardship to the lessee.

(c) *If coal-mining rights in adjoining premises privately owned.* If the coal-mining rights in adjoining premises are privately owned, an agreement may be made with the owner for the extraction of the coal in the boundary pillars.

(d) *Mining isolated blocks of coal not on leased lands.* Narrow strips of coal between leased lands and the outcrop on public lands and small blocks of coal adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions specificed in paragraph (b) and (c) of this section.

[3 FR 515, Feb. 25, 1938, as amended at 38 FR 10001, Apr. 23, 1973]

APPROACHING ABANDONED WORKINGS AND SEALING ABANDONED AREAS

§ *211.63 Drill holes in advance where approaching abandoned workings.*

In any working place within 100 feet of supposedly dangerous proximity to an abandoned mine or an abandoned section of a mine not known to be free of dangerous quantities of flammable or noxious gases or water, at least two drill holes shall be maintained not less than 20 feet in advance of the face. Such working place shall not be more than 10 feet wide. On each side thereof drill holes not more than 8 feet apart shall be drilled to a depth of 20 feet at an angle of 45° with the line of the place. In addition to said drill holes, brattice shall be carried within 12 feet of the face at all times. Gas from an abandoned mine or any abandoned part of a mine may be tapped only when all employees not engaged at such work are out of the mine, and such tapping shall be done under the immediate instructions and directions of the mine foreman by workmen equipped with permissible safety lamps.

§ *211.64 Sealing abandoned areas by fireproof stoppings.*

All worked out areas or areas abandoned premanently or temporarily that can not be so ventilated as to prevent the accumulation of explosive and noxious gases or that can not be inspected daily by duly authorized mine officials, and all unused openings into adjacent mines shall be sealed off by fireproof stoppings constructed of strong concrete or masonry of solid, substantial character built to withstand a pressure of 50 pounds to the square inch on each side. If well constructed with good clean sand and gravel and hitched into the floor and side walls, the thickness should be not less than 1 inch for each foot of maximum span; a minimum thickness of 12 inches is required. When workings are sealed, a pipe with locked valve shall be so placed as to extend through the stoppings, for the purposes of testing the gases behind the stopping, such tests to be made only by the foremen or mine examiners.

PART 216—OPERATING REGULATIONS GOVERNING THE MINING OF COAL IN ALASKA [1]

Sec.

Authority: The provisions of this Part 216 issued under sec. 17, 38 Stat. 745; 48 U.S.C. 451.

Source: The provisions of this Part 216 appear at 9 F.R. 6853, June 21, 1944, unless otherwise noted.

§ *216.1 Prior regulations made applicable.*

With the exception of §§ 211.4 (c) aand (g), 211.5(e), 211.24(c), 211.48(d), 211.77, 211.79(c), 211.82(a), 21.83(b), 211.86(a), 211.87, 211.88, and 211.90(a), which shall not be deemed applicable for the purpose of this part, Part 211 of this chapter is made applicable to and shall govern the methods of mining coal from leased, licensed, and permitted lands on the public-domain in the State of Alaska.

[9 F.R. 9883, Aug. 14, 1944]

§ *261.2 Production and royalty reports; sealing of mines.*

The mining supervisor shall examine the mines, mine maps, records, and books of lessees and determine the amount of coal mined from Government coal land; shall report the Secretary of the Interior quarterly the production and the accrued royalties and rentals; and shall place seals at the entrance of leased lands on orders of the Secretary when a lessee is delinquent in royalty and rental payments.

[9 CFR 6853, June 21, 1944, as amended at 38 FR 10002, Apr. 23, 1973]

§ *261.3 Orders to insure compliance with regulations not in conflict with laws of the State of Alaska; appeal.*

The mining supervisor may issue such orders and notices in writing as may be appropriate to insure compliance with the regulations in this part, and may order the discontinuance or modification of any operation or method that is causing or is likely to cause any endangerment of life or property or is in violation of the provision of the lease or regulations: *Provided*, That such orders are not in conflict with the laws of the State of Alaska: *And further provided*, That if any such order or notice does not contain a statement that immediate danger of loss of life or property is involved, and if the lessee appeals therefrom as provided in part 290 of this chapter, execution of said order or notice may be delayed pending final disposition of the appeal.

[38 FR 10002, Apr. 23, 1973]

§ *216.4 Basis of roylty computations.*

Royalty shall be paid on all coal shipped or removed from leased lands or manufactured into coke, briquets, or other products of coal, or consumed on the premises.

§ *216.5 Room neck maximum width and length.*

Room necks shall not be wider than 9 feet for the first 18 feet, unless the lessee is given permission in writing by the mining supervisor to modify these dimensions.

[9 FR 6853, June 21, 1944, as amended at 38 FR 10001, Apr. 23, 1973]

§ *216.11 Waiver of provisions.*

Any waiver of the provisions of the regulations in this part by the mining supervisor shall be in writing.

[9 FR 6853, June 21, 1944, as amended at 38 FR 10001, Apr. 23, 1973]

Subpart 3500—Introduction—General

Source: The provisions of this Subpart 3500 appear at 35 F.R. 9699, June 13, 1970, unless otherwise noted.

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[1] 38 FR 10001, Apr. 23, 1973.

§ *3500.0–3 Authorities.*

The statutory authority for leasing the minerals in this part is contained in the cited acts.

(a) *Public Domain.* The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271–276) as amended, hereinafter called "the act," provide for the leasing of all leasing act minerals.

(1) *Coal.* Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U.S.C. 201, 202–208), as amended.

(2) *Potassium.* Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281–287).

(3) *Sodium.* Sections 23 through 25 of the act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 189, 261–263).

(4) *Phosphate.* Sections 9 to 12, inclusive of the act of February 25, 1920 (41 Stat. 440, 441, 30 U.S.C. 211–214) as amended.

(5) *Sulphur.* Sections 1 to 7 of the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

(6) *Asphalt.* The Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181), as amended by the Act of September 2, 1960 (74 Stat. 781; 30 U.S.C. sec. 181, 241).

(b) *Acquired lands*—(1) *Leasable.* (i) The Mineral Leasing Act for acquired lands; enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359).

(ii) The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3 effective July 16, 1946 (3 CFR 1946 Supp., Chapter IV), except as to leases or permits outstanding on August 7, 1947.

(2) *Solid (hardrock) minerals.* (i) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(ii) Section 3 of the act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(iii) Section 3 of the act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

(c) *Special acts.* (1) Gold and silver in confirmed private land grants. The act of Congress approved June 8, 1926 (44 Stat. 710; 30 U.S.C. 291–293).

(2) Asphalt in Oklahoma. The act of June 28, 1944 (58 Stat. 483–485).

(3) Silica sands and other nonmetallic minerals in certain lands in Nevada. The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(i) Act of February 27, 1927 (44 Stat. 1057).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437) as amended.

(4) Leases of sand and gravel in certain lands patented to the State of Nevada. The act of June 8, 1926 (44 Stat. 708).

(5) Reserved minerals in lands patented to the State of California for park or other purposes. The act of March 3, 1933 (47 Stat. 1487), as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026).

(6) Certain National Forest lands in Minnesota. (i) The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended.

(7) Leases for minerals in lands withdrawn for reclamation purposes within the Lake Mead Recreation Area. The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(8) Prospecting and mineral leasing within National Forest Wilderness. National Forest Wilderness Act of September 3, 1964. (78 Stat. 890; 16 U.S.C 1131–1136; 43 U.S.C. 1201).

(9) Development of minerals in lands within Whiskeytown-Shasta-Trinity National Recreation Area. Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295). (i) Solid (Hardrock) minerals. (*a*) Section 10 of the act of August 4, 1939 as amended (53 Stat. 1196; 43 U.S.C. 387).

(*b*) Section 3 of the Act of September 1, 1949, (63 Stat. 683, 30 U.S.C. 192c).

(ii) Leasable. (*a*) Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181 et seq.).

(*b*) Acquired Lands Mineral Leasing Act of August 7, 1947, (30 U.S.C. 351–359).

§ *35000–5 Definitions.*

(a) *Sole party in interest.* A sole party in interest in a lease or permit or an application for a lease or a permit is a party who is and will be vested with all legal and equitable rights under the lease or permit. No one is, or shall be deemed to be, a sole party in interest with respect to a lease or permit in which any other party has any of the interests described in this section. This requirement of disclosure in an application for lease or permit of an applicant's or other parties' interest in a lease or permpt if issued, is predicated on the departmental policy that all applicants and other parties having an interest in simultaneously filed applications for permits shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease or permit includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interest." Any claim or any prospective or future claim to an advantage or benefit from a lease or permit, and any participation or any defined or undefined share in any increments, issues, or which may be derived from or which may accrue in any manner from the lease or permit based upon or pursuant to any agreement or understanding existing at the time when the application is filed, is deemed to constitute an "interest" in such lease or permit.

(b) *Regional mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

(c) *Rule of approximation.* The rule of approximation applies where an application embraces an acreage in excess of the acreage limitation; it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ *3500.1 Minerals subject to leasing.*

§ *3500.1–1 Public Domain and acquired minerals.*

The Mineral Leasing Act, as amended, the Acquired Lands Leasing Act and the Reorganization Act provide for the leasing of deposits of coal; chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; phosphate; native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried; sulphur in the States of Louisiana and New Mexico; minerals in acquired lands which would be subject to location under the United States mining laws if located in public domain lands; and for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described and associated with the potassium deposits.

§ *3500.1–2 Reports required.*

All reports concerning optrations shall be filed with the Mining Supervisor.

§ *3500.1–3 Special acts.*

(a) Gold and Silver in Confirmed Private Land Grants.

(b) Asphalt in Oklahoma.

(c) Nevada. (1) Silica sands and other nonmetallics, deposits of phosphate, coal, sodium and potash in lands withdrawn by Executive Order No. 5105 of May 3, 1929.

(2) Sand and gravel in certain lands patented to the State.

(d) Reserved minerals in lands patented to the State of California for park and other public purpose.

(e) Certain National Forest lands in Minnesota. Permits the prospecting, development, and utilization of those mineral resources which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws, and for the development and utilization for which no other authority exists.

(f) Lake Mead Recreation Area. All minerals subject to the general mining laws and mineral deposits of coal, phosphate, potassium, and sodium.

(g) National Forest Wilderness. All leasing act minerals remain subject to leasing until midnight December 31, 1983.

(h) Whiskeytown-Shasta-Trinity National Recreation Area. Permits the leasing of nonleasable and leasable minerals in the area.

§ *3500.2 Multiple Development.*

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3501—Lands Subject to Leasing

Source: The provisions of this Subpart 3501 appear at 35 F.R. 9701, June 13, 1970, unless otherwise noted.

§ *3501.1 Public Domain.*

§ *3501.1–1 Protection of preexisting rights.*

(a) *Potassium.* (1) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(2) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

(b) *Sodium.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, or on lands in San Bernardino County, Calif., on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(c) *Phosphate.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(d) *Sulphur.* Mining claims for sulphur deposits on lands such as specified in part 3500 situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

§ *3501.1–2 Unsurveyed lands, General.*

(a) All prospecting permits may be issued either by metes and bounds description or approved protraction suveys. All leases, preference right or competitive, must be surveyed prior to issuance of a lease.

(b) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(1) *Survey for leasing--Applicant's expense.* (*a*) Prior to the issuance of a lease based upon discovery of valuable deposits of potassium, sodium or sulphur, the survey for unsurveyed lands will be at the expense of the applicant.

(*b*) A deposit of the estimated cost of making a survey of the lands as officially determined by the Bureau of Land management will be required. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(2) *Government expense.* Prior to issuance of a lease based upon discovery of coal and on all competitive leases, the survey of unsurveyed lands will be at the expense of the Government.

§ *3501.1–3 Description of lands in offer.*

A complete and accurate description of the lands for which the lease is desired is required. The lands in the lease or permit shall be in reasonably compact form entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width; except for coal cases where noncontiguous tracts can be efficiently worked as a single mine or unit.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township and range.

(b) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(c) *Unsurveyed lands.* If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impractical to furnish a metes and bounds description, as required in paragraph (c) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high watermark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations § 3100.1–5 and the maximum or minimum area to be included in the lease pursuant to § 3110.1–3. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ *3501.1–4 Acreage limitations.*

(a) *Computing acreage holdings.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or

permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of anw acreage holdings of any association or corporation, unless he is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) *Allowable acreage.* Except as hereinafter stated, no person, association, or corporation may hold at any one time leases or permits exceeding the acreage as stated below in any one state, except for phosphate in the United States, whether directly through the ownership of such leases and permits, or interest therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interest therein, and applications therefor. The rule of approximation applies to all applications for permits and leases.

(1) *Coal* (i) A permit may not exceed 5,120 acres. Holdings in permits and leases shall not exceed 46,080 acres.

(ii) There is no statutory limitation on the acreage that may be included in any one leasing tract. However, the authorized officer after consultation with the mining supervisor of the Geological Survey, will determine the amount of acreage to be included in each leasing tract, taking into consideration the area required for plant facilities and such other data as may be pertinent.

(2) *Potassium.* A lease or permit may not exceed 2,560 acres. Holdings in permits shall not exceed 51,200 acres. Holdings in leases may not exceed 25,600 acres in one or more mining units.

(3) *Sodium.* A lease or permit may not include more than 2,560 acres. Holdings in permits and leases shall not exceed 5,120 acres.

(4) *Phosphate.* A lease or permit may not exceed 2,560 acres. Holdings in leases and permits shall not exceed 20,480 acres in the United States.

(5) *Sulphur.* A lease or permit may not include more than 640 acres. Holdings may not include more than three permits or leases.

(6) *Asphalt.* A lease may not include more than 2,560 acres. Holdings may not include more than 7,680 acres in any one State irrespective of the number of leases.

§ *3501.1–5 Exceptions.*

(a) National parks and monuments.

(b) Indian reservations.

(c) Incorporated cities, towns, and villages.

(d) Naval petroleum and oil shale reserves.

(e) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ *3501.1–6 Rejections.*

Applications for permits or leases which are filed for lands not available for prospecting or leasing, or which do not comply with the regulations in this part as to acreage limitations and land descriptions will be rejected.

§ *3501.2 Acquired lands.*

§ *3501.2–1 Lands and deposits not subject to leasing.*

(a) Lands acquired for the development of their mineral deposits.

(b) Lands acquired by forclosure or otherwise for resale.

(c) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.).

(d) Lands in incorporated cities, towns, and villages.

(e) Lands in national parks and monuments.

(f) Lands set apart for military or naval purposes, including lands within the naval petroleum and oil shale reserves.

(g) Lands which are tide lands, submerged coastal lands, within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ *3501.2–2 Sale or conveyance of lands.*

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ *3501.2–3 Outstanding permits and leases.*

(a) *Acquired lands*—(1) *Leasable minerals.* Coal, phosphate, sodium, potassium, sulphur, or oil shale leases outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

(2) *Solid (hardrock) minerals.* Prospecting permits and leases, heretofore issued by the Department of Agriculture will be continued to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ *3501.2–4 Description of lands in application.*

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) *Lands not surveyed under rectangular survey.* (1) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(2) If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

(3) In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundry of the desired tract, the description in the offer must be expanded to include such courses and distances.

(4) Application or offer must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(5) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted in such offer or application.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundry of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ *3501.2–5 Acreage limitations.*

(a) *Restrictions on holdings.* The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchangeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage

holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

(b) *Allowable acreage*—(1) *Leasable minerals.* See sec. 3501.1–4(b).

(2) *Locatable minerals.* (*Minerals* other than those subject to the 1920 Act as amended.) (i) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(ii) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ *3501.2–6 Consent of administering agency.*

(a) *Jurisdiction of lands.* Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered. Such consent to prospecting shall not be deemed to vest in the prospector an exclusive right to exploration or a preference right to a lease under this part.

(b) *Jurisdiction of surface.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(c) *Identification of administering agency.* All applications and offers for permits or leases should name if practicable, the Government agency from which consent to issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(d) *Right to stipulate.* Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to

protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized representative of the Secretary of Agriculture as to matters relating to the surface.

§ *3501.2–7 Lands subject to leasing.*

(a) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018).

(b) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(c) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(d) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

§ *3501.3 Withdrawn, reserved or segregated.*

§ *3501.3–1 Lands and deposits not subject to leasing.*

See §§ 3501.1–5 and 3501.2–1.

§ *3501.3–2 Consent of administrator.*

(a) *Requirements when lands are in a withdrawal.* Where any part of the lands embraced in an application for lease, permit or license is within a withdrawal which does not preclude disposition of the deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

(b) *Requirements when lands are reserved or segregated.* (1) General statement. With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

(2) Lands disposed of with a reservation of minerals. Where the lands included in a permit, lease or license have been or may be disposed of with reservation of the deposits, a permittee, lessee or licensee must make full compliance with the law under which reservation was made.

(i) *Coal.* See the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81); June 22, 1910 (36 Stat. 583, 30 U.S.C. 83–85); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301; June 17, 1949 (63 State 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377); and other laws authorizing such reservation.

(ii) *Potassium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iii) *Sodium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iv) *Sulphur.* Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 State 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(v) *Asphalt in Oklahoma.* See the Act of February 19, 1912 (37 Stat. 67), and the Act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

(c) *Special Stipulations.* Applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or application will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ *3501.3–3 Transfer of surface control.*

Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ *3501.4 Special leasing acts*

§ *3501.4–1 Lands and deposits subject to prospecting and leases.*

See subpart 3560.

§ *3501.4–2 Consent of administrator.*

See subpart 3560.

Subpart 3502—Qualification Requirements

Source: The provisions of this Subpart 3502 appear at 35 F.R. 9704, June 13, 1970, unless otherwise noted.

§ *3502.1 General.*

Every applicant for a permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3501.1–4.

§ *3501.1–1 Who may hold interests.*

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instru-

ment establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; including a company or corporation operating a common-carrier railroad and to municipalities, (a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease or permit will not be issued to a minor but leases or permits may be issued to a legal guardian or trustee in his behalf. See § 3502.8.

(c) *Common carrier railroad.* Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch line built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

§ *3502.1–2 Bona fide purchasers.*

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancelleation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to be highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right to dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, pay-

ments of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ *3502.1–3 Where filed.*

(a) *Proper office.* All applicants must file their statements of qualification and evidence thereto in the proper office unless previously filed, in which event a reference by serial number to the record and the proper office in which filed, together with a statement as to any amendments, will be accepted.

(b) *Exception.* If applicant is an individual he must submit with each application a statement of his citizenship. See § 3502.2–1.

§ *3502.2 Individuals.*

§ *3502.2–1 Statement of citizenship.*

If applicant is an individual, he must submit with each application for permit or lease a statement over his own signature setting forth the applicant's citizenship.

§ *3502.2–2 Equitable rights affecting certain coal lands in Oklahoma.*

(a) *Requirements.* Prior to the act of February 25, 1920 equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands.

(b) *Preference right.* A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease

§ *3502.3 Associations including partnerships.*

§ *3502.3–1 Statements.*

(a) If an applicant for a permit or lease is an association (including a partnership), it must submit a certified copy of the articles of association and a statement as to their citizenship and holdings as required of an individual.

(b) (1) If the offeror is an association which meets the requirements of § 3502.1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished.

(2) If the offer is made by an association which does not meet the requirements of § 3502.1–1 of this chapter the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ *3502.3–2 Evidence previously filed.*

Where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number of the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ *3502.4 Corporations.*

§ *3502.4–1 Statements.*

(a) If the applicant is a corporation, it must submit statements showing (1) the state in which it is incorporated; (2) that it is authorized to hold leases for mineral deposits, (3) names of the officers authorized to act in such matters in behalf of the corporation; (4) the precentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, addresses, citizenship, and acreage

holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each.

(b) Exceptions.

(1) Requirements for alien interests or persons having addresses outside of the United States. Regulations for potasium, sodium, sulphur and asphalt in Oklahoma state that if more than 10 percent of the stock is owned or controlled by or on behalf of aliens or persons who have addresses outside of the United States, additional qualifications may be required.

§ *3502.5 Guardian or trustee.*

§ *3502.5–1 Statements.*

(a) Where there is a legal guardian or trustee: A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3501.8.

§ *3502.2 Evidence previously filed.*

Where evidence of the authority to act of a guardian, trustee, an executor or administrator, have previously been filed pursuant to the regulations in this section. a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ *3502.6 Attorney-in-fact.*

§ *3502.6–1 Statements.*

(a) *Evidence required.*(1) All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

(2) Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(3) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3502.4 evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

§ *3502.6–2 Evidence previously filed.*

Where such power of attorney has been filed in the same proper office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications.

§ *3502.7 Showing as to sole party in interest.*

Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties of the application, a interested parties. If there are other interested parties in the application setting forth the nature and extent of the interest of each in the application, the nature of the agreement btween them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

§ *3502.8 Heirs and devises (estates).*

§ *3502.8–1 General.*

If an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is is-

sued, the permit or lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(a) *Probate not completed.* Where probate of the estate has not been completed:

(1) *Evidence to sign.* Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(2) *Evidence of heirship.* Evidence that the heirs or devisees are the heirs of devisees of the deceased permitees and are the only heirs or devisees of the deceased.

(3) *Evidence as to citizenship and holdings.* A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3502.1 and 3502.2–1.

(b) *Probate proceedings not required.* Where the executor or administrator has been discharged or no probate proceedings are required.

(1) Evidence of will or decree of distribution. A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3502.1 and 3502.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ *3502.9 Municipality.*

§*3502.9–1 Coal.*

(a) Evidence required. A municipality must submit evidence of: (1) the manner in which it is organized; (2) that it is authorized to hold a permit or lease; and (3) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the recorord in which it has been filed, together with a statement as to any amendments, will be accepted.

Subpart 3503—Fees, Rentals, and Royalties

Source: The provisions of this Subpart 3503 appear at 35 F.R. 9706, June 13, 1970, unless otherwise noted.

§ *3503.0–3 Authorities.*

Fees—Act of August 31, 1951 (5 U.S.C. 140). Rentals see § 3500.0–3.

§ *3503.1 Payments.*

§ *3503.1–1 Form of remittance.*

Remittances must be submitted as cash, money order, check, certified check, bank draft or bank cashier's check.

§ *3503.1–2 Where remitted.*

(a) *Proper office.* Unless otherwise directed by the Secretary, rentals, under all leases and permits issued under the act shall be paid to the Authorized officer of the proper office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ *3503.1–3 When remitted.*

First year rental must be remitted at the time of filing applications for prospecting permits and preference right leases. First year rental for competitive leases will be required by decision. Thereafter, rental for all prospecting permits and leases will be required in accordnce with permit and lease provisions. Applications for extension of permits must be accompanied by annual rental payment.

§ *3503.2 Fees.*

§ *3503.2–1 General statement.*

Applications for prospecting permits, leases or licenses, extension of permits, renewals, modifications, and for approval of any instrument transferring a lease or permit or interest therein, must be accompanied by a filing fee of $10 for each application. Such a fee will be retained as a service charge even though an application should be rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted.

§ *3503.2–2 Exceptions.*

(a) No filing fee required for coal licenses to relief agencies.
(b) Preference right lease applications.

§ *3503.3 Rentals and royalties.*

§ *3503.3–1 General statement rentals.*

(a) *Permits (Prospecting).* A prospecting permit application must be accompanied by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof, but no less than $20 per year, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. Thereafter, payment of the annual rental shall be made on or before the anniversary date of the permit.

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall be not less than 25 cents for the first year, not less than 50 cents for the second, third, fourth, and fifth years, and not less than $1 for each and every year thereafter during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year.

(2) *Phosphate.* Annual rental for phosphate leases shall be not less than 25 cents per acre or fraction thereof for the first year, not less than 50 cents for the second and third years, and not less than $1 for each and every year thereafter during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year.

(3) *Potassium and sodium.* Rental for potassium and sodium leases is 25 cents per acre or fraction thereof for the first calendar year or fraction thereof. Rental for succeeding years is payable on or before January 1, the beginning of the calendar year. Annual rental per acre or fraction thereof is 50 cents for the second, third, fourth, and fifth years, and $1 for the sixth and each succeeding year during the continuance of the lease. The rental for any year will be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(4) *Sulphur.* Sulphur leases shall provide for payment, in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with the date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(5) *Asphalt.* The annual rental will be 50 cents per acre or fraction thereof payable annually in advance.

