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Dear Mr. Chairman:

This is in response to your letter of August 3, 1972, in which you asked for our comments on the replies you requested from the Department of the Interior, the Department of Justice, and the Civil Service Commission on certain matters discussed in our report entitled "Improvements Needed in the Assessment and Collection of Penalties--Federal Coal Mine Health and Safety Act of 1969" (B-170686, July 5, 1972).

COMMENTS ON THE REPLY OF THE DEPARTMENT OF THE INTERIOR

The Department, in its August 31, 1972, reply to you, made a general observation that the assumptions and conclusions drawn in our report were based on a sampling of case files, which the General Accounting Office (GAO) auditors assumed to be representative of the entire operation, rather than upon a complete review of all the files.

Of the 12 items of statistical data in our report

- five were based on all the penalty assessment cases available at the time of our review,
- five were selected on a random basis, and
- two were selected on a nonrandom basis because of the impracticality or impossibility of determining the total universe from which to make a random selection.

A description of the 12 major items of statistical data in our report and their bases are contained in Appendix I.

Because our statistics were based on the total number of penalty assessments or on samples which were usually randomly selected, we believe that the statistics were representative of the entire operation at the time of our review, which covered operations through December 1971. The Department noted also, in its reply to you, that the management system and practices in use at the time of our review were no longer in use and that the overall picture had changed since our review. We acknowledged in our report (see pp. 19 and 23) that the Department was making or planned to make certain changes in the operation of the assessment program.

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In your letter to the Department, dated July 31, 1972, you expressed particular concern over five matters covered in our report. These matters, the Department's response and our comments thereon are as follows.

Guidelines on six factors

The first matter about which you expressed concern to the Department was the necessity for prompt publication of proposed guidelines defining the six factors which the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) requires to be considered in determining the amount of penalties assessed for violations of the act. The proposed assessment guidelines, which the Department discussed in its reply to you, were published in the Federal Register on August 26, 1972.

We believe that the proposed August 26, 1972, guidelines generally did not contain the depth of guidance necessary to achieve more uniformity in assessments. An official of the Department's Office of the Solicitor informed us that because of the adverse comments on the proposed guidelines, primarily from the coal mining industry, new proposed guidelines were drafted. In our opinion, the new proposed guidelines, which were published in the Federal Register on November 22, 1972, are an improvement over the previous proposed guidelines but there is still a need for more guidance on the consideration of certain factors and on the weight to be given the factors.

The new proposed guidelines, in our opinion, do not provide sufficient guidance for the use of assessors in considering and weighting all of the factors when assessing penalties. For example, the new proposed guidelines state that in considering the appropriateness of the penalty to the size of the operator's business, the assessor should ensure that each operator is penalized in proportion to the size of his business and his ability to continue in business. However, the guidelines do not contain any standards as to the size of businesses, nor do they indicate the importance of this factor as compared to the other five factors.

Concerning the weighting of the factors, the reply stated that it would not be appropriate to place any different weight on any of the six factors.

Because the assessors must consider the factors when assessing penalties, we believe that additional guidance on how to apply the definitions in the proposed guidelines would lead to less subjectivity and more uniformity and consistency in the penalty assessment process.

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An official of the Office of the Solicitor informed us in September 1972, that the assessors were being sent copies of key case decisions on coal mine penalty hearings, rendered by the Department's Board of Mine Operations Appeals and by hearing examiners of the Department's Office of Hearings and Appeals, which contain additional guidance on how the six factors are to be applied. We did not determine the use made of this information by the assessors.

Documentation

The second matter was the need for each assessor to document in the files of the Department's Bureau of Mines the basis for the initial penalty assessment and any subsequent reduction of the amount of the penalty as a result of a protest by the mine operator.

Regarding our recommendation that the assessors adequately document the consideration and weight given each factor in assessing a penalty, the Department responded that the magnitude of the number of assessments precluded the documentation of the rationale for individual penalties if a reasonable level of efficiency was to be maintained in the operation of the Bureau's Office of Assessment and Compliance Assistance.

The documentation that we recommended would involve some added paperwork. However, since the documentation should merely consist of the assessor summarizing on paper the rationale that he used in determining the amount of the penalty, we do not believe that the added work should be very time consuming.

During discussions of this matter with an official of the Assessment Office in November 1972, we were informed that the assessment worksheet, which presently lists only the health and safety standard violated and the dollar amount of the initial assessment and the reassessment for each violation, was being redesigned to provide for some documentation of the consideration given each of the six factors. The new proposed guidelines provide that a copy of the new assessment worksheet be attached to the proposed assessment order sent to the mine operator. However, the format of the new worksheet will not be developed until after the new proposed guidelines have been finalized. Because the new assessment worksheet had not been fully developed, we were not able to evaluate how it will meet the need for documentation which we recommended.

