

STATEMENT
OF
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BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

“PREVENTING POLLUTERS FROM GETTING GOVERNMENT CONTRACTS: BUREAU OF LAND
MANAGEMENT’S CORPORATE EXCLUSIONS LISTS”

JULY 28, 2022

Chair Porter, Ranking Member Moore, and Members of the Subcommittee, thank you for giving me the opportunity to discuss our office’s January 2022 report, [*The Bureau of Land Management Did Not Review the Federal Exclusions List Before Issuing Federal Mineral Leases*](#). As you know, inspectors general have a direct reporting relationship to Congress. My office and I take this obligation seriously, and we appreciate the Subcommittee’s continued support for our independent and objective oversight.

This an example of effective Government oversight: The Office of Inspector General (OIG) discovered and reported on an issue, and the agency took it seriously, accepted our recommendations, and took steps to implement them.

In this report, we concluded that the Bureau of Land Management’s (BLM’s) leasing staff did not check the SAM.gov Federal exclusions list, which identifies entities precluded from doing business with the U.S. Government, before issuing Federal mineral leases. Both Federal regulations and DOI policy require the BLM to do so. In addition, we found the BLM did not have internal policies or procedures in place to determine if a lessee was excluded from doing business with the Federal Government. These deficiencies increased the risk that the BLM may enter into business relationships with non-responsible entities, which in turn increases the risk of fraud, waste, and abuse of taxpayer dollars and Federal resources. We made four recommendations to the BLM to help it comply with Federal regulations and reduce the risk of issuing Federal mineral leases to entities that are suspended or debarred. The BLM concurred with our recommendations and responded that it is taking action to implement them.

Background

The BLM’s Federal Mineral Resources

The BLM is responsible for managing 245 million surface acres of public lands and 700 million subsurface acres of Federal minerals—approximately 33 percent of the Nation’s subsurface mineral resources. The BLM issues leases to private entities for energy and mineral exploration and production on Federal lands, including oil and gas, coal, helium, renewable energy, and other mineral resources. In 2020, royalties, rental payments, and bids on these leases led to \$5.2 billion in revenue.

Federal Suspension and Debarment Regulations

The suspension and debarment process protects the Federal Government from fraud, waste and abuse through various tools to avoid doing business with certain entities and individuals that present a high risk because of their past conduct. More specifically, suspensions and debarments are administrative remedies that prevent the Government from working with parties who are not “presently responsible” within the meaning of the relevant regulations. In other words, they have engaged in criminal or other improper conduct or demonstrated poor performance of such a compelling and serious nature that it would lead one to question their honesty, ethics, or competence. Suspension refers to the temporary exclusion of a person or company for up to 18 months, typically while an investigation is pending and during any ensuing legal proceedings. Debarment refers to a final decision to exclude a person or company for a fixed period, which generally does not exceed 3 years but can be longer under more severe circumstances.

The U.S. Department of the Interior (DOI) OIG has an Administrative Remedies Division that develops cases and refers recommendations for administrative action to the DOI Suspending and Debarring Official. Suspensions and debarments are imposed only where it is in the best interest of the Government. These remedies cannot be used as punishment and are intended to protect the Government from the risk of waste, fraud, or abuse. Essentially, there are two questions involved: (1) Does an entity’s or person’s misconduct or poor performance indicate a business risk to Federal programs? (2) Has the entity or person mitigated the business risk to Federal programs by undertaking certain remedial and corrective measures so that suspension and debarment are not necessary?

Both suspension and debarment have Governmentwide effect; if an entity is suspended or debarred by one agency, that decision is effective as to all Federal agencies. Executive departments and agencies, including the DOI, are required to determine if entities seeking to do business with the Federal Government are prohibited from participating in Federal programs before entering into any business relationship. To effectuate this requirement, Executive Order No. 12549, *Debarment and Suspension* (February 18, 1986), directed the creation of a uniform suspension and debarment system for nonprocurement programs. The order stated that agencies shall not, unless an agency grants an exception, permit an entity to participate in covered programs if that entity has been debarred, suspended, or otherwise excluded from participation by any executive agency.