(6) *Solid (hardrock) minerals.* An application for preference right lease must be accompanied by a rental payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

(c) *Use permits.* The annual rental for a sodium or phosphate use permit will be not less than $1 per acre or fraction thereof.

(d) *Licenses.* No rental payment required.

[35 F.R. 9706, June 13, 1970, as amended at 36 F.R. 7053, Apr. 14, 1971]

§ *3503.3–2—General statement royalties.*

(a) *Royalty on production.* Royalty rates will be determined on an individual case basis prior to lease issuance. such rates will be set out in the notice of competitive lease offer.

(1) *Exceptions*—(i) *Sulphur.* Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of sul-

phur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less then 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

(ii) *Solid (hardrock) minerals.* The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral.

(b) *Minimum royalty*—(1) Coal. Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act (see sec. 3503.3–2(e)). Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

(i) *Exception.* (*a*) *Certain coal lands in Oklahoma.* In the case of an award of a lease to a qualified person the royalties will be established at rates not less than the minimum provided for leases under the act.

(2) *Potassium, sodim and sulphur.* Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are supended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) *Phosphate.* (i) *Minimum production.* Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

(ii) *Lessee's petition for change in minimum production.* The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within 6 months after receipt of this information the authorized officer, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

(c) *Limitation of overriding royalties.* (1) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension

or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(2) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (1) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

(3) *Exceptions.* (i) *Coal.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he had made substantial investments for improvements on the land covered by the assignment.

(ii) *Phosphate.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

(d) *Waiver, suspensions, or reduction of rental or minimum royalty.* (1) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the mining supervisor for coal, phosphate, potassium, sodium, and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(i) Each application involving coal, phosphate, potassium, sodim and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(ii) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them.

(iii) The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the Government royalties.

(e) *Suspension of operations and production.* (1) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the Regional Mining Supervisor for all leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Mining Supervisor is authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(2) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(3) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on tht next rental or royalty due under the lease.

(4) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(5) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

(6) *Exceptions.* (i) *Solid (hardrock) minerals.* (*a*) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(*b*) Notwithstanding the provisions of the preceding paragraph, the Secretary in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

Subpart 3504—Bonds

Source: The provisions of this Subpart 3504 appear at 35 F.R. 9708, June 13, 1970 unless otherwise noted.

§ *3504.1 General.*

§ *3504.1–1 Statement.*

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3504.3 may be furnished for the protection of the entryman or owner of surface rights.

§ *3504.1–2 Special acts.*

(a) *Gold and silver in confirmed private land grants.* A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

(b) *Asphalt in Oklahoma.* A compliance bond in no event less than $1,000 will be required prior to issuance of the lease and compliance with § 3504.2–1(b).

(c) *Nevada*—(1) *Silica sands and other nonmetallic minerals in certain areas in Nevada.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

(2) *Sand and gravel in certain lands patented to the State.* The applicant will be required prior to issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease, and

for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(d) *Reserved minerals in lands patented to the State of California for park or other public purposes.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

(e) *Certain national forest lands in Minnesota.* There must be filed a bond in compliiance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

(f) *Lease for minerals on lands withdrawn for reclamation purposes within Lake Mead Recreation area.* There must be filed a bond in compliance with § 3504.2–1(b) for leases.

(g) *Prospecting and mineral leasing within National Forest Wilderness.* There must be filed a bond in compliance with § 3504.2–1(a)(1)for permits; and § 3504.2–1(b) for leases.

(h) *Development of minerals in lands within Whiskeytown-Shasta-Trinity national recreation area.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

§ *3504.2 Type of bond.*

§ *3504.2–1 Compliance bonds.*

(a) *Permit bond*—(1) *Amount.* The applicant must furnish a bond conditioned upon compliance with all terms of the prospecting permit on all permits issued pursuant to applications filed under this section. The bond shall be in the amount determined by the authorized officer, but not for less than $1,000.

(2) *Exception*—(i) *Solid (Hardrock) minerals.* The permittee may also be required, as condition precedent to the issuance of a permit, to furnish a permit bond.

(b) *Lease bond*—(1) *Amount.* A bond conditioned upon compliance with all the provisions of the lease must be furnished on all leases issued. The bond shall be in the amount determined by the authorized officer but in no event less than $5,000 for potassium, sodium, phosphate and sulphur leases; not less than $1,000 for coal leases; and not less than $500 for solid (hardrock) mineral leases. The right is reserved to increase the amount of the bond when deemed proper by the authorized officer.

§ *3504.2–1 Where filed and copies.*

Bonds must be filed in the proper office in a single original copy.

§ *3054.2–2 When filed.*

Permit bonds may be filed with an application which will expedite action thereon; or bonds may be filed within 30 days after receipt of notice by the applicant of the bond requirement.

§ *3504.2–4 Form of bond.*

Bonds will be furnished on a form approved by the Director.

§ *3504.2–5 Termination of period of liability.*

The period of liability of any bond will not be terminated until all terms and conditions in the permit or lease have been fulfilled.

§ *3504.3 Individual sureties.*

§ *3504.3–1 Net worth statement.*

Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ *3504.3–2 Certificate required.*

There also must be furnished a certificate by a judge or clerk of a court of record, a U S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ *3504.3–3 Requirements.*

All bonds furnished with individual sureties will be examined every 2 years, or at any other time when found advisable, and the principal on the bond will

be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required.

§ *3504.3–4 Terms.*

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations.

§ *3504.3–5 Forms.*

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ *3504.4 Corporate bond or personal bond.*

§ *3504.4–1 Amount.*

To be determined by the authorized officer after consultation with the Mining Supervisor.

(a) Compliance with § 3504.2–1(a)(1) for permits.

(b) Compliance with § 3504.2–1(b) for leases.

(1) *Corporate surety bond.* (i) A corporate surety bond may be filed for a prospecting permit or lease.

(2) *Personal bond*—(i) *Type of bond.* In lieu of a corporate surety bond, a personal prospecting permit or lease bond may be filed.

(ii) *Deposit of securities.* Personal prospecting permit or lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

§ *3504.4–2 Qualified sureties.*

(a) *Treasury lists.* A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of Congress, approved July 30, 1947 (6 U.S.C. 6–13) as acceptable sureties on Federal bonds is published in the Federal Register annually.

§ *3504.5 Nationwide bonds.*

§ *3504.5–1 Amount.*

Lessee may furnish for coal, potassium, sodium, or phosphate a separate bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued for the respective mineral pursuant to the Mineral Leasing Acts, and also pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

§ *3504.6 Statewide bond.*

§ *3504.6–1 Amount.*

Lessee may furnish for coal, potassium, sodium, or phosphate for each state in which the lessee holds leases or permits separate statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State for the respective mineral.

§ *3504.7 Collective bond.*

§ *3504.7–1 Amount.*

Lessee may furnish for coal, potassium, sodium, or phosphate a collective bond in an amount not less than the total minimum coverage required if separate bonds on each lease were furnished.

§ *3504.8 Default.*

§ *3504.8–1 Payment of surety.*

Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ *3504.8–2 Penalty.*

Thereafter upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $75,000, a new statewide bond in the amount of $25,000 or a new collective

bond as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ *3504.8–3 Relief.*

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ *3504.8–4 Applicability of provisions to existing bonds.*

The provisions hereof may be made applicable to any nationwide, statewide or collective bond in force at the time of the approval of the amendment of this paragraph by filing in the proper office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ *3504.9 Exploration bond.*

§ *3504.9–1 See 43 CFR Part 23.*

Subpart 3505—Cooperative Conservation Provisions

Source: The provisions of this Subpart 3505 appear at 35 F.R. 9709, June 13, 1970, unless otherwise noted.

§ *3505.1 General.*

§ *3505.1–1 Coal fields or prospective areas.*

To conserve the natural resources of any coal field or prospective coal area, or any part or zone thereof, and to permit an orderly, efficient and economic development of such coal fields, the act authorizes the Secretary of the Interior to approve cooperative agreements among lessees or permittees and their representatives if such agreements or contracts are certified by the Secretary to be necessary or advisable in the public interest. It also permits him to enter into a development contract with a single lessee and to consolidate the leases or permits of one or more lessees or permittees.

§ *3505.1–2 Solid (hardrock) minerals.*

The Secretary of the Interior or his authorized representative may approve operating or development contracts or processing or milling arrangements for the conservation of natural products or whenever in his discretion, the public convenience or necessity may require it or the interests of the United States may be best served thereby.

§ *3505.2 Coal.*

§ *3505.2–1 Types of contracts.*

(a) *Collective contracts.* The Secretary may approve collective contracts of lessees and permittees and their representatives and others, for prospecting, development or operation of coal fields or prospective coal areas, or any part or zone thereof.

(b) *Development contracts.* The Secretary may enter into a development contract with a single lessee or permittee embracing his lease or permits.

(c) *Consolidation of leases and permits.* The Secretary may consolidate separate Federal permits or leases of one or more lessees or permittees into a lesser number of permits or leases, or into a single permit or lease.

§ *3505.2–2 Application.*

(a) *Where filed and copies.* A contract submitted for approval must be filed in the proper office with enough copies to permit retention of five copies after approval.

(b) *Showing required.* The application must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field must be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and to prescribe the conditions on which approval of the contracts is made.

(c) *Common carrier railroads.* Any company or corporation operating a common-carrier railroad which may be a party to a collective contract or development contract with a Federal lessee under this subpart, to develop its own lands, excluding Federal lands leased by the railroad, in connection with or in cooperation with a Federal lessee or lessees shall not be deemed to be given or hold a lease by virtue of any such arrangement between the working interest owners.

§ *3505.2–3 Special provisions.*

(a) *Production and royalties.* A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. In connection with any contract approved or executed or with any consolidation accomplished under this subpart, the authorized officer may, with the consent of the party or parties involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits or contracts.

(b) *Working interest contracts.* In the case of any contract between lessees or their representatives, or between them and others for collective development or operation of any coal field or coal area, or any part or zone thereof, such arrangement as the working interest owners may enter into for the sharing or division of production among them shall not be deemed to be an apportionment of production or royalties among the separate tracts comprising the contract area.

§ *3505.2–4 Approval.*

(a) *Approval of contract.* A contract pursuant to the provisions of this section will be approved or executed by the Secretary.

(b) *Exemption from acreage limitations.* Coal leases and permits operated under a contract pursuant to the provisions of this section may be excepted from acreage limitations or maximum holdings or control imposed by the Act, if it is determined that such exception is required to permit economic development of the resources and is otherwise consistent with the public interest.

§ *3505.3 Solid (Hardrock) minerals.*

§ *3505.3–1 Types of contracts.*

(a) *Operating or development contract.* The Secretary of the Interior or his authorized representative may approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores.

§ *3505.3–2 Application.*

(a) *Where filed and copies.* An application must be filed in the proper office in three executed copies, and a duplicate original must be filed with the Regional Mining Supervisor of the Geological Survey. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

(b) *Showing required.* The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands.

§ *3505.3–3 Approval.*

(a) *Approval of contract.* Contracts may, by and with concurrence of the Geological Survey and on such conditions as may be subscribed, be approved by the Secretary or his authorized representative.

(b) *Exemption from acreage limitations.* Operating or development contracts may be approved regardless of acreage limitations provided in § 3501.2–5.

Subpart 3506—Assignments or Transfers and Subleases

Source: The provisions of this Subpart 3506 appear at 35 F.R. 9710, June 13, 1970, unless otherwise noted.

§ *3506.1 Qualifications.*

§ *3506.1–1 Who may file.*

Permits and leases may be transferred in whole or in part to any person, assocation, or corporation qualified to hold such leases and permits.

(a) *Minors.* A minor is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(1) *Exception.* An assignment in behalf of a minor heir or devisee of a permittee or lessee to his legal guardian or trustee may be approved.

§ *3506.1–2 Failure to qualify.*

No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient.

§ *3506.1–3 Number of copies required.*

A single executed copy of qualifications is sufficient.

§ *3506.1–4 Sole party in interest.*

Compliance with § 3502.7.

§ *3506.1–5 Attorney-in-fact.*

Compliance with § 3502.6.

§ *3506.1–6 Heirs and devisees.*

In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3502.8.

§ *3506.2 Requirements.*

§ *3506.2–1 Where filed.*

An application for approval of an assignment or transfer must be filed in the proper office as specified in § 3000.5–1.

§ *3506.2–2 Forms and statements.*

(a) *Record title; copies required.* Assignments or transfers of record title interest must be filed in triplicate.

(1) *Approved form.* There is no specific form which must be used for assignment transfers or requests for approval thereof. The application must contain evidence of qualifications of the assignee or transferee consisting of the same showing required of a lease or permit applicant as set forth in qualifications subpart 3502.

(2) *Separate instruments required.* A separate instrument of assignment or transfer must be filed for each permit or lease when transfers involve record titles. When transfers to the same person, assocation, or corporation, involving more than one permit or lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee or transferee will be sufficient.

(b) *Other than record; title; copies required.* A single executed copy of all other instruments of transfer is sufficient.

§ *3506.2–3 Bonds.*

(a) *Coverage.* If a bond is necessary it must be furnished before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred.

(b) *Continuing responsibility.* The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The ac-

count under the permit or lease must be in good standing before approval of a transfer will be given.

§ *3506.2–4 Permit or lease account status.*

The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ *3506.2–5 Description of lands.*

Each instrument of transfer must describe the lands involved in the same manner as described in the permit or lease or in the manner required by § 3501.1–3.

(a) *Effect of assignments.* The approval of transfer of only a part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other.

§ *3506.3 Approval.*

§ *3506.3–1 Application.*

Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 30 days from final execution and must contain evidence of the qualifications of the assignee or transfereee, consisting of the same showing required of a lease or permit applicant by subpart 3502.

§ *3506.3–2 Effective date.*

A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ *3506.4 Royalty interests.*

Transfer of royalty interests must be filed within 90 days from final execution and must contain evidence of the qualifications of the asignee or transferee, consisting of the same showing required of a lease or permit applicant by subpart 3502.

§ *3506.5 Extensions.*

The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease.

Subpart 3509—Surface Management

3509 Surface management.

§ *3509.1* See *43 CFR Part 23.*

PART 3510—PROSPECTING PERMITS

Subpart 3510—Prospecting Permits, General

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Subpart 3510—Prospecting Permits; General

Source: The provisions of this Subpart 3510 appear at 35 F.R. 9711, June 13, 1970, unless otherwise noted.

3510.0–3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to issue permits to prospect unclaimed and undeveloped land areas subject to the provisions of the Mineral Leasing Act as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3. The Secretary is further authorized to issue permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium.

3510.1 General.

§ 3510.1–1 Character of lands.

The Secretary of the Interior is authorized to issue permits to qualified applicants to prosect unclaimed and undeveloped areas of mineral lands and mineral deposits in public and acquired lands or in public and acquired lands disposed of with a reservation of deposits to the United States.

(a) *Exceptions.* (1) *Sulphur.* The Secretary of the Interior is authorized to issue permits to prospect for sulphur in public lands or in public lands disposed of with a reservation of such deposits to the United States in the States of Louisiana and New Mexico.

3510.1–2 Rights conferred.

A permit will grant the permittee the exclusive right to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein. Only such material may be removed from the lands as is necessary for experimental work or the demonstration of the existence of such deposits in commercial quantities.

Subpart 3511—Prospecting Permits

Source: The provisions of this Subpart 3511 appear at 35 F.R. 9711, June 13, 1970, unless otherwise noted.

§ 3511.1 Terms.

§ 3511.1–v Duration of permits

Prospecting permits are issued for a term of 2 years.

§ 3511.1–1 Duration of permits.

The permit will be dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

§ 3511.1–3 Acreage limitations.

(a) For public domain, compliance with 3501.1–4(b).

(b) For acquired lands, compliance with § 3501.1–4(b) is required.

(c) For solid (hardrock) minerals, compliance with § 3501.2–5(b) is required.

§ 3511.1–4 Withdrawal of application.

An application for permit may be withdrawn in whole or in part prior to its execution on behalf of the United States. The filing fee will be retained as service charge. The advance rental covering the acreage withdrawn will be refunded.

§ *3511.1–5 Amendment to the application.*

An amendment to an application for prospecting permit to include additional lands receives priority for such additional lands from the date of filing of the amended application. The amended application must be accompanied by the additional rental required.

§ *3511.1–6 Determination of priorities.*

(a) *Regular filings.* Priority of applications will be determined in accordance with time of filing.

(b) *Simultaneous filings.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing. All applications filed in the manner specified in § 1821.2–3 of this chapter, will be deemed simultaneously filed.

§ *3511.1–7 Land description.*

Compliance with § 3501.1–3 and 3501.2–4 is required.

§ *3511.2 Application.*

§ *3511.2–1 Forms.*

(a) *Application for permit; issuance of permit.* To obtain a prospecting permit, an application must be filed on a form approved by the Director or an exact reproduction thereof. Each application should be filled in on a typewriter or printed plainly in ink by the applicant or the applicant's duly authorized attorney in fact.

(b) *Exceptions*—(1) *Coal-additional showing required.* The application for a permit should be accompanied by a proposed plan and method for conducting prospecting or exploratory operations on the land setting forth the estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(2) *Acquired lands—additional showing required.* Specify the dominant mineral or minerals for which the lease or permit is sought;

(c) *Where filed and copies.* Applications must be filed in the proper office and filed in quintuplicate.

(1) *Exceptions*—(i) *Acquired and solid (hardrock) minerals.* Seven copies of the application must be filed.

§ *3511.2–2 Qualifications.*

(a) Compliance with Subpart 3502 is required.

§ *3511.2–3 Approval.*

(a) The United States will indicate its acceptance of the application, in whole or in part, and the issuance of the permit by the signature of the authorized officer in the space provided therefor. An executed copy of the permit will be mailed to the applicant at the address of record.

(b) An application for permit on a form not correctly reproduced, but which contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing, will be approved by the authorized officer provided all other requirements are met.

§ *3511.2–4 Rejection.*

(a) Except as provided in § 3511.2–3 an application will be rejected if:

(1) The land description does not conform with the requirements of § 3501.1–3, or the land is not in reasonably compact form as specified in § 3501.1–3.

(2) The total acreage exceeds the allowable acreage specified in § 3501.1–4(b) except where the rule of approximation applies (see §3500.0–5(c)).

(3) The full amount of the filing fee and the first year's rental do not accompany the application, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(4) The application is signed by an attorney-in-fact on behalf of the applicant and is not accompanied by the evidence and statement required by § 3502.6–1.

(5) The application is signed by a guardian or trustee on behalf of a minor and is not accompanied by the evidence specified § 3502.5.

(6) Less than five copies of the application are filed.

(7) There is noncompliance with the requirements specified in subpart 3502.

(b) Curable defects. If an application is defective to the extent set out in paragraph §3511.2–4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

§ *3511.3 Extensions.*

§ *3511.3–1 Terms.*

(a) *Duration.* Permits may be extended by an authorized officer of the Bureau of Land Management for a period of 2 years. (1) *Exceptions*—(i) *Sodium and sulphur.* No extension of term will be granted.

(ii) *Phosphate.* Phosphate permits may be extended by an authorized officer of the Bureau of Land Management for an additional period not in excess of 4 years.

(b) *Requirements.* A permit may be extended, in the discretion of the Secretary and after consultation with the Mining Supervisor of the Geological Survey, if:

(1) The permittee has been unable with reasonable diligence to determine the existence or workability of the deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such extension.

(2) The permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit. This requirement may be waived upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting.

(3) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

§ *3511.3–2 Application—*

(a) *Where and when filed; and copies.* Application for extension must be filed in quintuplicate in the proper office within 90 days prior to expiration of the permit.

(b) *Showing required.* The application for extension:

(1) Must disclose the reasons additional time is considered necessary to complete prospecting work.

(2) Should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor.

(3) Should state why the permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

(4) Must show how much additional time is necessary to complete prospecting work.

§ *3511.3–3 Approval.*

Extension will be limited to such period, not to exceed the 2 years, as may be determined to be allowable under the circumstances in each particular case.

§ *3511.3–4 Rejection.*

(a) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work as required without adequate justification.

(b) *Failure to file.* If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for permits.

§ *3511.4 Terminations, expirations, and cancellations.*

§ *3511.4–1 Relinquishments.*

The permittee may surrender the entire prospecting permit or any legal subdivision thereof. If the lands are not described by legal subdivisions, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

(a) *Where filed and copies.* A relinquishment must be filed in the proper office and filed in triplicate.

(b) *Acceptance.* Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

§ 3511.4–2 *Operation of law.*

(a) *Expiration.* If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new appications for prospecting permits.

(1) *Exceptions*—(i) *Sodium and sulphur.* Unless a lease application is filed pursuant to subpart 3520 the permit will expire at the end of its period without notice to permittee.

(ii) *Solid (hardrock) minerals.* Upon failure of the permittee to file an application for extension within the specified period, the permit will expire 30 days after the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

(b) *Terminations and expirations for nonpayment of rental.* (1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other permit applications. Applications for such permits filed prior to such notation will be rejected.

(3) Where lands embraced in a canceled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status records of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ *3511.4–3 Default.*

(a) *Noncompliance with terms of permit.* Except as provided for in § 3511.4–2(b)(1), if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stripulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

§ *3511.4–4 Cancellations.*

(a) *Coal.* A permit issued pursuant to § 3524.1 may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original 46,080 acres or no longer has facilities for the exploitation of the deposits under lease or permit. However, such lessee or permittee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease or permit should not be canceled.

Part 3520—Preference Right and Competitive Leases

Subpart 3520—Preference Right and Competitive Leases, General

Sec.

Subpart 3520—Preference Right and Competitive Leases; General

Source: The provisions of this Subpart 3520 appear at 35 F.R. 9713, June 13, 1970, unless otherwise noted.

§ *3520.0–3 Authorities.*

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1–1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0–3.

§ *3520.1 General.*

§ *3502.1–1 Preference right leases.*

A permittee who discovers valuable mineral deposits in the land before his permit expires is entitled to a preference right lease of all or part of the lands in the permit in a reasonably compact form.

(a) *Exceptions*—(1) *Coal.* Showing is required that the land in his permit contains coal in commercial quantities.

(2) *Sulphur.* Showing required that valuable deposits have been discovered in the permit and that the land is chiefly valuable therefor.

(3) *Solid (hardrock) minerals.* A permittee who discovers any valuable deposits of minerals shall be entitled to a preference right lease for the mineral in any or all of the lands in the permit except as provided in § 3501.2–7.

§ *3520.1–2 Competitive leases.*

(a) The Secretary is authorized to lease competitively those lands as set forth in Subpart 3501, containing valuable mineral deposits as set forth in § 3500.1. (1) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(2) All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(3) Leasing units may include, in whole or in part, unsurveyed land. If the lands are unsurveyed, they must be described in accordance with approved protracted surveys or, in the absence of such protracted surveys, by metes and bounds.

(b) Potassium. Potash lands and deposits in or adjacent to Searls Lake, Calif., are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under subparts 3511 and 3520.

§ *3520.2 Terms.*

§ *3520.2–1 Duration of leases.*

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations theretofore issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production. (a) *Exceptions*—(1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

§ *3520.2–2 Dating of leases.*

(a) *Preference right leases.* The lease will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, except that upon the applicant's request, the lease will be dated the first day of the month following the date the application is filed.

(b) *Competitive leases.* The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance.

§ *3520.2–3 Acreage limitations.*

(a) *Consolidation of prospecting permits into preference right leases after discovery.* After discovery, prospecting permits may be consolidated into preference right leases not to exceed the allowable acreage as set forth in § 3501.1–4(b) if, after consulation with the Mining Supervisor, it is determined to be justified and the interests of the United States are protected.

(b) *Consolidation of competitive leases.* Competitive leases may be consolidated not to exceed the allowable acreage as set forth in § 3501.1–4(b) if,

after consultation with the mining supervisor of the Geological Survey, if it is justifiable and the interests of the United States are protected.