Priority in collecting penalties,
increasing of staff, and other matters

The third matter was:

- (1) The steps the Department had taken or planned to take to carry out the following GAO recommendations:

"The Director, Bureau of Mines, should be required to:

- Issue guidelines defining each of the six factors and describing the consideration and weight that should be given each factor in determining the amount of a penalty.
- Make the guidelines available to mine operators.
- Provide for adequate documentation by the assessors in the Bureau's files of the consideration and weight given each factor in assessing a penalty.
- Give the same priority to collecting penalties as that given to assessing penalties."

- (2) When the Department expected to fill the existing vacancies in the Bureau's Assessment Office and to hire additional hearing examiners and lawyers to carry out this program more efficiently and economically.

Concerning the first three recommendations, the Department's response to them and our comments thereon have already been given in prior sections of this letter.

Priority for collecting penalties

The reply indicated that the Department has taken action to give the same priority to collecting penalties as that given to assessing penalties.

Staffing increases

An Assessment Office official informed us in August 1972 that the Assessment Office staff consisted of 41 permanent employees, including 12 assessors, and that two inspectors were in the process of being reassigned as assessors. In our report to you, we noted that as of December 31, 1971, only four permanent assessors had been employed. A Bureau official informed us that additional clerical positions were being filled for field offices

but that any further hiring action other than this would not be taken until the overall staffing requirements of the Assessment Office were evaluated to determine where the staff is needed--at headquarters or in the field--and the type of staff needed.

An official of the Hearing's Office informed us in November 1972, that there were seven hearings examiners handling penalty assessment cases, an increase of three since our report was issued. An official of the Solicitor's Office stated that since our report was issued two attorneys had been added to the staff handling actions under the Federal Coal Mine Health and Safety Act of 1969.

The Supplemental Appropriation Act for fiscal year 1973 (Public Law 92-607, October 31, 1972) provided funds for the hiring of 10 additional attorneys and nine additional hearings examiners to handle penalty assessment cases. However, because of the need to obtain an increase in the personnel ceiling imposed on the Department by the Office of Management and Budget (OMB), which is discussed in more detail later in this letter, the Department has not filled these positions. A Department official informed us in December 1972 that the Department had not yet received approval from OMB for such an increase, but had reallocated positions within the Department in order to allow for the filling of nine of these positions.

Protests of assessments

The fourth matter was the Bureau's apparent violation of Departmental regulations governing the time for protesting assessments by mine operators. You questioned the Bureau's practice of considering receipt of a protest within 30 calendar days after the date it mailed the assessment to the mine operator, as satisfying the requirement in the Department's regulations that a protest be made within 15 working days of receipt of the proposed assessment by the mine operator.

Subsequent to our review, the regulation was changed to require action by the mine operator within 20 calendar days of receipt of the proposed assessment rather than 15 working days (which was considered the equivalent of 30 calendar days). In its reply, the Department stated that the Bureau was strictly adhering to the 20 calendar days provided for in the regulations.

Examinations by Office of Survey and Review

The fifth matter was the steps that would be taken by the Department on the following GAO recommendations:

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"The Director, Office of Survey and Review, should be given the responsibility to:

- Determine whether the revised management system is effective in meeting management's needs, after the system has been in operation for a reasonable period.
- Evaluate the effectiveness of the actions planned to achieve speedy processing of cases, after they have been implemented for a reasonable period."

The reply stated that the Director, Office of Survey and Review, had been given this responsibility. According to an official of the Office of Survey and Review, that Office does not plan any evaluation of these areas until the cognizant operating offices or the Office of Survey and Review consider that the revised management system and the actions planned to speed case processing have been in effect for a reasonable time.

COMMENTS ON THE REPLY OF
THE DEPARTMENT OF JUSTICE

You requested the Department of Justice to initiate consultations with the Department of the Interior on harmonizing the application of the Federal Coal Mine Health and Safety Act of 1969 and the Federal Claims Collection Act (31 U.S.C. 951). The Department of Justice replied that it had been in close contact with officials of the Department of the Interior and that these contacts resulted in the development of procedures for expeditious referral of assessment cases to the Department of Justice and the enforcement of civil penalties in the Federal district courts.