The DOI subsequently adopted regulations, policy and guidance requiring awarding officials to check the Federal exclusions list before issuing awards, including mineral leases or subleases. The policy also requires awarding officials to document this review.¹

The DOI OIG’s Inspection of the BLM’s Compliance With Suspension and Debarment Regulations for Federal Leases

In this inspection, our objective was to determine whether the BLM checked the Federal exclusions list before issuing Federal mineral leases. Our inspection included leases that the BLM issued from October 1, 2016, through September 30, 2020. During the time period at issue

¹ DOI Acquisition, Assistance, and Asset Policy No. 39 (DOI-AAAP-0039), *Pre-award Eligibility Screening Requirements*, issued in 2015.

in our inspection, the BLM reported that it issued 5,168 Federal mineral leases covering more than 5.1 million acres.

We found that BLM leasing staff did not check the Federal exclusions list before issuing leases. We also found that while the DOI required each bureau to have policies and procedures directing leasing staff to check the Federal exclusions list before issuing a lease, the BLM itself did not.²

We interviewed 29 BLM employees—BLM leasing staff from the five State offices that issued 87 percent of these Federal mineral leases³ and employees at BLM headquarters. Only 1 of the 29 employees we interviewed was aware of the requirement to check the Federal exclusions list before our inspection. None of the employees in fact reviewed the Federal exclusions list to determine that lessees were not excluded before issuing leases. Further, only one BLM State office employee expressed any awareness of the Federal exclusions list.

The BLM employees we interviewed further reported that the BLM did not have processes that required these verifications to occur. We reviewed the BLM's leasing manuals and confirmed that the BLM did not have procedures in place for the leasing staff to check the Federal exclusions list before issuing leases.

We also reviewed the complete list of leases the BLM issued during the time period covered by our inspection.⁴ We compared these lessees to the Federal exclusions list and identified six that potentially matched.⁵ We attempted to confirm that the entities that received BLM leases were the same entities that were on the Federal exclusions list, but we could not do so.⁶

The Federal Government established the Federal exclusions list precisely to avoid the possibility of doing business with excluded or disqualified entities. Without checking the Federal exclusions list before issuing leases, the BLM faces an increased risk of issuing leases to suspended or debarred entities.

Given our findings, we made four recommendations to help the BLM comply with Federal regulations and reduce the risk of issuing Federal mineral leases to entities that are suspended or debarred from doing business with the Federal Government. Specifically, we recommended that the BLM:

1. Immediately require leasing staff to review the Federal exclusions list before issuing, transferring, or assigning leases and to document that review in the lease file

² DOI-AAAP-0039.

³ The Montana-Dakotas, Nevada, New Mexico, Utah, and Wyoming State offices issued 4,516 of the BLM's 5,168 total leases between October 1, 2016, and September 30, 2020.

⁴ During this time period, the BLM issued 5,168 leases to 762 lessees.

⁵ These 6 entities accounted for 108 leases covering 166,218 acres of Federal land.

⁶ While the names of the entities were the same, the addresses were different. Given the possibility that a business may have different addresses for different purposes—for example, different offices in different states—we did not rule out the likelihood that the entities may be the same. Our inability to match the entities was further exacerbated by the fact that not all entities on SAM.gov have unique identifiers, such as DUNS numbers or CAGE Codes.

2. Develop and implement an oversight mechanism that ensures that the leasing staff reviews the Federal exclusions list and documents the review
3. Develop and implement policies in compliance with DOI-AAAP-0039 requiring leasing staff to document the review of the Federal exclusions list before issuing, transferring, or assigning leases
4. Update applicable manuals to detail the processes for documenting the review of the Federal exclusions list for all leasing actions

In response to the draft report, the BLM concurred with the recommendations and provided target implementation dates. The proposed timeframes the BLM provided for implementing recommendations 2 and 3 were of concern to our office because the target dates were not until March 2024 and August 2023, respectively.

However, since our report was published, the BLM has taken some actions to implement our recommendations. For example, in response to Recommendation 1, the BLM took steps to ensure that leasing staff was checking the Federal exclusions list before issuing, transferring, or assigning leases. We consider Recommendation 1 closed. In addition, on June 28, 2022, the BLM issued an updated process and checklist for verifying eligibility, and, on July 8, 2022, the BLM issued an instruction memorandum with guidance on reviewing the Federal exclusion list and verifying eligibility. Finally, on July 21, 2022, the DOI issued a memorandum to all Bureaus and Offices to aid in its efforts to identify covered programs throughout the Department and to ensure that the Federal exclusions list is being checked appropriately throughout DOI.

As I said at the outset, our inspection and the BLM's and DOI's constructive response are an example of effective oversight. We will continue to monitor the BLM's implementation of our recommendations.

Thank you for your time, and I look forward to answering questions.