(c) *Size of competitive lease.* (1) Compliance with § 3501.1–4(b) is required.

(2) Preference right leases; acquired lands. Should the issuance of the preference right lease, for the acreage applied for, increase the permittee's leased acreage beyond 10,240 acres, such preference right lease will not issue unless the permittee, within the time allowed by the signing officer, relinquishes sufficient of his leased lands to reduce the area of his leaseholds, including the area to be included in the preference right lease, to 10,240 acres except as provided for in 3501.2–5.

§ *3520.2–4 Land description.*

(a) Compliance with 3501.1–3 is required.

Subpart 3521—Designation of Lands for Lease and Offer of Lands for Lease

Source: The provisions of this subpart 3521 appear at 35 F.R. 9714, June 13, 1970, unless otherwise noted.

§ *3521.1 Preference right lease application.*

§ *3521.1–1 Forms.*

(a) *Where and when filed; copies.* An application for preference right lease shall be filed in duplicate in the proper office not later than 30 days after the permit expires. (1) *Exception*—(i) *Coal.* An application for a preference right lease must be filed in duplicate promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited.

(b) *Requirements*—(1) *Showing required.* The application must describe the lands desired, show any change in the information contained in the application for permit, specify fully the extent and mode of occurrence of the deposits as disclosed by the prospecting work, and show that valuable deposits of the mineral covered by the permit were discovered before the permit expired.

(2) *Exceptions*—(i) *Coal.* Showing that coal was discovered in commercial quantities.

(ii) *Solid (hardrock) minerals.* The application must describe the lands for which the lease is desired; must contain a statement of permittee's interests. direct or indirect, in acquired lands mineral leases except leases covering oil, gas, oil shale, coal, phosphate, potassium, sodium, and sulphur; must disclose any change in the information contained in the application for the permit specify fully the extent the mode of occurrence of the mineral deposit disclosed by the prospecting, and show that a valuable deposit of minerals was discovered before the expiration of the permit.

(3) *Rental to be submitted.* The application must be accompanied by the first years rental at the rate of 25 cents per acre or fraction thereof.

(4) *Exceptions*—(i) *Sulphur.* The application must be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof.

(ii) *Solid (hardrock) minerals.* The application must be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

§ *3521.1–2 Qualifications.*

(a) Compliance with subpart 3502 required.

§ *3521.1–3 Special requirements.*

(a) *Sodium and sulphur.* An application for sodium or sulphur preference right lease must show that the land is chiefly valuable for that mineral.

§ *3521.2 Initiation of offer for competitve lease.*

§ *3521.2–1 Application or Bureau motion.*

(a) Application. (1) Forms. (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) Statement of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1–3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) Additional statements required. (i) Coal.

(ii) A statement of interests, direct or indirect, in other identified Federal coal leases, permits or applications therefor in the same State. Such total interests may not exceed 46,080 acres, except that if applicant is a railroad or corporation operating a common carrier such total interests may not exceed 10,240 acres.

(iii) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(3) The contemplated investment for the development and equipment of a producing mine of a stated average daily output. (i) Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(4) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

§ *3521.2–2 Qualifications.*

(a) Compliance with subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) Leasing units. (1) *Coal.* If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided in the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

(2) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding either at public auction or by sealed bids as provided in the notice of lease offer.

(3) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) Exception.

(*a*) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request except as provided in § 3503.3–2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss § 3505.3–2(b)(3),6(d), (e).

(*b*) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in subpart 3120.

(*c*) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands are situated.

§ *3521.2–3 Notice of lease offer.*

(a) *Contents.* (1) The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(2) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals unless the modification or withdrawals are received prior to the time fixed for opening of the bids.

(3) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared.

(4) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(5) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

§ *3521.2–4 Qualifications of successful bidder.*

(a) Compliance with subpart 3502 is required as well as the bid deposit and statement of citizenship and holdings.

(1) When the sale is by public auction, before bidding is commenced by those persons present, the authorized officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the authorized officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in subpart 3502.

§ *3521.2–5 Award of lease (competitive).*

(a) *Notification of award.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly.

(b) *Unsurveyed lands.* If the land is unsurveyed, the successful bidder will not be required to comply with the requirements for lease issuance until the land has been surveyed. See § 3501.1–2.

§ *3521.3 Approval.*

§ *3521.3–1 Preference right lease and competitive lease.*

(a) *Form of lease.* Lease shall be on a form approved by the Director.

(1) *Exception*—(i) *Asphalt.* The form of lease will be substantially the same as that set forth in 47 L.D. 426–429. The right is reserved to insert in the lease such other terms and conditions as may be deemed necessary for the protection of the surface of the land, its resources and any other lessees of the lands.

(b) *Unsurveyed lands.* Compliance with § 3501.1–2 is required.

§ *3521.3–2 Compliance with notice of competitive lease offer.*

(a) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 15th day after his

receipt thereof, or the 30th day after the date of the sale, whichever is later, to executive them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3521.2–3 and file a bond as required by subpart 3504.

(b) *Death of bidder.* If the bidder dies before the lease is issued there must be compliance with § 3502.8.

[35 F.R. 9714, June 13, 1970, as amended at 37 F.R. 10364, May 20, 1972]

§ *3521.4 Rejection.*

§ *3521.4–1 Preference right lease.*

(a) *Penalty.* If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate and such mining will not constitute a trespass.

(1) *Exception*—(i) *Solid (hardrock) minerals.* If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate (12½ percent) and such mining will not constitute a trespass. The permittee shall be liable for and pay to the United States a royalty of 12½ percent of the gross value of the minerals mined at the point of shipment to market during the period prior to the effective date of the preference right lease, but no mining operations shall be carried on prior to the effective date of such lease except with the written consent of the agency having jurisdiction over the surface of the land and subject to such conditions as the authorized representatives of the agency shall prescribe.

§ *3521.4–2 Competitive lease.*

(a) *Failure to comply with requirements*—(1) *Penalty.* If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act.

(i) *Exception*—(*a*) *Asphalt in Oklahoma.* If a bidder after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944 (52 Stat. 463, 485)).

Subpart 3522—Continuation of Lease Terms

Source: The provisions of this Subpart 3522 appear at 35 F.R. 9715, June 13, 1970, unless otherwise noted.

§ *3522.1 Renewal of leases.*

§ *3522.1–1 Application.*

An application for renewal of sodium. sulphur or solid (hardrock) minerals lease must be filed in the appropriate land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a new bond as prescribed in Subpart 3504.

§ *3522.1–2 Terms.*

(a) *Sodium.* Sodium leases are issued with preferential right to renew the lease for successive periods of 10 years.

(b) *Sulphur.* Sulphur leases are issued with the preferential right to renew the lease for successive periods of 10 years.

(c) *Solid (hardrock) minerals.* The lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover.

(d) *Exceptions*—(1) *Solid (hardrock) minerals.* Upon failure of the lessee to file an application for an extension within the specified period the lease will expire 30 days after the end of its primary term without notice to the lessee and the lands will therupon become subject to new application for leasing permits.

§ *3522.2 Renegotiation of lease terms.*

§ *3522.2–1 Terms and conditions.*

Coal, potassium, and phosphate leases are issued subject to readjustment of the terms and conditions of the lease at the end of each 20-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such 20-year period.

Subpart 3523—Relinquishments and Cancellations

Source: The provisions of this Subpart 3523 appear at 35 F.R. 9716, June 13, 1970, unless otherwise noted.

§ *3523.1 Relinquishments.*

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

§ *3523.1–1 Where filed and copies.*

A relinquishment must be filed in the proper office and filed in triplicate.

§ *3523.1–2 Acceptance.*

Upon its acceptance it shall be effective as of the date it is filed, subject to this continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ *3523.2 Cancellations.*

§ *3523.2–1. Judicial proceedings.*

(a) If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3522.2 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) *Exceptions.* (1) *Coal.* A lease issued pursuant to § 3524.1–1 may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee to carry on business economically or if the lessee has divested himself of all or any part of the original 10,240 acres or no longer has facilities for the exploitation of the deposits under lease. However, such lessee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease should not be canceled.

(2) *Solid (hardrock) minerals.* (i) *Default.* Except as provided in § 3511.4, if a lessee fails to comply with the general regulations in force at the date of the lease, or, as to a lease at the effective date of any readjustment of the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the lease may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Proper Office, the lands will not be open to further application for lease.

§ *3523.3 Termination.*

Any lease shall terminate automatically if the lessee fails to pay the rental on or before the anniversary date of the lease. However if the time for payment falls upon any day on which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper office. Until such notation is made, the lands included in such lease are not subject to issuance of any other lease.

SUBPART 3524—SPECIAL RIGHTS

Source: The provisions of this Subpart 3524 appear at 35 F.R. 9716, June 13, 1970, unless otherwise noted.

§ *3524.1 Leasing of additional deposits.*

§ *3524.1–1 Coal.*

(a) A person, association, or corporation may file with the appropriate land office an application or applications for coal leases or permits for acreage in addition to the 46,080 acres which application or applications shall be in multiples of 40 acres, not exceeding a total of 5,120 additional acres in any one State, and shall contain: (1) A statement showing that the granting of a lease or permit for such additional lands is necessary to carry on business economically and is in the public interest, and (2) a statement of direct or indirect interests in other Federal and non-Federal coal leases and permits in the State, identifying the Federal leases by serial numbers, and (3) a statement of estimated reserve of coal that applicant has from any other source within the State.

(b) *Availability.* (1) Upon the filing of an application for additional lands as specified in paragraph (a) of this section, the coal deposits in the lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under the Act.

(2) Notice of all applications filed for additional lands as specified in paragraph (a) of this section shall be posted in the proper office, and the authorized officer shall conduct public hearings thereon. The authorized officer will thereafter determine the amount of additional acreage to be granted under this section taking into consideration the area required for plant facilities and such other data as may be pertinent.

(c) *Terms and conditions.* A lease or permit may be issued, subject to such terms and conditions as may be prescribed by the Secretary of the Interior. Such terms and conditions may require the payment either of cash bonus per acre or fraction thereof or a rental and royalty rate different from that required by the original leases to permits, or both.

(d) *Approval.* Thereafter and to the extent, necessary for the applicant to carry on business economically, the authorized officer may issue coal leases or permits to the applicant for additional acreage of not more than 5,120 acres.

§ *3524.1–2 Potassium.*

(a) *Character of the lands*—(1) *Availability.* Lands determined to be available for leasing may be offered competitively in the manner specified in subpart 3521 except that if the Authorizing officer, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding.

(2) *Terms and conditions.* A noncompetitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of $15 per acre or fraction thereof or a production payment of 1 cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must be paid at the time of filing of application. Production payments will be prescribed on the lease form.

(3) *Exceptions.* Potash lands and deposits in or adjacent to Searles Lake, Calif., are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under subparts 3510 and 3520.

§ *3524.1–3 Sodium.*

(a) *Character of lands*—(1) *Availability.* Where necessary in order to secure the economic mining of sodium compounds, the authorized officer may, in his discretion and after consultation with the Mining Supervisor, permit a person, association, or corporation to hold up to 15,360 acres in any one State, upon submittal of but not necessarily limited to the following information and evidence as proof that the additional acreage is necessary for such purpose:

(b) *Application*—(1) *Requirements.* (i) Whether such person, association, or corporation holds sodium leases and permits covering fee, railroad and State lands within the same area of its public land holdings under sodium leases and permits, and if so, the description of those lands and the amount of acreage involved.

(ii) The reasons why the additional public lands covering acreage in excess of 5,120 acres are actually necessary to secure an economic mining unit.

(iii) A log of all wells drilled for sodium deposits on the lands which such person, association, or corporation holds under sodium lease or permit, together with an analysis of the ore discovered therein.

(c) *Non-chargeable fringe acreage*—(1) *Availability.* Any person, association, or corporation holding acreage approximating 25,600 acres of Federal land, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of a mining unit may file an application with the Authorizing officer to have such adjoining or adjacent Federal land (including lands under lease, permit lands subject to lease, or unleased lands) designated a fringe-acreage that will not be chargeable under § 3501.1–4(b)(3) as to leasehold acreage holdings of the applicant.

(2) *Approval.* If the Authorizing officer shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as nonchargeable to the applicant under § 3501.1–4(b)(3). The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe-acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

§ *3524.1–4 Phosphate.*

(a) *Character of lands*—(1) *Availability.* A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Proper Office, be granted, subject to the acreage limitation under §3501.1–4(b)(4) a lease for additional acreage, if the authorized officer of the Bureau of Land Management, after consultation with the Mining Supervisor of the Geological Survey shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste.

(2) *Approval; terms and conditions*—(i) *Noncompetitive leases.* In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively without publication either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than $1 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made.

(ii) *Competitive leases.* If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the authorized officer of the Bureau of Land Management determines that there is competitive interest therein, the lands will be offered competitively as provided by Subpart 3520.

§ *3524.2 Modifications.*

§ *3524.2–1 Coal.*

(a) *Under section 3 of the Act*—(1) *Application.* Under section 3 of the Act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits continguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification.

(2) *Availability*—(i) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(ii) *Competitive.* If however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in subpart 3520.

(b) *Under section 4 of the Act*—(1) *Application.* Under section 4 of the Act (30 U.S.C. 204) upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within 3 years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands.

(2) *Availability.* If the lands or coal deposits of any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in subpart 3520. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease.

(c) *Terms and conditions.* Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file the consent of surety and the acceptance by the lessee of the applicable regulations.

§ *3524.3 Use of other minerals.*

§ *3524.3–1 Phosphate.*

Use of silica, limestone or other rock. Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the authorized officer, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

Part 3530—License to Mine Coal

Subpart 3530—License to Mine Coal

Sec.

Source: The provisions of this Subpart 3530 appear at 35 F.R. 9717, June 13, 1970, unless otherwise noted.

§ *3530.1–0 Purposes.*

Coal licenses may be issued for a period of 2 years to individuals and associations of individuals to mine and take coal for their own local domestic need

for fuel, but in no case for barter or sale, without the payment of any rent or royalty. Licenses may be issued to municipalities to mine and dispose of coal without profit to their residents for household use. Under such a license a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

§ *3530.0–3 Authorities.*

Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U.S.C. 201, 202–208), as amended, authorize the Secretary of the Interior to issue limited licenses or permits to prospect for, mine, and take for use, coal from public lands.

§ *3530.1 Terms.*

§ *3530.1–1 Forms.*

(a) *Where to file copies.* Application for a limited license to mine coal for domestic needs must be filed in quadruplicate on a form approved by the Director or its substantial equivalent in the proper office and be accompanied by a $10 filing fee.

(1) Exception. (i) Relief agencies. (*a*) No filing fee required.

§ *3530.1–2 Area and duration of license.*

(a) *Private.* A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less and may be revoked at any time. Such license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period.

(b) *Local relief agencies.* (1) The Bureau of Land Management may grant authority to a recognized established relief agency of any State, upon its request, to take government-owned coal deposits within the State in localities where needed to supply families on the rolls of such agency who require coal for fuel for their homes and who are unable to pay for same.

(2) Tracts shall be selected at points convenient to supply the families in the locality thereof, and each family shall be restricted to the amount of coal actually needed for its use, which in no case shall exceed 20 tons annually.

(3) Coal may be taken from such tracts only by those given written authority by the relief agency, and all mining shall be done pursuant to permission and all Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(4) The local relief agency may take coal from available land prior to issuance of license but not earlier than 5 days after it has filed in the land office of the district wherein the land is situated an application for license. No filing fee will be required. In the absence of objections and if the application is otherwise regular, a license will be granted. Pending action on the application for license, the relief agency may continue to take the coal.

(c) *Municipalities.* Licenses to municipalities are limited as to area by the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 acres for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of 4 years from date of issuance, unless renewed; but every such licensee must make to the Bureau of Land Management, an annual report of all operations conducted under such license.

§ *3530.1–3 Renewal.*

An application for renewal of a license must be accompanied by a filing fee of $10, which will be retained as service charge even though the application is later withdrawn or rejected.

§ *3530.2 Qualifications.*

§ *3530.2–1 Private.*

§ *3530.2–2 Local relief agencies.*

Recognized established relief agency.

§ *3530.2–3 Municipalities.*

Compliance with § 3502.9 is required.

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Parts 211, 216]

Coal Mining Operating Regulations

PROPOSED REVISION

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181–287), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), 5 U.S.C. 301, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and various statutes relating to mining on Indian lands, it is proposed to revise 30 CFR part 211 as set forth below.

The primary purpose of the proposed revision is to update the regulations governing operations conducted under coal leases, permits, and licenses, on public domain and acquired lands of the United States and on Indian lands administered by the Department of the Interior by deleting obsolete material and including new provisions and requirements consistent with modern mining practices. The revised regulations clarify the responsibility of lessees, permittees, and licensees for the protection of the surface, the natural resources, the environment and existing improvements during operations for the discovery, testing, development, mining, and preparation of coal and for timely reclamation of disturbed lands.

It is also proposed that 30 CFR part 216, applicable to coal mining operations under leases in the State of Alaska which were issued pursuant to the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741), prior to its repeal by Public Law 86–252, September 9, 1959, 73 Stat. 490, be revoked and that operations under those leases also be governed by the regulations in 30 CFR part 211 as set forth below.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested parties may submit written comments, suggestions, or objections with respect to the proposed revisions of 30 CFR part 211 and the proposed revocation of 30 CFR part 216 to the Director, U.S. Geological Survey, Washington, D.C. 20244, on or before June 29, 2933. After the period for comments has expired, the proposed regulations will be revised, if deemed necessary, and republished in the Federal Register as interim regulations.

The Department of the Interior is currently conducting an environmental review of the coal leasing program. The Council on Environmental Quality has recommended that regulations for the effective management and protection of the public lands be promulgated to serve as interim regulations pending completion of that environmental review. The revision of 30 CFR part 211 presently proposed is essential for effective management and protection of the public lands. The delay which would be occasioned by the preparation of a seprate environmental statement related solely to the proposed regulations or the withholding of promulgation until an environmental statement on the coal leasing program is completed would create a period during which effective management and protection of the public land would be hindered. The proposed regulations are not fundamentally new regulations, but are essentially the existing regulations already applicable to the same mineral resources and land, reorganized, clarified, and, in some respects, amplified. Moreover, the interim nature of the proposed regulations would limit their overall cumulative impact on the quality of the human environment. Accordingly, the proposed regulations are published without the preparation of an environmental statement. When the review and statement on the coal leasing program are completed, the regulations in effect at that time will be revised to conform with the conclusions of the review.

Part 211 of title 30 of the Code of Federal Regulations is revised to read as follows:

Part 211—Coal-Mining Operating Regulations

ADMINISTRATION OF REGULATIONS AND DEFINITIONS

Sec.

Sec.

Authority.—34 Stat. 539, 35 Stat. 312 (25 U.S.C. 355 NT); 35 Stat. 781 (25 U.S.C. 396); sec. 32, 41 Stat. 450 (30 U.S.C. 189); 49 Stat. 1967 (25 U.S.C. 501, 502); 52 Stat. 347 (25 U.S.C. 396 a–f); 61 Stat. 915 (30 U.S.C. 359); 5 U.S.C. 301; Public Law 91–190, 83 Stat. 852 (42 U.S.C. 4321).

§ *211.1 Scope and purpose.*

(a) The regulations in this part shall govern operations for the discovery, testing, development, mining, and preparation of coal under coal leases, licenses, and permits issued for public domain and acquired lands pursuant to the regulations in 43 CFR group 3500 and the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741). These regulations shall also apply to operations for the discovery, testing, development, mining, and preparation of coal in tribal and allotted Indian lands under leases and permits issued under the regulations in 25 CFR parts 171, 172, 173, and 174.

(b) The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining, and preparation operations and production practices without waste or avoidable loss of coal or other mineral deposits or damage to coal or other mineral-bearing formation; to encourage maximum recovery and use of coal resources; to promote operat-

ing practices which will avoid, minimize or correct damage to the environment—land, water, and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all coal produced.

(c) These regulations will be interpreted and administered to the fullest extent possible in accordance with the policies of the National Environmental Policy Act of 1969 (83 Stat. 852) 42 U.S.C. 4321–4347.

(d) When the regulations in this part relate to matters included in the regulations in 25 CFR part 177—Surface Exploration, Mining and Reclamation of Lands—pertaining to Indian lands, the regulations in that part shall govern to the extent of any inconsistencies.

(e) When the regulations in this part relate to matters included in the regulations in 43 CFR part 23, the regulations in that part shall govern with respect to technical examinations, issuance or denial of leases, performance bonds, reclamation of land, and reports to the extent of any inconsistencies; otherwise, the regulations in this part shall govern.

§ *211.2 Definitions.*

The terms used in this part shall have the following meanings:

(a) *Secretary.*—The Secretary of the Interior.

(b) *Director.*—The Director of the U.S. Geological Survey, Washington, D.C.

(c) *Division Chief.*—The Chief of the Conservation Division, U.S. Geological Survey, Washington, D.C.

(d) *Regional Manager.*—Tht Regional Conservation Manager, Conservation Division, U.S. Geological Survey.

(e) *Mining Supervisor.*—The Area Mining Supervisor, Conservation Division, U.S. Geological Survey, a representative of the Secretary, subject to the direction and supervisory authority of the Director, the Division Chief, and the appropriate Regional Manager, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part, or a subordinate acting under his direction.

(f) *Lessee.*—Any person or persons, partnership, association, corporation, or municipality to whom a coal lease is issued subject to the regulations in this part, or an assignee of such lease under an approved assignment.

(g) *Permittee.*—Any person or persons, partnership, association, corporation, or municipality to whom a coal prospecting permit is issued subject to the regulations in this part, or as assignee of such permit under an approved assignment.

(h) *Licensee.*—Any individual, association of individuals, or municipality to whom a coal license is issued subject to the regulations in this part.

(i) *Leased lands, leased premises, or leased tract.*—Any lands under a coal lease and subject to the regulations in this part.

(j) *Permit lands.*—Any lands under a coal prospecting permit and subject to the regulations in this part.

(k) *Operator.*—A lessee, permittee, or licensee, or one conducting operations on lands under the authority of the lessee, permittee, or licensee.

(l) *Reclamation.*—The measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration, testing, mineral development, mining, onsite processing operations, or waste disposal, in ways which will prevent or control onsite or offsite damage to the environment.

(m) *Coal.*—Coal of all ranks from lignite to anthracite.

(n) *Mine.*—An underground or surface excavation and all parts of the property of a mining plant, either on the surface or underground, that contribute directly or indirectly to the mining and preparation of coal.

(o) *Preparation.*—The sizing, cleaning, drying, mixing, and crushing of the coal and such other work of preparing coal for market.

(p) *Portal.*—Any surface entrance to an underground mine.

(q) *Entry.*—An underground passage used for haulage, ventilation, or as a manway.

(r) *Shaft.*—A mine opening, the axis of which is approximately vertical, extending from the surface to develop one or more coal deposits.

(s) *Slope.*—A mine opening or inclined entry in a dipping coal formation or an inclined tunnel through rock to intersect a coal bed.

(t) *Drift.*—A mine opening or horizontal entry or passage underground.

(u) *Stripping operation.*—The term "stripping operation" or "strip pit" or "open pit" shall mean a mining excavation or development by means of a surface pit in which material over the coal bed is first removed and the coal itself is then extracted.

(v) *Explosive dust.*—An explosive dust is a combustible solid in airborne dispersion capable of propagating flame when ignited.

(w) *Flammable and explosive gases.*—A mixture of atmospheric air and combustible natural gases in such proportions that the mixture is flammable or explosive.

§ *211.3 Responsibilities.*

(a) Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered by the Director of the Geological Survey.

(b) The health and safety of miners engaged in mining operations on lands covered by coal leases, permits and licenses is governed by the Federal Coal Mine Health and Safety Act of 1969.