An official of the Bureau of Mines' Assessment Office informed us that the collection procedure now provides for sending one demand letter and a personal contact by telephone, rather than sending three demand letters and a personal visit as formerly required. We did not determine if this new procedure was being carried out in an expeditious and effective manner.

In our report, we noted that as of April 10, 1972, 136 cases had been forwarded to the Department of Justice for collection action. As of November 10, 1972, according to information furnished by the Assessment Office, 1,341 cases had been sent to the Department of Justice for collection action.

COMMENTS ON THE REPLY OF
THE CIVIL SERVICE COMMISSION

In commenting on the efforts of the Bureau of Mines to obtain staffing, our report to you stated:

"According to an Assessment Office official, efforts to obtain assessment and clerical employees were further hindered by limitations imposed by the Civil Service Commission in August 1971."

You requested the Commission's advice on the steps it was taking to allow the Bureau to promptly fill all authorized positions.

The Commission replied that the information given to GAO was inaccurate. As indicated in the Commission's reply, the Office of Management and Budget, in August 1971, imposed the requirements for reductions in staff and average grade level on all Federal agencies and set certain staffing and grade level goals to be met by June 1972 and June 1973. The recent efforts by the Department of the Interior to fill Assessment Office positions was discussed previously.

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You also requested our advice as to what steps have been taken by the General Accounting Office and the Department of Justice to insure that any claim arising under the Federal Coal Mine Health and Safety Act of 1969 is offset by the Bureau of Mines against any sum owed by the United States to a coal operator.

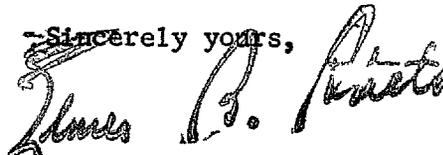
A question has arisen regarding the authority of the Bureau to use offsets prior to entry of a judgment by the court enforcing the assessment order. This question is still under consideration, and we shall advise you of our views at a later date.

We have not obtained formal comments from the Department of the Interior on the matters discussed in this report because of your desire to expedite processing of the report. We plan to make no further distribution of this report unless copies are specifically requested and then

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we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James B. Aronson".

Comptroller General
of the United States

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

DESCRIPTION OF THE 12 MAJOR ITEMS OF
STATISTICAL DATA AND THEIR BASES CONTAINED IN OUR
REPORT ENTITLED "IMPROVEMENTS NEEDED IN THE ASSESSMENT
AND COLLECTION OF PENALTIES--FEDERAL COAL MINE
HEALTH AND SAFETY ACT OF 1969" (B-170686, July 5, 1972)

The following statistics were based on all of the assessment cases for the period in question:

- The decrease in the percentage of cases in which penalties were reduced as a result of protests from mine operators from a high of 74 percent for cases assessed in March 1971 to about 19 percent for cases assessed from May through September 1971. (See p. 16.)
- The increase in the average amount of penalties assessed against mine operators from a range of \$60 to \$160 in February through July 1971, to a range of \$265 to \$360 in August through November 1971. (See p. 18.)
- The status of the backlog of 1,062 assessment cases on which mine operators had requested formal hearings but which, as of December 31, 1971, had not yet been held. (See p. 21.)
- The 1,785 outstanding assessment cases as of November 30, 1971, on which the Bureau should have taken collection action. In 40 percent of these cases some collection action had been taken whereas in the remaining 60 percent of the cases no collection action had been taken. (See p. 33.)
- The results from collection action on the 40 percent of the assessment cases on which some collection action was taken. (See p. 33.)

The following statistics were based on a random sample of the assessment cases for the periods in question.

- The average time of about 129 days between citation of a violation by the mine inspector and the issuance of a proposed assessment order. (See p. 11.)
- The average time of about 10 weeks from the date of request for a hearing by the mine operator to the date the case was referred to the Solicitor. (See p. 12.)
- The status of 50 penalty assessment cases referred to the Solicitor for hearings. (See p. 21.)

- A sample of about 400 violations assessed from April through December 1971 which showed that about 50 percent of the penalties were assessed at the minimum amounts. (See p. 25.)
- The analysis of assessment cases on which no collection action had been taken as of December 31, 1971, which indicated that collection action was an average of 53 days overdue. (See p. 33.)

The following statistics were based on a nonrandom sample of assessment cases for the periods in question

- The average response time, from date of assessment order to receipt of the protest in the Assessment Office, was 22 calendar days. (See p. 19.)
- The status of the cases subject to the Federal Claims Collection Act which showed that initial demand letters were sent about 43 days after the required time. (See p. 33.)