(c) The Mining Supervisor is empowered to regulate prospecting, exploration, testing, development, mining, and preparation operations under the regulations in this part. The Mining Supervisor in the performance of his duties shall:

(1) *Inspection and supervision of operations to prevent waste or damage.*—Examine frequently the lease, permit, or license lands where operations for the discovery, testing, development, mining, or preparation of coal are conducted or are to be conducted; inspect and regulate such operations, including operations at accessory plants, for the purpose of preventing waste of mineral substances or damage to formations and deposits or nonmineral resources affected by the operations; and insure that the terms and conditions of the permit, lease, or license and the provisions of the approved exploration or mining plans are being complied with.

(2) *Compliance with regulations, lease, permit, or license terms; and approved plans.*—Require operators to conduct their operations in compliance with the provisions of applicable regulations, the terms and conditions of the leases, permits, or licenses, and the requirements of approved exploration or mining plans.

(3) *Reports on condition of lands and manner of operation; recommendations for protection of property.*—Make reports to the division chief through the regional manager, as to the general condition of lands under permit, lease, or license and the manner in which operations are being conducted and orders or instructions are being complied with; and submit information and recommendations for protecting the coal, the coal-bearing formations, other minerals and the nonmineral resources.

(4) *Manner and form of records, reports and notices.*—Prescribe, subject to the approval of the division chief, the manner and form in which records of operations, reports and notices shall be made.

(5) *Records of production; rentals and royalties.*—Obtain and check the records of production of coal; determine rental and royalty liability of lessees, and permittees; collect and deposit rental and royalty payments; and maintain rental and royalty accounts.

(6) *Suspension of operations and production.*—Act on applications for suspension of operations or production or both filed pursuant to 43 CFR 3503.3.2(e), and terminate, when appropriate, suspensions which have been granted; and transmit to the Bureau of Indian Affairs for appropriate action applications for suspension of operations or production or both under leases on Indian lands.

(7) *Cessation and abandonment of operations.*—Upon receipt of a report of cessation or abandonment of operations, or relinquishment of a lease, permit or license, inspect and determine whether the operator has complied with the terms and conditions of the permit or lease and the approved exploration or mining plans; and determine and report to the agency having administrative jurisdiction over the lands when the lands have been properly conditioned for abandonment. The mining supervisor, in accordance with applicable regulations, in 43 CFR part 23 or 25 CFR part 177, will consult with, or obtain the concurrence of the authorized officer of the agency having administrative jurisdiction over the lands with respect to compliance by the operator with the surface protection and reclamation requirements of the lease or permit and the exploration or mining plan.

(8) *Wells or prospect holes.*—Prescribe or approve the methods of protection from wells or prospect holes drilled for any purpose through the coal measures and mines on leased lands and on coal lands subject to lease, with a view to the prevention of leakage of oil, gas, water, or other fluid substances that might endanger the life or health of employees, and prescirbe or approve methods of obtaining the ultimate extraction, so far as practicable, or coal in the vicinity of such wells.

(9) *Trespass; involving removal of coal deposits.*—Report to the agency having administrative jurisdiction over the lands any trespass that involves removal of coal deposits.

(10) *Water and air quality.*—Inspect exploratory and mining operations to determine the adequacy of water management and pollution control measures for the protection and control of the quality of surface and ground water resources and the adequacy of emission control measures for the protection and control of air quality.

(11) *Compliance with regulations.*—Issue such orders and instructions, not in conflict with the laws of the State in which the leased or permit lands are situated, as necessary to assure compliance with the purposes of the regulations in this part.

(d) In the exercise of his jurisidction under the regulations in this part, the mining supervisor shall be subject to the direction and supervisory authority of the division chief, and the appropriate regional manager, each of whom may exercise the jurisdiction of the mining supervisor.

§ *211.4 General obligations of licensees, permittees and lessees (including designated operators or agents).*

(a) Operations involving the discovery, testing, development, mining, or preparation of coal shall conform to the provisions of the applicable regulations; the terms and conditions of the lease, permit or license; the requirements of approved exploration or mining plans; and the orders and instructions issued by the mining supervisor. The operator shall take precautions to prevent waste and damage to coal-bearing formations, and shall take such steps as may be needed to prevent injury to life or health and to provide for the health and welfare of employees.

(b) The operator shall take such action as may be needed to avoid, minimize, or repair soil erosion; pollution of air; pollution of surface or ground water; damage to vegetative growth, crops, or timer; injury or destruction of fish and wildlife and their habitat; creation of unsafe or hazardous conditions; and damage to improvements, whether owned by the the United States, its permittees, licensees or lessees, or by others; and damage to recreational, scenic, historical, and ecological values of the land. The surface of leased or permit lands shall be reclaimed in accordance with the terms and conditions prescribed in the lease or permit and the provisions of the approved exploration or mining plan. Good "housekeeping" practices shall be observed at all times. Where any question arises as to the necessity for or the adequacy of an action to meet the requirements of this paragraph, the determination of the mining supervisor shall control.

(c) All operations conducted under the regulations in this part must be consistent with Federal and State water and air quality standards.

(d) When the mining supervisor determines that a water pollution problem exists, he may require that a lessee, permittee, or licensee maintain records of the use of water, quantity and quality of waste water produced, and the quantity and quality of waste water disposal, including mine drainage discharge, process wastes and associated wastes. In order to obtain this information, the lessee, permittee, or licensee may be required to install a suitable monitoring system.

(e) Full written reports of accidents, inundations, or fires shall be promptly made to the mining supervisor by the operator or his representative, Fatal accidents, accidents threatening damage to the mine, the lands, or the deposits, or accidents which could cause water pollution shall be reported promptly to the mining supervisor by telephone. Reports required by this section shall be in addition to those required by part 80 of this title, or other applicable regulations.

(f) Lessees and permittees shall submit the reports required by 25 CFR part 177 and part 200 of this chapter.

(g) If the operator fails to take appropriate action to protect the mine, coal deposits, or surrounding environment from damage or threatened damage by fire, water, oil, gas, subsidence, or other hazards, or fails to protect properly the mine or deposits or eliminate hazards to the public, upon abandonment or cancellation of a lease, permit, or license, the lessee, permittee, or licensee shall be liable for the expense of labor and supplies used by, or under the direction of the mining supervisor for the protection of the property and elimination of hazards to the public.

§ *211.5 Public inspection of records.*

Geological and geophysical interpretations, maps, and data and commercial and financial information required to be submitted under this part shall not be available for public inspection without the consent of the permittee or lessee so long as the permittee or lessee furnishing such data, or his successors or assigness, continues to hold a permit or lease of the lands involved.

§ *211.6 Appeals.*

Orders or decisions issued under the regulations in this part may be appealed as provided in part 290 of this chapter.

MAPS AND PLANS

§ *211.10 Exploration, mining and reclamation plans.*

(a) *General.*—Before conducting any operations, the operator shall submit to the Mining Supervisor for approval an exploration or mining plan, in quintuplicate, which shall show in detail the proposed exploration, prospecting, testing, development, or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The Mining Supervisor shall consult with the other agencies involved, and shall promptly approve the plans or indicate what modifications of the plans are necessary to conform to the provisions of the applicable regulations and the terms and conditions of the permit or lease. No operations shall be conducted except under an approved plan.

(b) *Exploration plans.*—The Mining Supervisor may require that an exploration plan include any or all of the following:

(1) A description of the environmental conditions within the area where exploration is to be conducted and a general description of the regional environmental conditions.

(2) A narrative description including:

(i) Method of exploration.

(ii) Measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat, or other natural resources and hazards to public health and safety.

(iii) Method for plugging drill holes.

(iv) Method for reclaiming lands disturbed by the exploration work, including grading, leveling and revegetation.

(3) Estimated timetable for each phase of the work and for final completion of the program.

(4) Five copies of a suitable map or aerial photograph showing topographic, cultural and drainage features, and the proposed location of drill holes, trenches, access roads, etc.

(c) *Mining plans.*—The Mining Supervisor may require that a mining plan include any or all of the following:

(1) A description of the environmental conditions within the area where mining is to be conducted and a general description of the regional environmental conditions.

(2) A narrative description including:

(i) Nature and extent of the coal deposit.

(ii) Method of mining including mining sequence and production rate.

(iii) Measures to be taken to prevent or control fire, soil erosion, pollution of surface or ground water, pollution of air, damage to fish and wildlife or their habitat or other natural resources, and hazards to public health and safety.

(iv) Method for disposal of refuse, waste or overburden, including location, design to prevent erosion, water pollution, and dump failure.

(v) Design for the necessary impoundment, treatment or control of all run-off water and drainage from mine workings and preparation plants so as to reduce soil erosion and prevent the pollution and increased sedimentation of watercourses.

(vi) The surface reclamation portion of the plan shall include:

(*a*) A reclamation schedule.

(*b*) Method of grading, backfilling and contouring.

(*c*) Method of soil preparation and fertilizer application.

(*d*) Type and mixture of shrubs, trees, grasses, or legumes to be planted.

(*e*) Method of planting, including amount and spacing.

(*f*) Method of abandoning mine openings, including mine portals, shafts, slopes and entries.

(3) Five copies of suitable maps or aerial photographs showing:

(i) Topographic, cultural and drainage features, roads and vehicular trails.

(ii) Cross sections of the deposit.

(iii) Size and locations for mine and surface structures and facilities.

(iv) Location of refuse and waste disposal areas.

(v) Location of settling or water treatment ponds.

(vi) For a surface mine, the planned mine layout map including the coal-outcrop line and a line indicating the limits to which the mining is expected to extend.

(vii) For an underground mind, the planned mine layout map including locations of shafts, slopes, drifts, main haulageways, aircourses, entries, and barrier pillars; and the proposed wideths of all slopes, entries, haulageways, aircourses, rooms, crosscuts, and barrier pillars.

(d) *Changes in plans.*—Exploration and mining plans may be changed by mutual consent of the Mining Supervisor and the operator at any time to adjust to changed conditions or to correct an oversight. To obtain approval of a changed or supplemental plan, the operator shall submit a written statement of the proposed changes or supplement and the justification for the proposed changes.

(e) *Partial plan.*—If the circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

§ *211.11 Approaching oil, gas, or water wells.*

When mining operations approach within 200 ft of wells or bore holes that may liberate oil, gas, water, or other fluid substances, the lessee shall present his plans for mining the coal in proximity to such holes to the Mining Supervisor and obtain his approval before proceeding with the work planned. The plans shall provide that the coal be extracted as completely as practicable with safety and in such manner that the well will not be damaged, and that precautions be taken against the sudden liberations of a body of oil, gas, water, or other fluid. In approaching such holes, the instructions in § 211.42 shall be followed.

§ *211.12 Mine maps.*

(a) *General requirements.*—The operator shall maintain an accurate and up-to-date map of the mine, drawn to a scale acceptable to the Mining Supervisor. All maps shall be appropriately marked with reference to Government landmarks or lines and elevations with reference to sea level. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Mining Supervisor annually or at such other times as he deems necessary. Before any mine or section of a mine is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on the map. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained. Additionally, the map shall show the name of the mine, the name of the lessee, the Land Office serial number, the lease boundary lines, surface buildings, dip of the coalbed, true north, the map scale, an explantory legend, and such other information as the Mining Supervisor shall request.

(b) *Underground mine maps.*—Underground mine maps shall, in addition to the general requirements of paragraph (a) of this section, show all mine workings; the date of extension of the mine workings, and a coal section at each entry face; the location of all surface mine fans; the position of all fire walls, dams, main pumps, fire pipelines, permanent ventilating stoppings, doors, overcasts, undercasts, permanent seals, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water either in or above the workings of the mine; areas affected by squeezes; the elevations of surface and underground levels of all shafts, slopes or drifts; and the elevation of the floor or bottom of the mine workings at regular intervals in main entries, panels or sections, sump areas, etc.

(c) *Surface mine mpas.*—Surface mine maps shall, in addition to the general requirements of paragraph (a) of this section, show the date of extension of the mine workings and a coal section at each working face; all worked-out areas; the stripped but unmined coal-bed; and the elevation of the top of the coalbeds and the surface.

(d) *Profiles of steeply dipping beds; vertical view of workings.*—When required by the mining supervisor, vertical projections and cross sections shall accompany plan views of steeply dipping beds.

(e) *Other maps.*—The operator shall prepare such other maps of the leased lands as in the judgment of the mining supervisor are necessary to show the surface boundaries; location, surface elevation, depth, and thickness of the coal, and total depth of each bore hole; improvements; reclamation completed; topography, including subsidence resulting from mining; and the geological conditions as determined from outcrops, drill holes, exploration or mining.

(f) *Accuracy of maps.*—The accuracy of maps furnished shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

§ *211.13 Failure of lessee to furnish maps.*

(a) *Liability of lessee for expense of survey.*—If the operator fails to furnish a required map, the mining supervisor shall employ a competent mine surveyor to make a survey and a map of the mine, the cost of which shall be charged to and promptly paid by the operator.

(b) *Incorrect maps.*—If any map submitted by an operator is believed to be incorrect, the mining supervisor may cause a survey to be made. If the survey shows the map submitted by the lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator.

PROSPECTING AND EXPLORATION OPERATIONS

§ *211.20 Information required to be submitted.*

The operator shall submit promptly to the mining supervisor upon request, completion, suspension of prospecting or exploration operations, or as provided in the leases and permits, signed copies, in duplicate, of records of all prospecting operations performed on the lease or permit lands along with vertical cross sections through the land and a map showing the exact location of coal outcrops, all drill holes, trenches and other prospecting activities. The records shall include a log of all strata penetrated and conditions encountered, such as water, quicksand, gas, or any unusual conditions; copies of all other in-hole surveys, such as electric logs, gamma ray-neutron logs, sonic logs or any other logs produced; and copies of analyses and results of other tests conducted on the land. All drill holes, trenches and excavations will be logged under the supervision of a competent geologist or engineer. Unless otherwise authorized by the mining supervisor, the core and cuttings from test holes shalll be retained by the operator for 1 year and shall be available for inspection at the convenience of the mining supervisor. The mining supervisor may sample such parts of the core and cuttings as he deems advisable.

§ *211.21 Core and test holes.*

(a) *Abandonment.*—Drill holes, trenches and other excavations for development or prospecting shall be abandoned in a manner to protect the surface and not to endanger any present or future underground operation or any deposit of oil, gas, other mineral substances, or water strata. Methods of aban-

donment shall be by backfilling, cementing or capped casing, or both, or by other methods approved in advance by the mining supervisor.

(b) *Surveillance wells.*—With the approval of the mining supervisor, drill holes may be utilized as surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(c) *Blowout control devices.*—When drilling on lands valuable or potentially valuable for oil and gas or geothermal resources, the drilling equipment shall be equipped with blowout control devices acceptable to the mining supervisor before penetrating more than 100 feet of consolidated sediments unless a greater depth is approved in advance by the mining supervisor.

(d) *Use of wells by others.*—Upon receipt of a written request from the surface owner or surface administering agency, the mining supervisor may approve the transfer of an exploratory well for further use as a water well. Approval of such well transfer will be accompanied by a corresponding transfer of responsibility for any liability for damage and sevenual plugging.

WELFARE AND SAFETY

§ *211.25 Sanitary, welfare, and safety arrangements.*

The underground and surface sanitary, welfare, health, and safety arrangements shall be in accordance with the regulations of the U.S. Public Health Service and the applicable standards in chapter 1 of this title.

Cross reference.—For regulations of the U.S. Public Health Service, Department of Health, Education, and Welfare, see 42 CFR chapter 1.

MINING METHODS AND MINE ABANDONMENT

§ *211.30 Good practice to be observed.*

The operator shall observe good practice following the highest standards in prospecting, exploration, testing, development and mining, sinking wells, shafts, and slopes, driving drifts and tunnels, blasting, transporting coal, hoisting, the use of explosives, timbering, pumping, reclamation, and other activities on the leased or permit lands.

§ *211.31 Ultimate maximum recovery.*

(a) *Maximum recovery and protection for future use.*—Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the coal deposits, consistent with the protection and use of other natural resources, sound economic practice, and the protection and preservation of the environment—land, water and air.

(b) *No available coal to be abandoned.*—The lessee shall not leave or abandon any coal which otherwise could be safely recovered by approved methods of mining when in the regular course of mining operations the time shall arrive for mining such coal. No entry, level, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned and rendered inaccessible, except with the written approval of the mining supervisor.

§ *211.32 Multiple seam mining.*

(a) *Sequence of mining.* In general, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined. Simultaneous workings in an upper coalbed shall be kept in advance of the workings in each lower bed. The mining supervisor may authorize mining of any lower beds before mining the available coal in each known upper bed.

(b) *Protective barrier pillars in multiple-seam mining.*—In areas subject to multiple-seam extraction, the protective barrier pillars for all main and secondary slope entries, main haulageways, primary aircourses, bleeder entries and manways in each seam shall be superimposed regardless of vertical separation of rock competency; however, modifications, exceptions, or variations of this requirement may be approved in advance by the mining supervisor.

§ *211.33 Advance workings; underground mines.*

(a) *Limits for removing coal.*—Where the room and pillar or other system of mining requires advance working in soild coal, including entries, rooms, and crosscuts or breakthroughs, the lessee, except with the written consent of the mining supervisor, shall not extract by such advance workings or first mining

more than 60 percent of the total area of the coalbed within any particular tract or panel entered by said advance workings where the cover is less than 500 feet; nor more than 50 percent where the cover is more than 500 feet and less than 1,000 feet; nor more than 40 percent where the cover is more than 1,000 feet and less than 1,500 feet; nor more than 30 percent where the cover is more than 1,500 feet and less than 2,000 feet; nor more than 20 percent where the cover is more than 2,000 feet. The mining supervisor may require a greater percentage to be left where unfavorable roof or floor conditions exist, where other adverse geologic conditions prevail or where the coalbed is or may be affected by mining elsewhere.

(b) *Pillar size and shape.*—During development, the size and shape of the pillars will be determined by the depth of cover, heights of coal, proposed method of pillar recovery and other conditions associated with the coalbed. The pillars will be of uniform size and shape insofar as is possible and the smallest dimension shall not be less than 20 feet.

(c) *Basis for computing percentage of tract to be mined.*—The percentage of the total area of the coalbed in a tract to be mined on advance mining shall be computed on the basis of the area and not on the basis of the calculated available tonnage.

§ *211.34 Pillar extraction.*

(a) The pillar recovery plan must be approved in advance by the mining supervisor.

(b) Where full pillar recovery is undertaken, extraction shall be such as to allow total caving of the main roof in the pillared area.

(c) Pillars of substantial size which must be abandoned prematurely due to safety considerations must be drilled and shot, if possible, to reduce their size so as to minimize undue forces overriding the working places.

(d) Pillaring methods shall be designed to eliminate pillar points and pillars that project in by the break line.

(e) The overall pillar recovery system shall be designed to minimize the possibility of outbursts, bounces and squeezes.

§ *211.35 Pillars left for support.*

(a) *Shaft, entry and slope pillars.*—A pillar proportionate in size to the depth below the surface and the thickness of coal being extracted shall be left in each coalbed for the support of each shaft, main slopes, main entry and main aircourse.

(b) *Shaft pillar size.*—Shaft pillars shall be not less in radius than one-half the thickness of cover over the pillar, but not less than 100 feet in radius.

(c) *Slope, main haulage and main aircourse pillar size.*—A pillar width not less than one-fourth of the thickness of cover above it shall be left on each side of the main slope entry system, main haulage entry system and/or main aircourse system. The pillar width will be determined by the maximum depth of the cover anticipated.

(d) *Openings in shaft and slope pillars.*—Shaft and slope landings, sidings, and entries for haulage, ventilation, manways, and shops may be excavated in a pillar provided the area of such places does not exceed 15 percent of the area of the pillar and that no rooms or other openings are made therein for the sole purpose of obtaining quick production.

(e) *Barrier pillars.*—The operator shall not, without the prior consent of the mining supervisor, mine any coal, drive any underground workings, or drill any lateral boreholes within 50 feet of any of the outside boundary lines of the leased lands, nor within such greater distance of said boundary lines as the mining supervisor may prescribe. Payment up to and including the full value of the coal mined may be required for coal mined within such designated distances of the boundary without the written consent of the mining supervisor.

(f) *Lessee may be required to mine barrier pillars on adjacent lands.*—If the coal on land covered by these regulations beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations, the lessee shall, on the written demand of the mining supervisor, mine out and remove all available coal in such barrier, both in the lands covered by the lease and in the adjoining premises, if it can be mined without hardship to the lessee. Authorization of the mining supervisor shall constitute a modification of the lease to include the necessary land.

(g) *Privately owned coal on adjoining premises.*—If the coal mining rights in adjoining premises are privately owned and this coal has been worked out, an agreement may be made with the coal owner for the extraction of the coal remaining in the boundary pillars which otherwise may be lost.

§ *211.36 Development of leased tract through adjoining mines.*

An operator may mine leased land from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) The entire mine and operations therein including that part on land privately owned or controlled shall conform to all the regulations in this part.

(b) Free access for inspection of said connecting mine on land privately owned or concontrolled shall be given at any resonable time to the mining supervisor or his representative.

§ *211.37 Surface or open pit mining.*

(a) *Fire prevention.*—Accumulations of slack coal or combustible waste shall be stored in a location and manner so as not to be a fire hazard to the coal deposit.

(b) *Coal face to be covered in strip pits.*—Upon completion or indefinite suspension of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively prevent the coalbed from becoming ignited.

(c) *Underground workings from any strip pit.*—The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken without prior written approval of the mining supervisor.

(d) *Reclamation and restoration of mined area.*—Reclamation must be performed as concurrently with mining as feasible.

§ *211.38 Mining isolated blocks of nonleased coal.*

Narrow stips of coal which are owned by the United States between leased lands and the outcrop, or small blocks of coal which are owned by the United States adjacent to leased land that would otherwise be isolated or lost may be mined on written authorization of the mining supervisor. Authorization of the mining supervisor shall constitute a modification of the lease to include the necessary land.

§ *211.39 Mine abandonment; surface openings.*

(a) *General requirement for abandonment.*—The operator shall substantially backfill, fence, protect or otherwise effectively close all surface openings, susidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, permit or license. Before permanent abandonment of operations all openings and excavations, including water discharge points, shall be closed or backfilled according to a plan approved by the mining supervisor.

(b) *Permanent abandonment of shafts.*—Mine shafts shall be abandoned in a permanent manner so as not to cause a public hazard or nuisance. This shall be done by filling the entire depth with incombustible material or by placing a reinforced concrete slab in solid rock and backfilling to the surface. All proposals for abandoning a shaft must have prior approval of the mining supervisor.

(c) *Permanent abandonment of slope and drift openings.*—Slope or drift openings when permanently abandoned shall be effectively sealed with solid incombustible material such as reinforced concrete, solid concrete blocks, or other substantial material; or shall be completely filled with incombustible material for a distance of at least 25 feet into such openings. The surface openings and the coal exposed by the operator shall be covered by a sufficient amount of incombustible material that will effectively prevent the coalbed from becoming ignited. All proposals for abandoning a slope or drift must have prior approval of the mining supervisor.

(d) *Temporary abandonment of surface openings.*—Surface openings at all underground mines which are temporarily closed shall be adequately fenced or equipped with a substantial incombustible gate or door which shall remain locked when not in use. Conspicious signs shall be posted prohibiting entrance of unauthorized persons.

(e) *Permanent abandonment—surface mines and strip pits.*—The highwall of the final cut of any abandoned strip or open pit mine must be graded to a

slope not greater than 2 to 1. Details shall be provided in the approved plan of reclamation required under part 211.10.

(f) *Reclamation and cleanup.*—Reclamation and cleanup of surface areas around and near permanently abandoned underground and strip mines must commence without delay following cessation of mining operations.

PROTECTION AGAINST MINE HAZARDS

§ *211.40 Abandonment of underground workings.*

(a) *Approval for abandonment required.*—No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the written approval of the mining supervisor.

(b) *Sealing or ventilating abandoned workings.*—All abandoned workings shall be either sealed or ventilated. All seals shall be constructed of solid, substantial, incombustible material, and at least one seal in each sealed area will be fitted with a pipe and valve for testing the atmosphere and pressures in the sealed area.

§ *211.41 Flammable gas and coal dust.*

(a) *Flammable gas.*—All active underground workings shall be ventilated by a current of air containing not less than 19.5 percent oxygen by volume, not more than 0.5 percent carbon dioxide by volume, and contain no harmful quantities of other noxious or poisonous gases. The volume and velocity of the current of ventilating air shall be sufficient to dilute, render harmless, and to carry away flammable, explosive, noxious, and harmful gases, dust, and smoke. No dangerous accumulations of flammable gas will be allowed in or on surface coal handling facilities nor near active strip or augering mining or other types of remote coal recovery methods under an open pit highwall.

(b) *Coal dust.*—Accumulations of coal dust, loose coal, and other combustible materials shall not be permitted to accumulate in dangerous quantities in active underground and surface mine workings, on electrical equipment, or on surface coal handling facilities.

§ *211.42 Approaching abandoned workings.*

Whenever a working place in an underground mind approaches within 50 ft of abandoned areas which can be inspected or within 200 ft of any abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 ft of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 ft in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 ft in advance of the working face. Such boreholes shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled at an angle of 45° and not more than 8 ft apart in the rib of such working places to a distance of at least 20 ft and such rib holes shall be drilled in one or both ribs of such working places as may be necessary for adequate protection of persons working in such places.

§ *211.43 Fire protection and prevention.*

All structures within 100 ft of any mine opening shall be of fireproof construction. Flammable material shall not be stored within 100 ft of a mine opening. All shafts shall be fireproof, or adequate fire-control devices, satisfactory to the mining supervisor, shall be installed. All underground offices, stations, shops, magazines, and stores shall be of fireproof construction and so equipped and maintained to eliminate fire hazards. Sufficient materials and fire-fighting apparatus in working condition shall be maintained at the mine openings and at convenient points in the mine workings for fire emergencies. An adequate water supply shall be held in storage tanks or reservoirs for fire emergencies and shall be available for immediate use through connecting pipelines for either surface or underground fires.

§ *211.44 Alternate source of power for main mine fans.*

If deemed necessary by the mining supervisor, all electricially driven main mine fans shall be provided with an alternate source of power for immediate use in case of failure of the electrical power source.

WASTE FROM MINING

§ *211.51 Disposal of mine waste or rejects.*

(a) The operator shall dispose of all solid wastes resulting from the mining and preparation of coal and mineral substances as required by the mining supervisor.

(b) All waste or rejects containing practically no coal shall be deposited separately and apart from sized coal for which no immediate market exists. The waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall also be stored separately.

PRODUCTION RECORDS, ROYALTY AND AUDITS

§ *211.60 Production records.*

(a) Lessees shall maintain books in which will be kept a correct account by weight of all coal mined; coal sold; to whom sold and the price received; coal stored; coal used on the premise; and coal otherwise disposed of.

(b) Permittees, if producing coal under a prospecting permit, must maintain the same records as required of the lessees in paragraph (a) of this section.

(c) Licensees must maintain a correct record of all coal mined and removed from the land under license.

(d) All records and books maintained by lessees, permittees and licensees showing the required information must be kept current and in such manner that the records can be readily checked by the mining supervisor or his representative upon request.

§ *211.61 Basis for Royalty Computation.*

(a) *Sale price.*—The sale price basis for determination of the amount of royalty due shall not be less than the highest and best obtainable market price for coal of similar quality at the usual and customary place of disposal:

(1) At the time of sale, if the coal is sold.

(2) At the time of use by the operator or other disposition, if the coal is used or otherwise disposed of.

(3) On the date the royalty is paid, if the coal is stored for future use, sale, or other disposition.

(b) *Bone or other inpurities.*—All bone coal, rock and other impurities may be removed from the raw coal prior to determination of coal weights for royalty purposes.

(c) *Discretion of mining supervisor.*—(1) The right is reserved to the mining supervisor to determine and declare the sale price if it is deemed necessary by him to do so for the protection of the interests of the lessor.

(2) If royalties become due and payable prior to extraction of bone coal, rock, and other impurities or final weighing of coal, the mining supervisor may determine by estimate the weight of the coal for royalty purposes. In addition, the mining supervisor may, after the removal of bone coal, rock and other impurities and final weighing of the coal, require the payment of such additional royalties or allow such credits or refunds as may be necessary to adjust the royalty payments to reflect the true weight of the oal.

§ *211.62 Production reports and payment—other reports.*

(a) *Lessees.*—Lessees shall report, on the report form provided, within 30 days after expiration of the period covered by the report, all coal mined from the leased land during each calendar quarter and the sales price basis on which royalty has been paid or will be paid. Except as provided by leases and permits issued under the regulations in 25 CFR parts 171, 172, 173, and 174, the royalty for coal mined shall be paid prior to the end of the third month succeeding the extraction of the coal from the mind.

(b) *Permittees.*—Permittees shall report the prospecting work done, the cost of the work, the results of prospecting and such other information as may be necessary. Permittees shall report all coal mined while determining the existence or workability of the deposit.

(c) *Licensees.*—Licensees shall report all coal mined on a semiannual basis on the report form provided.

(d) *Penalty.*—If a lessee or permittee records or reports less than the true weight or value of coal mined, the Secretary may impose a penalty equal to double the amount of royalty due on the shortage, or the full value of the shortage, which penalty shall be paid in addition to royalty due and payable.

If, after warning a lessee or permittee maintains false records or files false reports, a suit to cancel the lease may be instituted in addition to the imposition of penalties.

§ *211.63 Audits.*

An audit of the lessee's or permittee's accounts and books may be made annually, or at other such times as may be directed by the mining supervisor, by certifiifed public accountants and at the expense of the lessee. The lessee shall furnish, free of cost, duplicate copies of such annual or other audits to the mining supervisor within 30 days after the completion of each auditing.

INSPECTION, ISSUANCE OF ORDERS, AND ENFORCEMENT OF ORDERS

§ *211.70 Inspection of underground and surface conditions.*

Operators shall provide means at all reasonable hours, either day or night, for the Mining Supervisor or his representative to inspect or investigate the underground or surface mine conditions; to conduct surveys; to estimate the amount of coal mined; to study the methods of prospecting, exploration, testing, development, preparation, and handling necessary; to determine the volumes, types, and composition of wastes generated, the adequacy of measures for minimizing the amount of such wastes, and the measures for treatment and disposal of such wastes; and to determine whether the terms and conditions of the permit or lease and the requirements of the exploration, mining or reclamation plan have been complied with.

§ *211.71 Issuance of notices, instructions, and orders.*

(a) *Address of responsible party.*—Before beginning operations, the operator shall inform the Mining Supervisor in writing of the designation and post office address of the exploration or mining operation, the operator's temporary and permanent post office address, and the name and post office address of the superintendent, or designated operator or agent, who will be in charge of the operations and who will act as the local representative of the operator. Thereafter, the Mining Supervisor shall be informed of each change of address of the mine office or in the name or address of the local representative.

(b) *Receipt of the notices, instructions, and orders.*—The operator shall be considered to have received all notices, instructions, and orders that are mailed to or posted at the mine or mine office, or mailed or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator or his local representative.

§ *211.72 Enforcement of orders.*

(a) *Notice of noncompliance.*—If the Mining Supervisor determines that an operator has failed to comply with the regulations in this part, other applicable departmental regulations, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan, or with the Mining Supervisor's orders or instructions, the Mining Supervisor shall serve a notice of noncompliance. The notice shall specify in what respects the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan or the orders and instructions of the Mining Supervisor, and shall specify the action which most be taken to correct the noncompliance and the time limits within such action must be taken. A written report shall be submitted by the operator to verify that noncompliance has been cor-

(b) *Penalty for noncompliance.*—If, in the judgment of the Mining Supervisor, failure to comply with the regulations, the terms and conditions of the permit or lease, the requirements of approved exploration or mining plans, or with the Mining Supervisor's orders or instructions threaten immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Mining Supervisor or his representative is authorized, either in writing or orally with written confirmation, to suspend operations without prior notice of noncompliance. Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for ordering suspension of operations by the Mining Supervisor.

PART 216—OPERATING REGULATIONS GOVERNING THE MINING OF COAL IN ALASKA [REVOKED]

Part 216 of chapter II of title 30 of the Code of Federal Regulations is revoked.

JOHN B. RIGG,
Deputy Assistant Secretary of the Interior.

APRIL 24, 1973.

[FR Doc. 73-8313 Filed 4-27-73; 8:45 am]

Mrs. MINK. If there are no further questions, the subcommittee stands adjourned.

Thank you very much.

[Whereupon, at 12:23 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

FEDERAL COAL LEASING

THURSDAY, AUGUST 15, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MINES AND MINING OF
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Patsy T. Mink (chairman of the subcommittee) presiding.

Mrs. MINK. The Subcommittee on Mines and Mining will please come to order.

We will hear first from Mr. Patrick Sweeney, Washington representative of the Northern Plains Resource Council, on the bill S. 3528 which we are considering.

Welcome to the committee, Mr. Sweeney. I have a copy of your prepared testimony which we will insert in the record at this point, and you may proceed in any manner you choose.

STATEMENT OF PATRICK SWEENEY, WASHINGTON REPRESENTATIVE, NORTHERN PLAINS RESOURCE COUNCIL

Mr. SWEENEY. My name is Patrick Sweeney. I am the Washington representative for the Northern Plains Resource Council—an agriculturally based citizen's group concerned with the current and proposed development of the Northern Great Plains coal and water resources. The council represents a significant economic and social interest in the Northern Great Plains—agriculture.

For the record I would like to thank Senator Metcalf for his leadership in the Senate and Congresswoman Mink for her leadership here in the House on the bill, S. 3825, amendments to the Mineral Leasing Act of 1920, which will go a long way to correct the widely criticized practices of leasing Federal coal.

NO NEW FEDERAL COAL LEASING

The Northern Plains Resource Council feels that there should be no new Federal coal leasing at this time. The short-term leasing policy of the Secretary of Interior as announced on February 17, 1973 should be continued. At that time the Secretary stated that coal leases would be issued only under the following conditions:

When coal is needed now to maintain an existing mining operation; or

When coal is needed as a reserve for production in the near future; and

When the land to be mined will in all cases be reclaimed in accordance with lease stipulations that will provide for environmental protection with land reclamation; and

When an environmental impact statement covering the proposed lease has been prepared when required under the National Environmental Policy Act.

The Secretary went on to say:

> This short-term leasing policy is intended to insure that current coal production can continue. It will prevent deficiencies in supplies of coal which are necessary to meet our continuing energy needs.

There are several major reasons why this would be a rational policy for the Department of Interior:

1. BECAUSE OF UNFINISHED WORK

The two long-range aspects of Interior's leasing policy have not as yet been completed. These long-range goals were:

1. Development of an environmental impact statement on the Department's entire coal leasing program, supplementing this as necessary for appropriate impact reporting on a regional basis or for individual leases, and

2. Development of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs Most effectively—Now known as EMARS. The impact statement on the entire Federal coal leasing program is in a draft form and has drawn heavy criticism from many sectors on its inadequacies and lack of direction. EMARS is still in the planning and formulative stages with little public or congressional input.

The Northern Great Plains resource program, an interagency task force established to study coal development in the entire five state region of Montana, North and South Dakota, Nebraska, and Wyoming has not yet filed for public review of its interim report which was scheduled for completion June 30, 1974.

A complete assessment of existing Federal coal leases is not due for completion until September 15 this year as stated recently by Assistant Secretary Horton.

As recently as this Monday before the Public Lands Subcommittee of the House, George Turcott, Associate Director of the Bureau of Land Management, stated that BLM had begun: The preparation of surface and mineral ownership management maps through a coordinated effort of the Bureau of Land Management and Geological Survey. These maps indicate the often complex patterns in Western coal areas and are of use to both Government and industry in determining ownership of coal resources These should be complete for known coal leasing areas by November or December of 1974. When they are completed, they will enable the Federal Government to determine for the first time definitively how much coal land it owns and where. This data, coupled with geologic information, will provide us with an inventory of federally owned coal resources.

In essence he states the U.S. Government does not know how much coal land it owns and where. Yet decisions are being considered to continue federal coal leasing.

2. VAST EXTENT OF EXISTING COAL LEASES

The extent of coal reserves under existing coal leases in all sectors of coal ownership, i.e., Federal, State, Indian, and private, is staggering and represents a sizable coal reserve to meet current and projected demands for many years.

In the seven States of Arizona, Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming the Department of Interior has issued 463 leases covering over 680,000 acres. Interior estimates that there is 15 billion tons of recoverable coal on these outstanding leases, 15 billion tons. That is 25 times the amount of coal produced in the entire United States in 1973. Yet of these 463 Federal leases nearly 90 percent have never produced a single ton of coal. In the 54 years of the leasing program less than 1 percent of the Nation's coal production has come from Federal lands. Thus this country has a tremendous reserve of coal under existing Federal lease not yet in production.

The Federal coal reserve under existing leases cannot be isolated from existing leases on Indian, State, and private lands. It is only when all components of coal ownership are assessed together that a complete picture emerges. The complex checkerboard pattern of ownership in the Northern Great Plains is just now being understood and the Federal share of this checkerboard should not be segregated from the other ownerships.

The Northern Plains Resource Council has compiled and recently updated leasing figures for the State of Montana. These figures show 58,000 acres leased by the State of Montana, almost 340,000 acres of private coal under lease from individuals or corporations—basically railroads—and nearly 78,000 acres under Indian lease. Including Federal leases the total in Montana alone is 507,514.05 acres. [See attachment A.]

In Wyoming a recent tabulation shows in just three counties in the Powder River Basin nearly 700,000 acres are under lease from federal, state, and private lands. [See attachment B.]

I have made attachments with the appropriate figures showing the different sectors.

In the Northern Great Plains two of the largest owners of private coal are the Burlington Northern and the Union Pacific Railroads with an estimated 11 and 10 billion tons of coal reserves respectively. With scant corporate disclosure as to their holdings or leasings the public and government are little informed on the railroads' resources policies. Yet with their extensive holdings these corporate giants to a large extent can dictate land use policies for certain areas of the Northern Great Plains.

Furthermore, a startling fact is that the Burlington Northern has leased over 230,000 acres in Montana, North Dakota, and Wyoming for coal development according to a recent financial report. Although scattered information exists, a comprehensive analysis of private coal is not available at this time when an overall assessment of the resources is most critical.

What we are suggesting by the leasing figures from the other segments of coal ownership is nothing extraordinary—only that in as-

sessing the need for continuation of Federal coal leasing all ownership segments must be considered. This necessitates adquate corporate disclosure of coal ownership and leasing patterns and the willingness of the Department of Interior to provide a comprehensive plan of resource ownership and availability before decisions are made to commit more federal coal to lease.

3. NO NATIONAL COAL POLICY

Members of the subcommittee, 1 week ago in Denver the Federal Energy Administration held "Project Independence" hearings on coal leasing and synthetic fuels, on Monday of this week the Subcommittee on Public Lands of the House Interior Committee held hearings on EMARS, the energy minerals allocation recommendation system, yesterday in Billings the Department of Interior held hearings on the impact statement on federal coal leasing, and the Mines and Mining Subcommittee is now holding hearings on the amendments to the Mineral Leasing Act of 1920 as it pertains to coal. All these hearings deal in some specific way with a rational coal and energy policy for this country. Yet nowhere has the administration or Congress outlined a detailed framework for all these policies.

The decisions on Federal coal leasing must be made in light of the overall coal picture in this country. Complex questions such as whether or not coal production should come from deep or strip coal, from predominantly eastern or western coalfields must be addressed.

A recent report of the coal extraction task force of the Department of Interior entitled "Coal Extraction R. & D. Program" released in March of 1974 outlines some very basic policy issues.

The report sets forth two alternative coal production schedules: Strategy 1 and strategy 2. Strategy 1 is maximum reliance on surface mining to achieve the stated objective [increased coal supply to meet demand]. This strategy assumes that production from the western surface reserves will expand from 50 million tons in 1972 to 1.440 billion tons by 1985; an annual production level to be maintained through 2000. Surface mines production in the East [under strategy I] is assumed to grow modestly from 250 million tons in 1972 to 380 million tons by 1985. Underground production from the West is not initiated and production from underground mines in the East is not expanded. Strategy 2 balances the increased production between regions and mining methods. Increased surface mine development is initially required to meet the production goals, but strategy 2 would reduce the dependence on surface mining after 1980 by relying more heavily on underground development in both the East and West.

The Department of Interior's own R. & D. task force had this to say about the two strategies:

> Strategy 1 would cause rapid regional changes and exhaust a very high portion of reported surface reserves in both the East and West by the year 2000, threatening rapid decline in surface mine development after the turn of the century. . . . Thus, Strategy 1 cannot be depended upon to maintain a production output of 43.1 x 10 to the 15th Btu's from 1986 to 2000. For these reasons, we find strategy 1 to be unacceptable. Accordingly, the Task Force has used strategy 2 to define the R&D program.

In essence, Interior states that rapid full scale development of western strippable reserves will not meet our energy needs and in their own words is "acceptable." Why then continue to lease more Federal coal? In fact, might not the stripping of large reserves in the West preclude the eventual recovery of the overwhelmingly more abundant deep mine reserves in the East and in the West?

4. POOR ADMINISTRATION OF THE MINERAL LEASING ACT OF 1920

There is wide criticism of the Federal leasing program. The most recent comprehensive study is that of the Council on Economic Priorities entitled "Leased and Lost". CEP states of the Federal leasing program that:

> Because of weaknesses in the original legislation and mismanagement on the part of the Department of Interior, the public coal leasing program over the last 54 years has not operated in the public interest. It has failed to encourage resource development, failed to provide fair market value to the public and Indian treasuries, and it has saddled the nation with a huge block of leased but unmined coal that may well frustrate energy resource planning for decades to come.

Criticism has also come from the General Accounting Office who in 1972 stated, "The mere leasing of lands is not accomplishing the objective of the leasing program or the intent of the legislation authorizing the program." Again the National Academies of Sciences and Engineering found that leasing laws "are conceptually and operationally outmoded * * * The situation has become nearly chaotic." And again the GAO in another report in 1972 noted, "The government has not received equitable royalties for coal produced on federal land," while reclamation clauses are "not being implemented with regard to several significant areas." It is quite obvious that the Mineral Leasing Act of 1920 is not doing the job.

S. 3528 is a beginning to correcting the Mineral Leasing Act. However, it does not carry through far enough to make the needed changes. I will detail for the subcommittee several recommendations for additional changes. Recommendations:

1. TERMS OF THE LEASE

S. 3528 stipulates [p. 3, 1.3] a 20-year term for leases or so long thereafter as coal is produced annually for the lease. A more reasonable time period would be 10 years or so long thereafter as coal is produced annually. Since lead times for any development plan are no greater than 10 years [mining: 2–4 years; power generation: 6–8 years; gasification: 8–10 years] a 10-year lease term is reasonable.

S. 3528 states beginning on line 10 of page three that lease stipulations can only be readjusted at the end of the primary term—20 years. This unduly restricts the Department of Interior's ability to impose additional requirements for both environmental safeguards and higher royalty rates if needed. Readjustments should be possible at 5-year intervals.

S. 3528 also sets the minimum rental at "not less than $1 per acre or fraction thereof." This figure is entirely too low and Interior has considered as much as $9 per acre. The bill should also repeal rental

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credits on future royalty payments. This now exists for Indian leases and would add incentives for development.

The bill as drafted leaves the royalty payment at the discretion of the Department of Interior. A flat minimum royalty rate fixed by law would insure a better return on coal produced if the royalty rate is a percentage of the price of the coal.

2. COMPETITIVE BIDDING

There is no question that a more open competitive bidding system is needed. As the CEP report documents the top 15 of the 144 leaseholders—both Federal and Indian leases—control 70 percent of the lands under lease. This list contains 7 of the 15 largest coal producers in the country, 5 major oil companies, and 3 utilities.

There are several alternatives to increase competition: (A) so-called deferred bonus bidding; and (B) royalty bidding. The committee might consider several systems that require a certain percentage of all leases to be bid by the two systems, a combination of both. Clearly of the two alternatives, deferred bonus bidding is preferable from the standpoint of increasing incentives to develop the lease to meet deferred payments.

The bill should contain more restrictive guidelines on the nature of competitive bidding. For instance no bids should be accepted below the minimum bid established by Interior.

3. COAL CONSERVATION

Amending S. 3528 to include the concept of coal conservation is also imperative. This would insure that all available coal is taken out at once to avoid the possibility of the mine being opened again and to lessen the demand for coal elsewhere.

4. DILIGENT DEVELOPMENT AND CONTINUOUS PRODUCTION

One of the most important areas not addressed in the legislation is the question of diligent development and continuous production of existing leases. I would strongly urge the committee to amend the bill to include in section 7(c) existing leases in the requirement to file a development and reclamation plan one year after the date of enactment. Failure to file such a plan would be grounds for cancellation. Additionally, the committee should define precisely "diligent development" and strike the payment of advanced royalties in lieu of continuous operation, which is now allowed.

5. NO NEW FEDERAL COAL LEASING

As a final recommendation, I would urge the committee to legislatively extent the short-term leasing policy of the Secretary of Interior for at least fiscal years 1975 and 1976 until the comprehensive work begun in the Northern Great Plains is completed, until the Federal strip mining bill is implemented by the States, until the country and the Congress have had time to assess energy and coal policy through the blueprint of "Project Independence."

I have attached to my statement some listing of some of the private, State, and Indian coal leases in the States of Montana and

Wyoming which might give the committee a better picture of what we consider to be the overwhelming amount of leases already existing in the Northern Great Plains, and one of the primary reasons why at this point additional coal leasing, Federal coal leasing, is certainly not needed, since the amount of reserve under lease that can now be produced is overwhelming and adequate to meet at least our short-term energy needs before we assess the longer term needs of coal.

[Attachments A and B to the statement of Mr. Patrick Sweeney follow:]

ATTACHMENT A.—*State of Montana total coal leases*

	Acres
Federal lands	36,232.27
State lands	57,534.23
Indian lands	77,158.98
Private lands	336,588.57
Total	507,514.05

ATTACHMENT A–1.—*State of Montana private fee coal leases—totals by individual lessee*

	Acres
Ark Land Co	200.00
Consolidation Coal Co	53,780.21
Gulf Mineral Resources	160.00
Charles M. Hamptman	12,950.24
H F C Oil Co	62,342.70
Joe H. Halverson	1,589.84
Charles J. Heringer	814.20
John H. Howell	1,815.60
Page T. Jenkins	960.00
Norman Jessen	1,920.00
Thomas F. Keating	3,342.20
Kerr-McGee Corp	3,209.50
Pat McDonough	1,000.00
Mobil Oil Corp	2,560.00
John P. Moore	1,126.16
Norsworthy and Reger	17,926.20
Peabody Coal Co	1,920.00
Phillips Petroleum	9,845.01
Rocky Mountain Oil & Minerals	288.32
Rosebud Coal Sales	80.00
Sentry Royalty Co. (Peabody)	96,781.87
Charles B. Smith	970.19
Sun Oil Co	4,516.00
Tenneco Coal Co	9,442.10
Fred R. Tiddens	2,558.60
Western Energy Co	10,810.00
Westmoreland Resources	8,883.10
John S. Wold	24,796.53
Total recorded private coal leases (Mar. 1, 1974)	336,588.57

ATTACHMENT A–2.—*Revised coal lease figures by county*

	Acres
Powder River County	73,342.68
Rosebud County	44,275.39
Big Horn County	9,345.42
Wibaux County	25,647.02
Dawson County	98,030.28
Richland County	19,360.65

ATTACHMENT A–2.—*Revised coal lease figures by county*—Continued

	Acres
Prairie County	3,977.28
Roosevelt County	546.00
Treasure County	2,172.67
Musselshell County	1,513.93
Custer County	43,575.15
Fallon County	14,802.10
Total	336,588.57

ATTACHMENT B.—*State of Wyoming total coal leases*

[Powder River Basin including the counties of Campbell, Johnson, and Sheridan]

	Acres
Federal lands	131,311.80
State lands	502,659.77
Private lands	60,124.24
Total	694,095.81

Mrs. MINK. We thank you very much, Mr. Sweeney, for your statement.

It is very detailed and comprehensive, and we shall study very carefully the recommendations you have made with regard to the specific amendments to our bill.

Mr. Camp?

Mr. CAMP. I do not have any questions right now, I may have later but not now.

Mrs. MINK. Mr. Vigorito?

Mr. VIGORITO. No questions.

Mrs. MINK. Well, I have a few.

The matter of no leasing at all, which you recommend, is that a matter which is appropriate to the pending bill and if so how would you state it?

Mr. SWEENEY. Well, I think it is appropriate to the pending bill. I think it could be simply done by the insertion, you have already corrected in the bill now the bidding system, to simply allow for competitive bidding, and I think that an inclusion within the very first clause of the bill which strikes the old preference right leases and prospecting permits, at that point is simply could be added that no competitive bids under the new terms of this bill will be issued for fiscal years 1975 and 1976.

I think this is a very reasonable approach to take. As I pointed out, the work of the administration and Congress, and the people in terms of looking at the problems of coal, have not been completed. There are many loose ends now that have not been worked on and the overwhelming volume of leases and reserves now available to be mined certainly does not portend a crisis atmosphere of need for more coal production. There are leases that can be developed, existing leases, both Federal, private, Indian and State, that could be developed right now. And if the demand is there to develop those leases, they will be developed.

And the arguments for immediate increased Federal leasing to meet that demand I do not think fit in light of the fact that there are so many other leases outstanding.

Mrs. MINK. Well, I am sure you heard the testimony of the last two meetings on the point of why the lessees have failed to get into the active coal production stage under these existing leases.

Would you care to comment on the responses that the committee received with regard to that problem?

Yesterday, we heard from the Department where the inference was left that about 50 percent of the lands in question are held by companies who can be said to be in production, although the specific lease itself may not be currently producing.

This is because of the so-called logical unit designation and therefore are categorized as lands under production.

Mr. SWEENEY. Well, I think first of all the concept of the logical unit still escapes me to some degree because the history of the leasing has been that all leases administered in the 54 years of the leasing act have been at the call of the lessee. They have made application for specific areas and have been leased not under any kind of a program where the Department has put up certain tracts for leasing.

It has been simply by application on a specific section and this speaks to the question of if you look at a map detailing the leasing of Federal coal you will see it looks like a shotgun effect, that is simply because these corporations have come in and taken whatever they felt was needed for reserve, and it does not in my opinion speak to logical, at all, mining units.

I have not seen the recommendations of the Department in terms of what they consider these mining units to be. But, looking at maps of what has been leased, certainly it does not speak to any logical mining units in my opinion.

Mrs. MINK. Well, that may be the pattern of the past but does this current legislation take care of that problem?

Mr. SWEENEY. Well, in terms of requiring production I do not think the current legislation speaks to the very question of making the lessee produce off of Federal lands.

Mr. MINK. No, I mean to the question of who initiates the decision to put certain lands up for lease?

Mr. SWEENEY. I think to some degree the practice of the lessee still making application will continue, unless EMARS, the energy mineral allocation recommendation system, which the Department is doing in conjunction with the leasing, unless that is brought in line to where the Department is assessing the actual demand for coal and then putting up tracks in assessment of demand, and not simply because of application from lessees, that the present policy is going to continue and I think EMARS is the key to that very question.

Mrs. MINK. Well the Department has testified that they are embarking on EMARS and that is going to be the principle ingredient for their coal leasing policy in the future. Is there any necessity to tie that system into the statute which we are considering, or how would we assure that that kind of an evaluation becomes the basic policy of the Government in the future?

Mr. SWEENEY. Well, I have not got any specific recommendations on that, but I do feel that the EMARS system should be addressed to some degree in the legislation so that it is tied legislatively to what the Department is doing because the whole EMARS system is an administrative approach, and probably in some degrees may be a good one. I do not know because we have not had time to assess it.

The information has not been put out to public, as to essentially what in total EMARS is.

It may be a good program, but it certainly—and it is a response in part to the bad practices and abuses under the Mineral Leasing Act, and if these are corrected certainly then EMARS should be spoken to in the corrections of the Mineral Leasing Act, because EMARS is a direct response to that.

Mrs. MINK. Does the law now require that the Department must issue an environmental impact statement with the issuance of each separate lease?

Mr. SWEENEY. Well, the history has been no, it did not. In fact, no leases for Federal coal issued by the Department have ever been accompanied by an environmental impact statement.

And it has only been in recent, in the last 2 years, since the first mining plans have become available or the lessees have been turning their leases into actual mining operations that the Department has been recognizing the fact that an overall development plan on the lease is required.

An in the most recent case the Big Sky Mine, Peabody Coal Co. in Montana, with the first Federal lease, essentially to go into production in Montana, an overall assessment was made, but the assessment was made at the time of permit application for a strip mine and not at the time the lease was granted by the Department of the Interior.

So no assessment, environmental assessment, has been done on leases, only to strip mining permits, and the recent EIS that has been published by the Department of Interior is the first overall environmental assessment of the leasing program.

Mrs. MINK. Calling your attention to subparagraph 2 on page 2 of the bill, do you feel that the requirement of a comprehensive land use plan, which includes the coal deposits in question, is sufficient and adequate to require of the Secretary to take into account the whole matter of the need for the coal, the environmental consequences of the removal of said coal in that area, and what safeguards must be provided to protect against permanent degradation of that area?

Mr. SWEENEY. In regard to this particular section, in my judgment, this overall land use plan should be much more comprehensive than the bill discusses and that the proper sphere for that might be in a NEPA statement to discuss all of the ramifications.

This has been done, as has been pointd out, by the Natural Resources Defense Council. This is now done, NEPA statements are done by the Forest Service for their model, and they have effectively plugged in NEPA to the Forest Service model on lands.

And this addresses the very same question talking about an overall development plan and it seems to me that Interior, BLM, could follow the same model as the Forest Service in this section by using NEPA for an overall model for the leasing development.

Mrs. MINK. So as you envision the operation of a new coal policy, the Department would have the responsibility of determining the needs of the country for a given period, the necessity of Federal coal in order to meet this need, where the best and most logical de-

posits exist for the economic extraction of said coal and an environmental impact statement dealing with the extraction of that specific coal and then the issuance of competitive bids?

Is that the scenario of a good policy for the country?

Mr. SWEENEY. Essentially in terms of actually granting the leases, yes.

I think, however, in terms of the overall picture we are looking at here of the question of demand, the first question we have to look at, and I think we are beginning to get this now through the blueprint of Project Independence, of how does coal fit into the overall energy needs of the country, and which coal is the most important coal to mine, and what in terms of leasing Federal coal, are we leasing it to strip mine that coal, are we leasing it to deep mine, or by stripping the Federal lease are we precluding eventual deepmining of coal that is underneath that Federal lease and would have to be gotten at some future day.

So, the very first question of the demand I think has got to be answered soon, and that is why I say that the 2 year period of 1975–76 when the country has got to look at the blueprint of Project Independence and discuss the alternatives of the coal policy versus all of the other energy policies that are going to be coming out, that these decisions have to be made before Interior can adequately assess the real demand that western coal is going to have. Certainly there is going to be some demand, and certainly there is going to be an increase in production.

But as I have stated, existing leases, 463 of them, contain 15 billion tons of coal, which is a lot of coal that can be mined now.

Mrs. MINK. Have you undertaken any studies, or do you have any reports to show the ownership pattern of the 463 leases and whether they are held by a large number of lessees or a small number of lessees, or what the combinations are, and any evaluations which could assist the committee in evaluating the 15 billion tons of coal which lie unutilized?

Mr. SWEENEY. Well, I would recommend to the committee the Council on Economic Priorities report, volume 5, number 2 which was published in the Spring entitled "Leased and Lost". This has a very exhaustive account of existing Federal leases, and a very thorough discussion of who actually owns these leases, who is in control of these leases.

And an interesting figure that I found in this report is that 67 percent in the 54 year history of the leasing act, 67 percent of the leases that were issued by Interior were issued in the 1960s, in the period when the coal industry was at the same time being bought by the oil industry, when the large coal producers are now owned by the oil industry.

At that same period, these oil companies were also buying or attempting to acquire Federal leases. Sixty-seven percent, a large chunk of that leasing was done in 1960, and as the report points out, of the 15 largest lease holders, of the total Federal leases, five of those were major oil companies and seven of them are of the top 15 producers of coal in this country and I think is one of the reasons why the competitive bidding system is so important.

And it is funny, but as Mr. Bagge said yesterday, he is interested in opening up competition in the coal leasing program. Well, so are we, because it is obvious that there is a very tight control on the leasing program right now and that the deferred bonus bidding system I think will really go a long way toward opening up that competitiveness.

Mrs. MINK. Does my colleague, Mr. Udall, have any questions?

Mr. UDALL. I came in late and I have none at this time. I think these hearings are vitally important and I am sorry I have not been in better attendance here.

But, I am skimming through the statement and it looks like it hits the major points very well.

Mrs. MINK. Could I now go to the specific recommendations that you have made with regard to the bill at hand?

In the middle of page 8 regarding the first recommendation, terms of the lease, your third paragraph there you make reference to the minimum rental of no less than a dollar.

This was entirely too low, you said. And the Department has considered as high as $9 per acre. The bill should also repeal rental credits on future royalty payments.

Now, is this part of the Mineral Leasing Act, or is this simply a practice that has been engaged in by the Department?

Mr. SWEENEY. It was my understanding it was a part of the act. I may be wrong there but at least it has been a credit to credit royalty rental payments toward future royalties and if it is indeed part of the act, which I thought it was, I would suggest repeal of that particular section.

This does not exist by the way, in the Indian leasing program.

Mr. MINK. Then second, with the deferred bonus payments, is there a practice now that these deferred bonus payments are credited against royalties?

Mr. SWEENEY. I do not think there has been at this point any deferred bonus payments on existing leases but I would certainly not recommend the deferred bonus payments.

Mr. MINK. I am talking about the oil shale leases. I should have prefaced my remarks in that instance. Did not the Department permit crediting of the deferred bonus payments?

Mr. SWEENEY. On the oil shale royalties.

Mrs. MINK. To the royalties that would be required.

Mr. SWEENEY. I would not recommend that as part of the program.

Mrs. MINK. So we would also have to take care of that possibility should they go into the deferred bonus payment method to make sure that the bonus payments and the rentals are in addition to whatever requirements for royalties might ensue from production?

Mr. SWEENEY. Exactly.

Mrs. MINK. And then your last sentence there, it says this now exists for Indian leases and would add an incentive for development. I do not quite understand that sentence.

Mr. SWEENEY. What I simply meant here is that Indian leasing practices do not allow the rental credits on future royalty payments.

Mrs. MINK. So how would that add an incentive?

Mr. SWEENEY. Well the incentive would be that if you cannot, if you cannot credit your rental payments on royalties, that you then have payments that have to be made which would be a monetary incentive to develop coal to get royalties. I mean, it is simply, it is not maybe a very large incentive but certainly the monetary incentive of forcing production in each of these cases should not be repealed because I think one of the biggest pressures for speculation has been that these payments have all been deferred to a large degree on royalties and that the total amount of royalty and rentals paid to the Federal Government, to Federal coal leasing, is very small.

In fact, to some degree, the outright cancellation of all existing Federal coal leases, if the Government could pay back all rentals and royalties that these companies have actually paid, they would not be spending I think more than in the neighborhood of maybe $10 million, something like that.

It is just not a large sum of money right now.

Mrs. MINK. Moving to page 9, another sentence I would like you to clarify, you say clearly of the two alternaties deferred bonus bidding is preferable from the standpoint of increasing incentives to develop the lease to meet deferred payments.

Mr. SWEENEY. Again, my theory is that in terms of requiring production, that in the deferred bonus bidding system the lessee will have, if the degerred bonus is, for instance, on 5 year intervals or 2 year intervals or whatever it is, at the end of the 2 year interval he has to come up with a bonus payment.

If that is an incentive for him to develop a lease, to make royalties to meet his bonus payments. If, however, we are on the royalty bidding system he does not have the particular incentive the monetary incentive of a bonus payment that he has to make at a certain-due date in order to keep his lease and, therefore, the deferred bonus bidding system adds a monetary incentive for production increases by the fact that at some future date 2 years, 5 years, whatever the interval will be, the lessee has to come up with that payment.

Under the royalty bidding system he does not and that is a monetary incentive.

Mrs. MINK. You heard the plea yesterday from Mr. Bagge, rather on Tuesday, excuse me, that a provision should be written into the bill to make it possible for the small operators to bid and to win on a competitive basis.

Would you care to comment on that?

Mr. SWEENEY. I think to some degree I very much agree with Mr. Bagge that the small operators, the co-ops, for instance, and other people, should have access to the coal just as well as the large oil companies.

And the present front end loader system, so-called, where the major bidding is on the first bonus, definitely puts the weight toward people who have access to large amounts of capital.

This obviously is anticompetitive for small operators, people who cannot amass that kind of capital.

Mrs. MINK. Your theory is based upon the fact you believe the small operator might be willing to pay a higher royalty?

Mr. SWEENEY. Exactly. He also might be willing to, under the deferred bonus system, bid higher bonuses for leases, because he knows

that at future dates he can defer payments as he increases the production of the coal from the lease and the royalties will take care of those deferred bonuses that he has promised.

Mrs. MINK. Do you believe that the current law is sufficiently vague with regard to diligent development that it would be possible for the bill we are now considering to detail retroactively requirements on the part of the Secretary in making a determination of diligent development in existing leases so that greater authority and initiative would be assumed by the Secretary in terminating these leases that have not been actively pursued?

Mr. SWEENEY. Well, I was encouraged to see Senator Moss' statement on this very point of diligent development recommending eventually that the Secretary have greater powers in enforcing the diligence clause to cancel existing leases.

I think the system that is used now, with the question of one, diligent development and continuous operation where the lessee is allowed advanced royalties in lieu of continuous operation, and yet the other side of the equation is that diligent development has never been enforced and the department is just now, as the Secretary testified issuing regulations for the 15th of September which will speak to this very question.

And they have set up apparently some elaborate system dealing with the logical mining units as a definition.

Mrs. MINK. My question is not whether we should or should not permit this with regard to new leases that might be issued in the future.

My question goes to the existing leases where the terms include an indeterminate length of time, subject to review only every 20 years, with the requirement of diligent development and continuous production.

Mr. SWEENEY. My only recommendation is that, indeed, this bill can speak to diligent development.

Mrs. MINK. Can we set down the criteria?

Mr. SWEENEY. Exactly, and I would strongly urge that there be some very stringent criteria on diligent development. I recommend also——

Mrs. MINK. And this can be applied to existing leases?

Mr. SWEENEY. And, in fact, my recommendation is that the committee might consider under 7(c) of the bill that existing leases be required to file within one year of the date of enactment the reclamation and operation plan that is now required for future leases. The bill says after the date of enactment future leases must file within 1 year a reclamation and development plan.

My recommendation would be that this requirement be extended to existing leases, and that after 1 year from the date of inception of the act that the existing lease holder must file that reclamation plan as a means and this could be defined in terms of diligent development, if the lease holder fails to file this, this would be grounds for cancellation of his lease.

Mr. LAHN. I am Richard Lahn, speaking for the Sierra Club, Mrs. Mink. I wanted to interject a point right on this issue because I was going to develop it in my statement, that I would even

go a step further and would say that the committee should consider terminating all leases, all existing leases, where there has not been any development in the last three years and then make the lessees come to the federal government, come to the Department of Interior and prove, to give their reasons why they have not developed and what their problems have been so that the onus is on and the burden of proof is on the lessee and why they have not developed and not on the Department of Interior.

Mrs. MINK. That is kind of like going to the guillotine and being asked later why you should not have been allowed to live.

Mr. LAHN. But the problem is there is no rational way to take the problems of the——

Mrs. MINK. Why not, as Mr. Sweeney suggests, write into this bill a positive requirement that they came forward as he suggested, with a plan for development to meet the criteria of diligent development and failing to do so within a year the Secretary shall terminate?

I mean, I think a procedure like that probably would meet the requirements of due notice and give the lessee an opportunity to prove that they have a logical plan, under a logical unit concept, or whether these vast acreages are just being held for some future speculation without any immediate relevance to meeting the need of a specific plan.

Mr. LAHN. Right. I agree it goes to the same point.

What I am worried about is if the burden of initiative and the burden is on the department rather than the lessee, I am just afeared——

Mrs. MINK. No. No. I was not suggesting that, I think the lessee must bear that burden of proof of diligent development.

Mr. SWEENEY. In fact, in terms of requiring a plan for reclamation and operation, the burden would be on the lessee to do that and submit it.

And failing to do so would mean cancellation.

Mrs. MINK. Well, your comments have been most helpful.

Do either of my colleagues have any questions? Mr. Udall?

Mr. UDALL. I had a couple of points that might be more properly directed to the administration than the witness but I wanted to raise them at this point.

In the Subcommittee on the Environment we are now undertaking a series of hearings on this whole question of payments in lieu of taxes, and this grew out originally of the study of the Public Land Law Review Commission.

We point out in chapter 14 of that study that there are whole range of Federal programs in which certain revenues are shared with the State and local governments and it is the most incredible patchwork.

Twenty-five percent of the stumpages of timber taken off the Federal lands go not to the State but to the county. Here you have part of the proceeds the Federal Government gets from coal leasing going directly to the States.

The percentages varied among these dozens of programs from five percent to 90 percent, and it is whole incredible patchwork that really makes no sense.

And sometimes it is related to the burden that is brought on the county when federal resources are taking it out and sometimes it does not.

We found that payments to counties were inordinately unfair in some cases where you have a big timber operation in county A, but the people who work that timber operation work across the line in county B, and have children who go to school there.

And I notice that in this, this is a much broader problem than what we are dealing with here. But, it is related to our hearings and I do not know whether the witness has any thoughts on this.

I have not made up my mind what to do about it except I am committed to some kind of a rational revenue sharing program or payment in lieu of taxes program.

The people of the United States own the coal, for example, in all of these cases, and the government is entitled to the royalty because of that ownership.

And certainly there is some obligation to share those proceeds with the areas feeling the impact of it. But, I wonder if you have any thoughts on whether this is the appropriate place in which to deal with this overall problem or whether we simply leave this as it is until some rational overall solution can be provided.

But, that occurred to me in looking at the bill and the testimony.

Mr. SWEENEY. The bill as it now stands amends the law so that the 37½ percent of the royalty that goes back to the State can go for things other than roads and schools.

Mr. UDALL. Yes. I heartily approve of that. We found, incidentally, no pattern at all in all of these programs. To insist that it be spent for roads and schools, other than just general revenue, some goes to counties, some goes to states, and so on, but I heartily approve of that change. This is very arbitrary and if you are going to share money with the state and the local government, they ought to have discretion as to where to put it.

Mr. CAMP. Would the gentleman yield?

Mr. SWEENEY. We have a real problem in Montana.

Mr. UDALL. Yes, I yield.

Mr. CAMP. Would you suggest it be kind of like on a revenue sharing plan, like back to them for their own use?

Mr. UDALL. The administration bill and the bill we are dealing with in these hearings junks this whole or phases out this whole arbitrary system over a 10-year period and so as to each area we are going to have a system of payments in lieu of taxes, as though these Federal reserve resources were privately owned and what would a private owner be paying in taxes who owned this coal, who had the coal processing operation, and to erect some kind of a reasonable system by which the payment was based on that and not on the fortuitous question of how much coal or how much timber happens to lie in that particular jurisdiction.

Why should one area get a windfall, get more than 10 times more than its burden and another area which happens to have timber instead of coal get a third of what the impact is on it? I mean, it is a very serious and complex problem we are dealing with and this hits it peripherally.

Mrs. MINK. If the gentleman will yield, I hope that his committee does not do violence to the very important program referred to as impact aid.

Mr. UDALL. Oh, no. In fact, this is related to it and this keeps coming up.

This keeps coming up in our hearings as to what extent should this program be meshed with the impact aid program.

Mr. CAMP. Madam Chairman, I have a question that I would like to ask.

Mrs. MINK. Yes, Mr. Camp.

Mr. CAMP. Would you just express yourself maybe a little more on page 10, on the last page where you say as a final recommendation I would urge the committee to legislatively extend the short-term leasing policy of the Secretary of the Interior for at least fiscal year 1975 and 1976 and until the comprehensive work begun in the Northern Great Plains is completed.

Would you express yourself a little more in the last part of that sentence?

What is your program?

Mr. SWEENEY. Well, the comprehensive work I am speaking of involves basically all levels in terms of not just the Federal level but the State level.

Right now on a Federal level and State joint jurisdiction there is a Northern Great Plains resource program, which I referred to earlier.

This is an interagency task force that was made up of the Environmental Protection Agency, the Department of Interior as the lead agency, and the Department of Agriculture in conjunction with the States and citizens to look at the whole question of coal in the five-State region of the North Great Plains.

This work has not been completed. In fact, the interim report was supposed to be filed and it has not yet been filed. And this overall program, the Northern Great Plains resource program, is essentially the framework around the major decisions. In other words, it is assessing what information is not and is known at this time and what are the possibilities for reclamation, what is going to be the impact on people from gasification plans and increased social services and things like this? And this program is a very important program in terms of assessing the things we need to know and do not know and that is not done. That is one of the programs I am speaking of.

I think one of the other important things in terms of the surface mining legislation is that the implementation on the State level and the Federal level in the bill, were it to psss this year, would not be for another 2 years, assuming eventually that the present interim program in some form goes through.

That means in 2 years from now the State will have to gear up, will be geared up, to administer good reclamation, and the Interior Department will be geared up.

But, that is not going to happen for 2 years, and in the meantime I think we can certainly hold off on leasing Federal coal until the State has geared up for that possible increase in reclamation work and things like that.

Mr. CAMP. Well, the study then that is being made is not by the Northern Plains Resource Council itself?

Mr. SWEENEY. Not the council per se. We are involved in working with the study but unfortunately the names are so close, it is the Northern Plains Resource Council and the Northern Great Plains resource program and they are often confused.

Mr. CAMP. Thank you.

Mrs. MINK. Thank you very much, Mr. Camp.

We thank you, Mr. Sweeney, for your testimony. Regretably the chair was not informed that the House would be going into session at 11, but I note from the bells which just rang that we will be.

Consequently, we may not be able to devote as much time to our next witness as I would have liked.

But, Mr. Lahn of the Sierra Club, we welcome you to the committee and you may proceed with such time as there may be remaining.

STATEMENT OF RICHARD LAHN, WASHINGTON REPRESENTATIVE, SIERRA CLUB

Mr. LAHN. Thank you very much.

I first would like to commend Mrs. Mink and Mr. Udall and others on the committee for their valiant efforts in fighting for strong strip mining bill and for trying to make some rational sense out of the coal policy in this country.

I think this is probably one of the most terrible situations I have seen on how to run a national resource policy and how to manage it properly.

I really cannot think of any charitable way of describing the overall plan in the program that is laid out for developing coal resources in the West.

It has just been random, haphazard, shotgun, whatever name you want to ascribe to it.

It is probably one of the best case studies on how not to manage a program, and how to go about it wrong.

There was a statement made in reference to the report which came out by the Council on Economic Priorities that it seems that the policy has been that it has been better to have leased and lost than never to have leased at all.

In an effort to bring some kind of focus to this whole issue, the Sierra Club filed a lawsuit to try to force a cessation to major coal-related developments in the West until such a plan was produced, until such an environmental and tax study was produced and imposed and until comment and due process could take place.

It was a very humble undertaking. All that we wanted to do was to get an adequate environmental impact statement before the various Federal programs went ahead, and they were going ahead full tilt.

This is despite the fact of a leasing moratorium. And curiously enough, we tried to make the case that there was not a plan, that there was not an overall planning mechanism, and this all had to be coordinated and put through the NEPA process. And we took it to district court and the judge ruled, and I will quote from that ruling. He said:

There is no evidence of record in this case that individual projects by private industry, the development of coal and other resources in the area defined by the plaintiff as the "Northern Great Plains Region" are being planned are constructed as part of any integrated plan or program for any such area, or that any such individual projects are interrelated or integrated with other like projects.

The court further found that the Northern Great Plains resources program was only designed "to provide a tool for planning at all levels of government rather than to develop an actual plan."

The court turned us down and said they did not need an impact statement because there was no plan, and nobody really had an approach to developing the resources out there. In fact there is an affidavit from Secretary Morton in this case supporting this contention.

He said we do not have a plan. And he was aruging against a lawsuit out there. The district court ruled against us.

We now have this case under appeal and we have taken it to the appeals court, and they recently just came out with an order, and they granted us an expeditied review of this matter. And there is some very interesting language in this order. They said "There is a spectre of significant hard to large tracts of valuable wilderness areas that still remains." They are worried about "irreversible actions." Before the appeal was decided they gave a work of warning to the Department of Interior to be careful and to "exercise substantial restraint" is the way they put it in all of their future developments of coal in that area.

Now, what we are talking about is that there has not been any review process and NEPA has not been complied with at all. You were alluding to this earlier. Let me just very briefly tell you what has been complied with and what has happened since 1970 out in the Northern Great Plains that has not been complied with in the NEPA process.

The Federal Government has leased 137,406 acres for coal mining. They have granted prospecting permits on 671,014 additional acres. They have entered into water auctions for 601,000 acre feet annually. Also granted by the Department of Interior have been 75 preference right lease applications involving 186,246 acres.

Twenty-nine applications or extensions in coal prospecting permits involving 74,000 acres. Fifty-six competitive coal lease applications involving 369,000 acres. And I have a full list that I will be happy to provide of what has not been complied with through the NEPA process.

There is not a plan, and they admit there is not a plan. I think this is a terrible way to do business and it is scandalous.

It would seem, and I want to outline and get to the specific merits of this bill and I have a number of I think very important suggestions on the legislation, but it would seem that there is time available now to call a halt to what is happening in the Northern Great Plains and start to do it right.

I do not think that there is any need to rush into it right now on the whim of the coal industry having prior commitments or existing leases they have not developed for years, and that a number of people have alleged they are sitting on so that the price will go up.

I think the time is to say right now we should call a halt and try to do it right. And I wanted to outline a rational approach of what I think should be done in the interim period. And right now is a good opportunity with this coal leasing moratorium in effect to extend it and to do a number of very important studies.

What I wanted to do in the remainder of my testimony and I am not sure of the time constraints but I wanted to outline a number of very important areas that I think the Department of Interior should study first, and then some specific changes in the bill that I think are going in the right direction.

First, in the series of studies, number one, I would say is that the question must be addressed as to is Western coal low sulphur? There is a lot of information that has come out recently that goes to the point that Western coal may be low sulphur, but it is now low enough. I will cite two instances.

There is a hearing examiner's decision in Nebraska on the Gerald Gentleman Power Plant. The Sierra Club was a party to that. In that decision the hearing examiner found that the preponderance of the evidence did not prove that the Wyoming coal which was going to be used in the Gerald Gentleman Power Plant was low-sulphur coal. He had one test boring and it did not make a prima facie case that it was going to be low sulphur enough to not require scrubbers in Nebraska.

Second, I refer to a National Journal Article of July 6, 1974, page 1018.

A study by the U.S. Bureau of Mines found that a sample of coal from a Wyoming coal mine had moisture content of 29.9 percent by weight and negligible sulphur content, but when the coal was dried there was no moisture. The BTU value had increased from 7850 to 12,830 BTU's per pound of sulphur content increased to .9 percent by weight. This weight level exceeds the limits for new plants prescribed by the Clean Air Act Amendments of 1.2 pounds of sulphur per million BTU's which transmits into .7 percent sulphur content by weight.

So, the coal content in Wyodak, Wyo., at least from this report, was that the coal was not low sulphur enough and that is the big area they are now developing in that whole region.

I think you have to address this question before you go hellbent on a policy of assuming a low-sulphur coal in the West and before the coal industry pulls up all of its stakes in the East and heads out there.

That is one area that must be looked into before future development is allowed.

Second, will consumers be overcharged by developing Western coal in preference to Eastern coal?

Now, Pat outlined one of the responses that was made in a study on the two strategies, the Department of Interior considered on what could happen to Western coal in preference to Eastern deep mine coal.

I think implicit in all of this is if they go out West that nuclear power is going to some day step right in immediately and save the day.

Well, all the reports that I see and in my judgment I do not see this in the future. The problems on how consumers may be over-

charged in this way, I bring you to the question of what the transportation costs associated with developing and transporting and shipping Western coal to the East will be, the energy cost, the fuel cost, and the net energy from Western coal minus the transportation energy costs must be looked into.

Another thing that is contributing to this is the problem of pass throughs and rate structures in State utility commissions. It is found to be more economic for utilities to adopt cleaner fuels in preference to stack gas scrubbing equipment, because they can get an immediate pass through of these fuel costs where they cannot get immediate action through the public service commissions on the rate increases for a capital cost or I guess it would be for operating costs.

Well, and capital costs for scrubbers.

There is one very important document that addressed this question. It was the Sulphur Oxide Technology Control Panel of 1973, pages 68 to 69 and I think this was a Federal interagency task force that came out with these words. This was not a number of environmental organizations making this statement. I would like to submit the whole passage for the record, but I would like to read the last paragraph if I may.

Mrs. MINK. The entire passage will be placed in the subcommittee files.

Mr. LAHN. Thank you.

> While the probable dislocations in fuel supply resulting from these factors raise many questions, one of the most disturbing is the precipitous rush by the utilities to obtain low sulfur coal contracts and thus to show 'good faith' in compliance insofar as the low sulfur coal is available. Vigorous utility competition for low sulfur coal from new and proposed mines in Wyoming and Montana has led to widespread speculation in land and water rights, particularly in the Powder River Basin. Much of the coal in this region lies under land whose surface rights are privately owned but whose mineral rights are either owned by the Federal government or Indian tribes. Few mines are operating today but many applications for leasing public mineral rights are pending and blocks of coal deposits owned by the railroad and other private interests, the states and Indian tribes (off the reservations) are being unitized for exploitation. Acceptable reclamation of these semi-arid lands has yet to be demonstrated. The sudden surge for development of these resources finds both states and the responsible Federal agencies inadequately prepared to cope with the array of immediate problems presented by the development let alone long-range cumulative effects on the economic, physical, and social environment of the region. Since stack gas cleaning represents a technological alternative in the near-term to such a culture-and-environment-shattering resource development, the full implications of both options should be explored.

In the paragraph I probably should have read but I did not, they go into the point about pass throughs and adding a bias as to the fact that this is an added incentive for increasing Western coal in preference to using stack gas scrubbing.

The third thing that has to be done is that they have to prove reclamation.

Nowhere, and you are probably a better judge than I, sitting through the years of debate on the stripmine bill, as to whether they can prove reclamation in the West.

I have not seen any data that shows it. Empirical data on reclamation in the West. And I think this should be proved and that

there is time available in this interim period before we proceed in development of the West to do this.

The fourth thing is that there is implicit, with all coal development in the West, there is a water cost. The national Academy of Sciences Report addresses this. They go to the point that it appears that most of the water in a number of parts of Montana is already assigned uses, it is already committed.

They mention in the report in many places water in the West is overcommitted. The same is true in Wyoming and most of the States out there. For every acre of coal that is leased, implicit in that is water that is attached to it and it seems right now as though well, there is not a plan that exists, there certainly is not any focus in the Department of Interior about trying to pull together in an orderly fashion, and I would say that the Northern Great Plains resources program, if allowed to go through to its end, in a responsible fashion, will address this question.

But, I do not think anything should be allowed until this question is resolved.

What are the water problems going to be?

Now, let me go to specific points in the legislation that I think should be changed.

Mr. CAMP. Madam Chairman, if you would allow me to interrupt the gentleman for just a minute, I hope you will forgive me for doing so, but I would ask unanimous consent, I know he has asked to put certain statements he has made in the record but I would suggest that he make his whole statement of recommendations and that we could put in the record at this time.

Mrs. MINK. Yes. The chair would concur with that request. If you have any written statement you would care to submit we will leave the record open for a week so that you might submit it to the subcommittee. Your Statement may contain recommendations with regard to this legislation, and it will be inserted in the record at this point.

[The material referred to will be furnished at a later date and will be placed in the subcommittee files.]

Mrs. MINK. And you may have 5 minutes to finish your statement.

Mr. LAHN. Okay. Thank you very much.

I would like to go very quickly then into specific changes in the legislation.

I think it is going in the right direction but I think there are some things that should be changed.

In section 2(a), sub (a), sub 2, where it talks about plans that have to be in place, these comprehensive land-use plans, I think the comprehensive land-use plans have to address the question of existing leases.

It also has to address the question of private coal. I do not think you can operate in a vacuum here and just assume you can start a brand new program with a new leasing program and come up with a comprehensive plan on just a new leasing program for leases in the future.

You have to address what the impacts are going to be on private coal development in that area, because that is going to affect what the comprehensive land-use plan is going to look like.

You also have to address what the impact is implicit in the existing leases.

Then turning to section 7, I would also support what Pat stated on changing the terms of the lease from 20 years, I would say 10 years.

And the point here is that I do not think it is proper to give any longer time than necessary so that coal companies could buy up leases and sit on the land as some have speculated waiting for prices to go up.

I would also suggest on line 12 deleting the words "the end of its primary term of 20 years" and inserting "5-year intervals" so that you should possibly consider readjusting these leases at 5-year intervals, considering what effects had been made on the price and on what additional environmental requirements may be necessary on the leases.

I would suggest also on section 7, sub(c), there is a very good due process referring to the leases with public participation and notice, and I would also suggest that due process, that it may be possible on a certain size lease, and it may be necessary, to hold public hearings, and I think that may be addressed in this legislation.

Now, I think also there should be a due process associated with the mining plans also. There is not any particular reference to that in this legislation, but there should be a notice and public input into the mining plans also.

On page 4, line 19, the sentence that begins the Secretary may approve revisions, I disagree strongly with the clause in that sentence that says or is the only means available to avoid severe economic hardship to the lessee.

In other words, I do not think it is fitting. I can see where the lease, there should be maybe changes in the mining plans, but I do not think that a valid ground is that it would impose severe economic hardship. I think this is a loophole where somebody could come in, make a good faith effort in the proposal and then just throw up their hands 3 years later and say we are very sorry, we just cannot do it.

And I do not think that it is necessary to keep marginal operations in business if they are not going to do a proper job.

I also have a concern with reference to something Mr. Udall said that addresses the royalty provisions and one of the problems in paying back to the local areas. While I am afraid that this may act as a tapeworm in a sense to drive coal development, because of the incentive that is held out for lease services, which will be provided from the mining produced from the coal, the problem here on the royalties is that the money does not come forth at the proper time from what I have seen.

When they go out and develop in Wyoming, the goods and the services and the hospitals and schools, all of them are necessary and needed in advance before the money starts flowing in the Federal Treasury.

So that it seems to me there seems to be a time gap between when the money is really needed and when it arrives at the local level and that may be an issue which may be worth being addressed.

I would also very quickly like to mention three other important changes.

Mrs. MINK. I regret, Mr. Lahn, but I must leave, so if you would submit the remaining recommendations in writing to the committee I assure you that we will take them into consideration in drafting a clean bill which it is the intention of this chairman to draft and submit and call for the markup sometime in September when we return after the recess.

We would like to have your statement however, within a week so that the record can be closed and the hearing printed in time for the markup session in September.

Mr. LAHN. Thank you.

Mrs. MINK. Thank you very much, Mr. Lahn. I apologize again for not being informed in advance that the House was going into session early this morning.

For the record, there are statements that need to be inserted and without objection these statements will be inserted. They were previously approved by Mr. Hosmer.

[The statements follow:]

STATEMENT OF HON. FRANK E. MOSS, A U.S. SENATOR FROM THE STATE OF UTAH

Madame Chairman, I want to thank you for the opportunity to testify before your subcommittee and to present my views on how S. 3528, the Federal Coal Leasing Amendments Act, might be strengthened.

The bill before you comes at an opportune moment. The legislation which you report can contribute significantly to improving the Department of Interior's new coal leasing program, EMARS, which will soon go into effect.

I see two problems with that policy which the bill, in its present form, fails to remedy.

First is the likelihood that small coal operators are going to be shut out from successful bidding for new coal leases. The bill repeals the prospecting permit preference right leasing system, requiring instead competitive bidding for all Federal leases. The EMARS leasing strategy is designed to select lease sites which will draw large bonus bids. Thus competitive bonus bidding will impose a front-end cash load that many responsible but small firms will not be able to meet.

Preference right leasing is inconsistent with the principle that the public should receive fair market value for its resources. That principle must not be perverted, however, to make the Federal coal lands,which are a public heritage, the exclusive province of a small number of very rich corporations.

Therefore, I urge the Subcommittee to consider adopting an amendment requiring Interior to lease a minimum percentage of the annual coal acreage under either a deferred bonus system or a royalty bidding system Under the former, the operator would pay the bonus in installments, thus allowing a company to generate revenue from mining a lease to pay the bonus. Under the latter system, bidding would be on the amount of royalty rather than the size of the bonus. Such a system would have to allow for a declining royalty rate to prevent high royalty costs from prematurely curtailing production.

My second concern is that the bill does not adequately ensure that the Department will have the power to enforce diligent production requirements. There are 195 Federal coal leases in my state, Utah. 176 of them produce no coal.

Although the bill requires the submission of development plans to the Secretary, the bill leaves the Department's power to enforce production requirements in doubt. According to the Council on Economic Priorities' recent report, "Leased and Lost", 321 of the 474 western coal leases have never produced a ton of coal. Yet Interior has never sought the cancellation of a single coal lease.

I suggest the Subcommittee adopt an amendment giving the Department *administrative* power to cancel coal leases for failure of the lessee to comply with diligent production clauses. The Department has such power now respecting oil and gas leases, but must move through the Justice Department to the Federal courts for cancellation of a coal lease.

STATEMENT OF W. P. SCHMECHEL, VICE PRESIDENT AND GENERAL MANAGER, WESTERN ENERGY CO.

Montana Power Company and its subsidiary, Western Energy Company, express their gratitude for the opportunity to submit for the record to the House Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs, the following testimony regarding S.3528, Federal Coal Leasing Amendments Act, 1974:

Montana Power Company and Western Energy Company agree that certain provisions of the Mineral Leasing Act of 1920 need modification to prevent large multi-national concerns from forestalling exploration and development of the nation's mineral resources by controlling these resources with no plan for development until the marketplace offers the highest possible economic returns. The ability to hold such leases at minimal cost to the lessee is fraught with the hazard of preventing development in a time frame consonant with national energy requirements. Our concern also extends to the speculator, who enters into coal leasing activities with neither the financial ability nor the technological capability of developing the resource. His express intent is to reap a windfall profit. We believe coal leases should be granted to interests that clearly can demonstrate a need for the coal resource. We, therefore, endorse the intent of this legislation.

We do, however, offer the following suggestions in the interest of clarification and to ease the administrative burdens which could occur:

In reference to Section II, (a)(1) we would suggest that at the end of this section, the following wording be added: "Provided, however, such leases shall furnish the lessee with tracts of sufficient size to permit continuity of operations for the life of the lessee's proposed project."

We would further suggest the following addition to Section II, (a)(2): remove the period after the word *adoption* in line 15 and add, "except where mining operation already is extant or where additional leases are necessary for the continuation of an existing mining operation or where an environmental impact analysis encompassing the lands containing the coal deposits previously has met environmental, public hearing and other requirements herein.

We would urge the elimination of Section III of the proposed legislation which would end coal prospecting. We would suggest that the right to convert a prospecting permit to lease reside with the permittee as at present, provided, however, that upon conversion to lease the permittee would be required to pay a bonus amount consistent with amounts offered under competitive leasing procedures applying to U.S. coal of comparable quality and quantity and recoverable under similar physical conditions. We submit the preceding with the intent or permitting prospecting rather than discouraging or repealing the right to prospect for coal. Not all of the coal that could benefit the nation's energy position has been discovered and without the right of prospecting, discovery may never occur.

Section VII (c): The provisions of this section are duplicative of provisions contained in S.425 and H.R. 11500, both of which are under consideration by conference committee in the Congress. These requirements are covered in Section 213 of S.425 and Sections 210 and 211 of H.R.115000, and would therefore be redundant in S.3528.

In addition to the redundancy of this Section VII (c), a one year period within which to prepare the development and reclamation plan and to set forth the specific work to be performed and the manner in which coal extraction will be conducted in insufficient. Such a plan requires drilling, coring, analysis of the coal, soils analyses, overburden analysis, and the preparation of detailed maps. An effort of this magnitude would require several years and could not be accomplished in the time frame specified.

Again, Montana Power Company and Western Energy Company appreciate this opportunity to present their views on this legislation.

UNITED MINE WORKERS OF AMERICA,
OFFICE OF THE PRESIDENT,
Washington, D.C., August 15, 1974.

Hon. PATSY MINK,
Chairperson, Subcommittee on Mines and Mining, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE MINK: The United Mine Workers of America support S. 3528 and the work your subcommittee is doing to improve and update the Mineral Leasing Act of 1920.

There are many defects in the method by which federal mineral rights are leased and the way these leases are used. We believe that S. 3528 helps alleviate some of these problems. In our view, the three major areas of concern are the lack of production in the leased areas, the method of bidding and the environmental and social impacts of coal leasing policies.

In this time of energy shortages, what is needed most is increased production. The fact that only 10% of the coal being leased is actually being mined in inconsistent with this goal. Something should be done to put an end to the price speculation which is retarding the development of these coal reserves.

Many companies use the loophole of advance royalty payments to avoid actual production. This practice should end. Royalty payment in lieu of actual production is not solving our energy problems.

In addition, the Secretary's power to terminate nonproductive leases should be clarified, and if need be, strengthened. Unless diligent development is taking place the lease should be revoked. This will help increase production.

The various methods of bidding all have their advantages and their disadvantages. Front heavy, bonus bidding discriminates against small companies, but helps insure that all the coal will be mined. The competitive royalty bid allows the small companies to pay as they go, but the resulting high royalty rates encourage coal to be left in the ground if it is not easily extracted. Perhaps a combination of the two is called for.

The royalty rates could be predetermined to allow for differences in quality and availability. For instance, coal which lays far below the earth's surface would have a lower royalty rate than surface coal. This would make deep coal as attractive as surface coal because of the lower cost. A similar method could be used to reflect differences in quality.

The competitive nature of bidding which is desired could be included by using a front end bonus bid, but to prevent small companies from being excluded the payment could be made over a period of years. This installment method would allow the small companies to pay as they go.

Finally, special attention should be given to the social and environmental impacts of mining. Since surface and mineral rights are usually separate, environmental concerns should be given top priority. Channels should be opened to concerned citizens so they may participate in the forming of land use and production plans, which companies must adhere to.

Representative Camp's concern, expressed in the hearing, about the social impact on the surrounding communities should be seriously considered. The increased demands on community services, such as school, hospitals and utilities, due to the influx of coal miners, is a direct responsibility of those who benefit from the leases (namely the federal government, state governments, and coal companies). Perhaps some of the lease revenue and coal profits could be used to help these communities provide expanded services for their new and old citizens.

There is concern here at the UMW about these matters. We offer both our suggestions and our support for S. 3528.

Sincerely,

ARNOLD MILLER.

STATEMENT OF J. ALLEN OVERTON, JR., PRESIDENT, AMERICAN MINING CONGRESS

Madam chairman and members of the subcommittee, my name is J. Allen Overton, Jr., I am president of the American Mining Congress, a national association of U. S. mining companies that produce most of the nation's metals, coal, and industrial and agricultural minerals. The American Mining Congress wishes to comment on S. 3528, a bill which would amend certain provisions of

the Mineral Leasing Act of 1920. The development of coal on federal lands in the West is a subject of vital importance to the mining industry, and the bill before you is the cause of great concern to us.

The Arab embargo on oil exports to the western nations earlier this year suddenly focused the country's attention on coal as a reliable, long-range source of energy which has not been developed to its potential. Due to environmental considerations which have now become controlling, new coal development will probably be centered primarily on low-sulfur coals situated in federal lands in the West rather than on eastern coals with higher sulfur content. Although some federally owned coal is already under base to the coal industry, tremendous reserves of federal coal, recoverable by low-cost strip mining, remain unleased and hence would be affected by the provisions of S. 3528.

We feel that the goal of the federal government in the current situation should be to bring the low-sulfur western coals into the market as soon as possible, and at as low a price as possible, to alleviate the problems arising from our dwindling domestic reserves of oil and gas and from our increasingly difficult air pollution situation. The Minerals Policy Act of 1970 stated the intent of the Congress to encourage the development of minerals by private industry. The opportunity is now present for the federal government to implement that policy and to further the attainment of the goal previously suggested by leasing federal coal to private industry both as supplements to reserves already held privately and in large enough quantities to support independent new mines.

We feel that S. 3528 does not accord with this goal in that it would:

(1) Destroy much of flexibility presently given to the Secretary of the Interior in issuing and administering leases,

(2) Favor large companies and increase inflationary pressures by requiring that leases be issued only by competitive bidding.

(3) Reduce the search for new economic coal reserves on federal lands by eliminating the provision for prospecting permits and preferential leases.

(4) Introduce as contractual lease obligations new reclamation requirements although a different regulatory scheme for coal land reclamation has already been passed by both Houses of Congress, and

(5) Impose unrealistic time requirements for development of coal deposits under lease.

In considering the regulation of coal leasing in the West, certain realities should be borne in mind. Western coal will be used primarily for the generation of electricity in thermal-electric plants and for the manufacture of synthetic natural gas and oil, although some small amount may also be useful for metallurgical purposes. The deposits in many instances are remote, and consequently the industrial facility using the coal—i.e. a power plant or gasification plant—may be located adjacent to, or in the vicinity of, the mine and hence the end product of the plant will often be transported to the market, rather than the coal. Even if not located close to the mine, the plant may well be dependent on one mine for its entire coal supply. In order to justify the siting of an industrial facility costing hundreds of millions of dollars in a remote location, the plant will require a contract from the mine guaranteeing it a dedicated coal supply for the life of the plant—from 25 to 35 years. Consequently, a coal reserve of substantial size must be firmly held by the mining company in order to make such a project acceptable to the utility industry and to the financial institutions lending funds for its establishment. The economies inherent in large-scale mining operations also argue for the accumulation of large reserves in a single ownership.

It should also be recognized that even after acquiring a lease for a coal deposit, the mining company requires a substantial time to accomplish drilling on the deposit sufficient to develop data upon which to base a proposal to mine and sell coal, and after this information is acquired and a proposal made for sale of coal, the mere negotiation of a long-term contract for supply to a power or gasification plant may consume in excess of a year.

Prompt economic development of western coal will be seriously impeded by anything in the statutes or regulations governing coal leasing, or in the administration of the leasing system, which will operate to prevent the accumulation in a single ownership of sufficient reserves to fulfill a long-term contract or impair the ability of the lessee to hold such reserves for a lengthy time prior to

commencement or production or which will cast doubt on the nature of lease requirements during the life of the lease. S. 3528 contains several such elements.

Section 2 of S.3528 would require that coal lands be leased only by competitive bidding and would remove the Secretary's present flexibility to issue leases by other methods. This provision would favor large companies and would also prevent the Secretary from considering other factors which may be very important in considering prospective lessees, such as other coal lands already owned, water rights owned and surface rights owned. It is argued that competitive bidding assures the government a "fair return" for its minerals, but it should be remembered that lease costs such as bonuses, rents, and royalties are all passed on to the consumer in the form of higher coal prices and really amount to a hidden tax on the public. We believe this proposed limitation is inconsistent with the best interests of the nation.

Section 2 would also require the Secretary to prepare a comprehensive land use plan with which all leases to be issued must be consistent. Interminable delays in the coal leasing program might result from such a provision, especially since the Secretary's adoption of a land use plan might be such a major action as to require the filing of an environmental impact statement under NEPA. Additionally, in areas where the surface is in private ownership and the coal is owned by the United States, jurisdictional conflicts may be involved. In view of these factors and in view of the reluctance of the House of Representatives to act in the field of land use legislation earlier this year, it would seem unwise to impose this requirement on the Secretary.

Section 3 of S. 3528 would repeal the provisions of the Mineral Leasing Act relating to prospecting permits and preferential leases. We doubt that all economic reserves of coal in federal lands are now known. Hence it is not wise to remove from the Secretary the discretion to issue prospecting permits. Instead, he should be encouraged to resume the issuance of such permits. The preferential right to a lease if the prospector is successful should also remain in the statute. Without such a right the prospector would be effectively denied the fruits of his work and few would seek a prospecting permit.

Section 4 of S. 3523 would make the life of a coal lease after the first 20 years dependent on continuous production and would limit the Secretary's power to substitute a minimum royalty requirement in lieu of production to "circumstances neither caused by nor attributable to the lessee." It would further require the submission by the lessee of a development and reclamation plan to the Secretary within one year after lease issuance and severely restrict the Secretary's ability to approve revisions of that plan. As mentioned above, the lessee must have a lengthy period of time within which to develop information about the coal deposit, to find a market for the coal, and to negotiate sales contracts. One year after issuance of the lease is entirely unrealistic. In this connection there have been assertions from several resources in recent months that lessees of existing federal coal leases in the West have held them undeveloped while waiting for coal prices to rise. These statements fail to recognize the historic supply and demand pattern in the coal industry prior to the recent increase in demand for low-sulfur coal and the oil embargo. While there may be some outstanding leases in the hands of speculators, it should be recognized that many lessees have made efforts to develop their holdings, but until recently there was no great market for western coal and some efforts by lessees to open mines and make sales were rejected by potential buyers in favor of other alternatives. The proposed provisions of S. 3528 with respect to the lease term would be clearly inequitable, especially with respect to a lessee who has spent substantial sums in development of his lease but has been unsuccessful in making coal sales.

Section 4 would also require submission of a reclamation plan to the Secretary. Since both Houses of Congress have passed bills establishing a statutory scheme for mined land reclamation, there should not be a separate contractual obligation imposed on the lessee by the terms of his lease. This would merely require duplication of effort and could lead to conflicting requirements between the statutory regulation and that required by the Secretary under the lease.

There is also a provision in section 4 that the rents, royalties, and other terms of the lease will be subject to revision by the Secretary at the end of the initial 20-year term and each 10-year period thereafter, rather than at the end of each 20 years as presently provided. As mentioned above, longer term

certainty of lease provisions is highly desirable because of the long-term nature of the coal sales contracts required for the large-scale projects which will use the coal. Even the 20-year provision in the present statute causes much concern.

In conclusion, we believe the present Mineral Leasing Act does not require the modifications proposed by S. 3528. This bill would severely restrict the degree of discretion presently available to the Secretary and would not be conducive to development of federally owned coal. At a time when the nation sorely needs new large, dependable, economic sources of energy, it is not desirable to undertake an unnecessary statutory revision which reduces the flexibility of the administering agency.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM,
Washington, D. C., August 22, 1974

Hon. PATSY T. MINK,
Chairman, Subcommittee on Mines and Mining, Committee on Interior and Insular Affairs, Longworth Office Building, Washington, D.C.

DEAR MADAM CHAIRMAN: Submitted herewith, on behalf of The Atchison, Topeka and Santa Fe Railway and Burlington Northern is a joint statement in support of repealing section 2(c) of the Mineral Leasing Act of 1920, which restricts the issuance of Federal coal leases to railroad companies. We respectfully request that it be included in the official hearing record on S. 3528, amending certain coal leasing provisions of the Mineral Leasing Act.

Sincerely yours,

ROBERT M. CLARK,
Vice President.

Attachment.

STATEMENT OF THE NEED TO REPEAL SECTION 2(c) OF MINERAL LEASING ACT OF 1920

Section 2(c) of the Mineral Leasing Act[1] prohibits any railroad company from obtaining federal coal leases, other than "for its own use for railroad purposes." Since all commercial railroads have converted from coal to diesel fuel the result is that no meaningful use of coal from federal leases is now possible for them. Section 2(c) also imposes restrictive acreage limitations on railroads which are not applicable to other lessees. The reason for these restrictions has long ceased to exist, if it was ever valid. They were placed on railroads because of the unfair advantage it was believed they might have over other coal producers because they owned their own transportation capability. However, there are other existing regulatory controls intended to prevent any possible transportation advantage of railroads. The "commodities clause" of the Interstate Commerce Act (49 U.S.C. §1(8)) clearly prohibits any railroad company from transporting in interstate commerce coal "mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

Three times in the period 1957–1966 the Senate has passed legislation repealing section 2(c)[2] only to have it die in the House, in part because of the opposition of the National Coal Association. A principal reason for failure of the House Interior Committee to take action on the proposal in 1966 and after was apparently Chairman Aspinall's well-known policy decision not to take up any significant public land legislation until the Public Land Law Review Com-

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[1] "No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this chapter for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

Nothing in this section and section 201 of this title shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines." 30 U.S.C. § 202.

[2] S.2069, 85th Cong., S.1192, 87th Cong., S.3070, 89th Cong.

mission, created by Congress in 1964 to conduct a comprehensive review of public land policy, had completed its study and submitted its report and recommendations. After careful consideration of this issue, the Commission in its 1970 report recommended repeal of section 2(c). Copies of the Commission's recommendation and relevant extracts from the contract study done for the Commission on federal coal leasing are attached.

The opposition of the National Coal Association over the years does not appear to have extended beyond a desire by a majority of its members to block competition for federal coal leases by certain western railroads which own coal lands interspersed with federal lands in a checkerboard fashion. Such a narrow view runs counter to the public interest in light of the nation's energy needs. There is some reason to believe that the National Coal Association may have abandoned its previous position, since NCA president Carl E. Bagge vigorously supported increased competition for federal coal leases in his recent testimony on S.3528 before the House Mines and Mining Subcommittee on August 13, 1974. Indeed it would be unseemly for coal producers to continue to obstruct efforts by railroads to obtain equal eligibility for federal coal leases with other corporate entities at a time when coal companies are making a strong move into the transportation field through their promotion of coal slurry pipelines. (See S.3879 recently reported out of the Senate Interior Committee (S. Rept. 93–1072) and presently pending before the Senate Committee on Commerce on referral.)

Section 2(c) is antithetical to the Department of the Interior's objectives to promote greater competition and more rational, environmentally sensitive decision-making in its coal leasing program. There is no valid reason why railroad companies ought not to be able to compete for federal coal leases on a non-discriminatory basis with all other eligible applicants, such as large coal companies, electric utilities, natural gas pipelines, coal pipelines, and large integrated energy companies. Removing the artificial restraint on railroad entry into the federal coal market can only help to improve the present competitive situation. Similarly, in the checkerboard owner-ship areas where the railroad lands are located, economic efficiency and environmental considerations may well dictate development of a mixed ownership tract as a "logical mining unit" under the BLM's EMARS planning program, but such development may be frustrated where railroad lands are involved because of the constraints of 2(c). In short, section 2(c) is the kind of outmoded public land legislation which can only hinder rational, efficient and environmentally sound development of public land resources, as did the unduly restrictive right-of-way provisions of the Mineral Leasing Act in connection with the Alaskan pipeline.

The Administration's proposed full scale revision of the Mineral Leasing Act, for which the Department stated a strong preference at the hearings on S. 3528, would repeal section 2(c). (See H.R. 5442, §§3(b), 101(a)(1), 102(a), and 123(a)(1)). S.3528, Senator Metcalf's bill to amend some of the coal leasing provisions of the Mineral Leasing Act, does not repeal section 2(c). If a more limited bill dealing only with coal leasing along the lines of S.3528 is favored by the Committee, it should be amended to include a section repealing 2(c), as follows: "Subject to valid existing rights, subsection 2(c) of the Act of February 25, 1920 (41 Stat. 438, as amended, 30 U.S.C. §202) is hereby repealed."

EXTRACT FROM ONE-THIRD OF THE NATION'S LAND, A REPORT TO THE PRESIDENT AND THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION (JUNE 1970)

RECOMMENDATION 53 (PP. 135–136)

"Removal of Restrictions

Recommendation 53: Restrictions on public land mineral activity that are no longer relevant to existing conditions should be eliminated so as to encourage mineral exploration and development and long standing claims should be disposed of expeditiously.

Coal Leases

Provisions of existing law prohibiting the apportionment of royalties and imposing minimum production requirements on each lease[32] *should be modified to permit unitization of public land coal leases.*

[32] 30 U.S.C. § 201–1 (1964).

There is an increasing demand for large consolidated coal reserves, particularly where needed to assure a long-term fuel supply for mine-mouth generating plants. We believe it is in the public interest to permit the same techniques for unitization of coal leases as are now allowed for oil and gas.

Likewise, restrictions upon the leasing of public land coal deposits to railroad companies should be removed.[33] The fears of monopolistic control which led to the enactment of the existing restrictions no longer are applicable. The importance of pipelines and truck transportation and the growing use of mine-mouth generation have materially reduced any competitive advantages railroads may once have had over other coal producers. Furthermore, it appears that other Federal laws, such as the antitrust laws, are far more effective in regulating the competitive position of the railroads than the public land laws."

EXTRACTS FROM LEGAL STUDY OF COAL RESOURCES ON PUBLIC LANDS, COLLEGE OF LAW, UNIVERSITY OF UTAH (DECEMBER 1968) PREPARED FOR THE PUBLIC LAND LAW REVIEW COMMISSION (NATIONAL TECHNICAL INFORMATION SERVICE PUB. NO. 196325)

1. Restrictions on issuance of federal coal leases to railroad companies

A. EXISTING LAW (PP. 159–60)

"*c. Railroad limitations*

Companies and corporations operating common carrier railroads are under special and very restrictive acreage limitations under the mineral leasing acts. Companies and corporations operating common carrier railroads may obtain coal leases or permits only for use for railroad purposes. Further, such companies are prohibited from holding permits or leases for more than 10,240 acres in the aggregate and the are further prohibited from holding more than one permit or lease for each 200 miles of railroad lines served or to be served from the coal deposits. This length limitation is exclusive of spurs or switches and also exclusive of branch lines built to connect the leased coal with the railroad. This limitation is also exclusive of parts of the railroad operated mainly by power otherwise than by steam.[104]

"Under the present circumstances, in which practically all the railroads in the nation are now operated by diesel electric locomotives,[105] it is apparent that railroad companies are effectively precluded from leasing federal coal land.

"As originally enacted in 1920 the limitation concerning railroad companies was phrased only in terms of the number of permits or leases per amount of line which could be held by a railroad company. A railroad company could not hold more than one permit or lease for each 200 miles of railroad lines within the state where the coal was located. A 1944 amendment altered this to both a lease limitation and an acreage limitation.[106] The legislative history for this amendment indicates that this change was ostensibly made to permit railroads to obtain needed coal more easily.[107]

"A regulation attempting to clarify the status of a company or corporation operating a common carrier railroad which might enter into a collective contract under section 201–1 was promulgated in 1967. This regulation says that if a railroad company enters into a collective contract or development contract with a federal lessee under this particular provision of law for the purpose of developing its own lands but not for development of any federal lands leased by the railroad, that the railroad company shall not be deemed to be given or to hold a lease by a virtue of any such arrangement between the working interest owners. The intent of this provision is to allow railroad companies to enter into agreements with others whereby the railroad owned lands and federal leases owned by the others could be operated under a cooperative prospecting development or operation contract without having the railroad company be considered thereby to be holding federal leases in violation of the law.[108]

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[33] 30 U.S.C. § 202.
[104] 30 U.S.C. § 202 (1964).
[105] Except for one or more tourist attraction railroads.
[106] Act of June 13, 1944, ch. 244, 58 Stat. 275.
[107] H.R. Rep. No. 1540, 78th Cong., 2d Sess., 1 (1944).
[108] 43 C.F.R. § 3131.5–6 (1968). The statute is 30 U.S.C. § 201–1 (1964).

"The validity of this regulation has not been determined. Until this is done there may be a natural reluctance to make large investments based upon it. In addition it should be noted that section 201–1 prohibits apportionment of either royalty or production, two additional factors which might inhibit use of cooperative agreements."

B. PROBLEM POSED (PP. 230–31)

"*1. Limitations Affecting Railroad Companies*

At the time of the original enactment of the Mineral Leasing Act of 1920 there existed strong, adverse feelings about the participation of eastern and midwestern railroads in coal activities. As a result severe restrictions were built into the act limiting the acreage and use of coal from leased federal lands by railroads. Such coal can be used only for railroad purposes and the acreage limitation is severely limited. Recently all commercial railroads have converted from coal to diesel fuel, thus no meaningful use of coal from federal leases is now possible for them. This, however, is but part of the problem. Three of the western railroads received substantial land grants containing coal. These grants were in alternate sections in rows several miles wide on each side of the railroad right of way. The result is that ownership of coal lands in large areas is in a checkerboard arrangement. It is said that this checkerboard arrangement deters economic development both of the railroad and Government owned areas for present industrial, electric generation or other large uses. In any event, the use and acreage limitations imposed on railroad companies effectively preclude direct development by the three railroad companies involved of their lands, they argue, for it prevents the blocking up of sufficient acreage to permit direct or indirect participation in any large scale venture. They argue that the limitations thus inhibit development of all coal lands, whether state, federal, railroad, or private in these checkerboard areas.

"Recent regulations provide that railroads which commit their lands along with lands of non-railroad federal lessees for cooperative development contracts will not be charged with the interests of the federal lessees. This is apparently intended to foster development of federal and railroad lands, but because of the high stakes involved in such large scale developments as might be undertaken for mine-mouth generation plants or unit-train operations, there is a natural reluctance to avoid the hazard of a lawsuit to test the validity of the regulation. On the other hand, however, it has been argued that the elimination of these restrictions on the leasing of federal coal by railroads could result in the railroads having an unfair advantage over other coal producers because of the combining of both transportation and mining in one company."

C. PROPOSED AMENDMENT (PP. 288–89)

"Restrictions on Railroad Leasing

Alternative No. 24

Remove in whole or in part the limitations on railroad leasing and use of federal coal.

Issues or Problems To Be Solved

For reasons deemed adequate in 1920, railroads were prohibited from using coal obtained under federl leases or permits held by them for any purpose other than railroad uses, and, in addition, the amount of federal land which a railroad could hold under lease or permit was drastically restricted. Although the acreage limitations have been somewhat modified the acreage limitation applied to railroads is much less (10,240 acres) than the general acreage limitation (46,080 acres per state). Three major railroads received coal lands as part of their land grants for construction of the railroad. These lands were in a checkerboard pattern on either side of the railroad right of way. When railroads used coal for motive power, they could use coal from their lands and some coal from federal lands advantageously. Now they are considerably more limited for coal is not used as a fuel for railroad locomotives. One additional law should also be noted. The Interstate Commerce Commission Act prohibits common carrier railroads from transporting certain articles, including coal, in which they have a legal or equitable interest except for railroad uses.[5] It is contended by the railroads which own coal lands in the public land states that

[5] 49 U.S.C. § 1(8) (1964).

the cumulative effect of the checkerboard arrangement and the mineral leasing act restrictions is to limit severely their ability properly to utilize their own resources as well as to limit the utilization by the government of the interspersed federal coal resources. (p. 159)

Key Features

Railroads are now prohibited from using coal from federal lands for any thing but railroad uses purposes. They are stringently restricted as to the acreage of federal leases or permits which they can legally hold. The key feature of this possible modification is the amelioration or elimination of this difference in treatment between railroad companies and others.

Probable Advantages

(1) Facilitate better conservation practices.

(2) Permit more flexible use by the affected railroad companies of their own) coal lands.

(3) Tend to foster development of the federal and other lands within the checkerboard areas.

(4) Foster development of western coals.

Probable Disadvantages

(1) Permit more active participation in coal development by owners of very large coal reserves.

(2) Potentially unfair competitive advantage inurring to the railroads owning these coal deposits because of the possibility of combined mining and transporting of their own product and that of others (ignoring for the moment the effect of the 'Commodities Clause' of the Interstate Commerce Commission Act.)"

STATEMENT OF HON. FRANK E. EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Madam Chairman, I am testifying in support of S. 3528, the Federal Coal Leasing Amendments Act of 1974.

Reform of the Federal coal leasing program is long overdue. Over the years, a speculative situation has been created through extensive leasing with insufficient competition. This has been based on an inadequate understanding of the value of the resources being leased combined with no assurance of development. The public has not received energy from its leased resources, the Treasury has not received a fair market return from the public's resources, and the public's land and water have not been protected.

The members of the Senate Interior Committee who drafted this bill are to be commended for their action, and the distinguished Chairlady and members of this Subcommittee also deserve commendation for their expeditious handling of this legislation.

Though I support the bill passed by the Senate, I do have some comments on certain provisions of the Senate-passed bill and some suggestions for additional reforms that could be incorporated into the bill in the House.

Section 2 requires the Secretary of Interior to develop a comprehensive land use plan including all lands to be leased for coal. This requirement would have more meaning if the Secretary were given some criteria to guide him in developing and evaluating the land use plans.

Section 3 of S. 3528 repeals the provisions of the Mineral Leasing Act of 1920 which provide for the issuance of prospecting permits and preference right leases. Considering the amount of Federal coal lands already under lease and those areas established as known coal leasing areas, there is no pressing need to continue to issue prospecting permits. In contrast to earlier times, our needs today aren't so much to find new coal beds but to get the coal lands we have already identified and leased into production. The system of automatically granting a preference right lease to the holder of a prospecting permit who discovers coal in commercial quantities has been widely held as contributing to the present speculative situation and should be discontinued.

Section 4 of S. 3528 amends Section 7 of the Mineral Leasing Act of 1920 in several important ways.

S. 3528 establishes a term for coal leases of twenty years and for so long thereafter as coal is produced annually from that lease. A term of ten years would be

much more appropriate in that it would provide adequate lead time for any development plan and more frequent review of progress toward development of the lease. A shorter lease term will help prevent speculation that is likely to take place with a twenty year lease.

The lease should also be subject to readjustment at shorter intervals than at the end of the primary term of 20 years thereafter. Again, a shorter interval between adjustments would discourage speculation and give the Federal Government more flexibility in managing its resources.

The Interior Department has suggested that a requirement of annual production for automatic extension of leases could be easily met and could allow lands to be tied up indefinitely without stimulating production. Some provision tightening this language in the Senate bill should be added.

A major deficiency in the administration of the coal leasing program by the Interior Department has been the Department's neglect in enforcing the diligent development requirements of the Mineral Leasing Act of 1920. To their credit, the Interior Department is moving now to issue regulations defining diligent development for the purpose of enforcing the law. Diligent development is the single most important and central issue in reforming the coal leasing program. If nothing else were done, proper enforcement of existing law requiring diligent development would correct many of the abuses of the past. If the Committee can agree on a suitable definition, it would be helpful to have diligent development specifically and rigorously defined in the bill to be sure that there is no recurrance of past practices.

The minimum rent of $1 per acre is too low. A rental schedule should reflect the policy objective of timely and orderly development. Accordingly, if there is to be any rent it should be very high with rentals credited against future royalties. The General Accounting Office reported in early 1972 that the Geological Survey had already computed new rental rates of $2 per acre for three Wyoming leases, $3 and $3.50, respectively, for two lease offerings in Utah, and $9.50 and $13, respectively, for two other proposed leases of high-quality coal in Colorado. One former Interior Department official who ran the coal leasing program at one time suggested to me the figure of $100 per acre as an appropriate rental fee.

S. 3528 gives the Secretary the discretion to allow payment in advance of a minimum royalty in lieu of continuous production under the lease if the Secretary determines this to be in the public interest "Where production is prevented by strikes or other circumstances neither caused by no attributable to the lessee . . ." As written, this provision is a dangerous loophole that could perpetuate the speculative situation we have had. This language is so broad it could include practically anything under "other circumstances" such as a downturn in the coal market or adoption of strict environmental standards. This language must be tightened to where it can still function to give the Secretary necessary flexibility in special circumstances, such as natural disasters, and no more.

The bill leaves the matter of setting an appropriate royalty up to the discretion of the Secretary of Interior. The Secretary should be directed to set a percentage royalty rate, with an appropriate minimum set by law, thereby assuring a better and more fair return on coal produced. The flat rate system currently used has produced scandelously low royalties as the market price of coal has increased.

I am particularly pleased with Section 5 of S. 3528, which will allow revenues returned to State and local governments to be used for public purposes in addition to schools and roads. The need to support the schools and provide for and maintain an adequate road system is obvious—but so is the need for other essential facilities and services that local government must provide. These local jurisdictions must bear the burden of providing vital services such as water and sewer systems, health and emergency services, and police and fire protection.

One of the most distressing trends in recent years has been the domination of various sectors of the energy industries by a few companies and the acquisition of many companies in other fields by the large oil companies. The major oil companies are truly energy corporations.

The Council on Economic Priorities has reported that there is a great concentration of coal lease holdings among corporations. 15 out of a total of 144 leaseholders control 70% of all coal leases. This group includes 5 oil companies, 7 out of the top 15 coal producers in the Nation, and 13 electrical utilities. The largest leaseholders speculate the most. The 15 major leaseholders have rights to 70% of the public coal lands, but this land has produced only 48% of the

coal from all leases. Five of those major leaseholders—El Paso Natural Gas, Westmoreland Resources, Shell Oil Company, Sun Oil, and Richard Bass—have never produced a ton of coal from their leases.

One method that may help to curb these trends would be to change the bidding system used by the Department in competitive lease offerings. The present system, the so-called "front-end" bonus bidding system, favors those with the most risk capital. The Interior Department is currently experimenting with a royalty bid sale on the Outer Continental Shelf. The Secretary should be authorized and directed to experiment with various bidding systems, such as the royalty system or deferred bidding system, on a percentage of their lease offerings in order to determine which system would better foster competition.

I really don't have any specific suggestion as to how it might be done, but I believe the long term interests of the Nation require that something is done to assure that our coal resources are conserved and used wisely. Coal operators should not be allowed to only extract the coal that is most profitable and then leave or make it impossible to extract additional coal resources at the site.

The Interior Department has been making much of a new concept called "logical mining units." Under this concept, a number of leases, Federal, State, or private, are all consolidated for planning purposes into one "logical mining unit." I urge the Subcommittee to look upon this new concept with some skepticism. It may turn out to be a device where land can be tied up for speculative purposes by producing coal from one lease within the logical mining unit, so the unit would be producing coal, while the remaining leases would all remain unproductive for a long period of time. If this concept is given any statutory basis, it should be done only under appropriate safeguards.

Lastly, I urge the Subcommittee to legislatively extend the current moratorium on Federal coal leasing. It could be extended either for a definite period of time or pending the submission of a report to the Interior Committees of Congress and approval by the respective Committees of a resumption in leasing. The House Appropriations Subcommittee on Interior and Related Agencies, of which I am a member, took a similar approach in acting on the proposed increase of oil and gas leasing on the Outer Continental Shelf.

The Senate Report on S. 3528 describes the current status of the Federal coal leasing program. "There are currently outstanding coal leases covering almost 800,000 acres of Federal land. These leases include over 15 billion tons of recoverable coal reserves. In addition, applications for preference right leases have been filed for almost 300,000 acres of Federal land estimated to contain almost 7 billion tons of coal. Active prospecting permits cover almost 370,000 acres and additional pending lease applications cover over 500,000 acres." Coal production under Federal leases amounted to 1.7% of total U.S. production in 1972 or 10.2 million tons. Despite the current moratorium on issuance of new coal leases the recoverable coal reserves on public lands already committed to development are equal to 540 years of production at the estimated rate in 1975.

Congress has a job to do in reforming the Federal coal leasing program, and we have the time to do a good job if we will only take it. I urge the Subcommittee not to be unduly hurried and pass out a narrow bill that does not make all the reforms needed. Even if this bill is not enacted into law this year due to a shortage of time at the end of the session, it should provide the basis for expeditious action next year and give the Interior Department an indication of the determination of the Congress in this matter.

Mrs. Mink. And the committee is now adjourned.

[Whereupon, at 11:15 a.m., the hearing in the above-entitled matter was concluded.]