

FEDERAL REGISTER: 44 FR 12046 (March 5, 1979)

DEPARTMENT OF THE INTERIOR

AGENCIES: Office of Surface Mining Reclamation and Enforcement (OSM); Geological Survey

30 CFR Part 211

Regulation of Coal Mining on Federal Lands; Federal/State Cooperative Agreements; Utah

ACTION: Proposed rulemaking and notice of public hearing on modified cooperative agreement with Utah.

SUMMARY: This proposed rulemaking is for the purpose of modifying the existing Federal/State cooperative agreement between the Department of Interior and the State of Utah (30 CFR 211.77(b)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) (hereinafter referred to as the "Surface Mining Act") and Section 211.75(b) and (c) of Title 30 CFR. Such agreement for the cooperative regulation of surface coal mining and reclamation operations on Federal lands would be modified to (1) adopt amended State statutes and regulations containing new or modified enforcement procedures, environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law; (2) require the State regulatory authority to exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to Section 521 of the Surface Mining Act; (3) clarify the procedures for the cooperative review and approval of mining and reclamation plans for surface coal mining and reclamation operations on Federal lands; (4) provide for the termination of such agreement in the event the State does not implement the permanent Federal lands program or receive approval of a permanent regulatory program under section 503 of the Surface Mining Act on lands regulated by a State. Amendments to requirements of 30 CFR Part 211 necessary to implement these agreements are also proposed.

DATES: Interested persons may submit written comments on the proposed rulemaking on or before April 4, 1979. A public hearing will be conducted if public comment warrants.

ADDRESS: Comments should be addressed to the Director, Office of Surface Mining, U.S. Department of Interior, Room 233, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, with one copy to the Regional Director, Office of Surface Mining, U.S. Department of Interior, 1823 Stout Street, Denver, Colorado 80201. Copies of the Utah laws and regulations referred to in the proposed agreement are available for inspection in the Denver, Colorado, Office and in Room 120, South Interior Building, Washington, D.C., and the Department of Natural Resources, Division of Oil, Gas, and Mining, 1588 West North Temple, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT:

Donald Crane, Regional Director, Region V. Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80201, (303) 837-5421.

SUPPLEMENTARY INFORMATION:

The proposed rulemaking is intended to implement section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) and 30 CFR 211.75 as amended, 43 FR 37181-37196, August 22, 1978. Section 523(c) authorizes States which had entered into a cooperative agreement with the Secretary to regulate surface coal mining and reclamation operations on Federal lands prior to enactment of the Surface Mining Act, to continue regulation on Federal lands "provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act."

The modifications required by section 523(c) include (1) the adoption by the State of performance standards and other requirements as stringent as those promulgated pursuant to section 502 of the Surface Mining Act; (2) the incorporation of such new or amended State standards into 30 CFR Part 211 so as to make them applicable to surface coal mining and reclamation operations on Federal lands; and (3) modification of the enforcement procedures to be used by the State on Federal lands so as to require that the legal consequences of State enforcement are consistent with the results which would be achieved by Federal enforcement under section 521 of the Surface Mining Act.

1. State Standards. Prior to the signing of this cooperative agreement, Utah adopted new or amended regulations in order to implement section 502 of the Surface Mining Act on lands regulated by the State. Utah's environmental protection and reclamation standards as set forth in Appendix A of the proposed cooperative agreement qualify for application to Federal lands because they are as stringent as Federal standards in 30 CFR Part 211. The review of Utah's regulations has not

included a determination whether any standard is more stringent than the comparable Federal standard. Such a determination would be made pursuant to Section 211.75(a) of this Title upon the receipt of an application from the State.

Portions of the Utah Mined Land Reclamation Act relating to bonding and enforcement are also contained in Appendix A as additions to the proposed cooperative agreement.

2. Adoption as Federal law. Final approval of the proposed cooperative agreement as rulemaking would continue to authorize State jurisdiction over surface coal mining and reclamation operations on Federal lands so as to establish a uniform regulatory program applicable to both the State-regulated and Federal land portions of a mine. State jurisdiction will be exercised pursuant to the requirements of State law for the review and approval of mining plans, bonding and enforcement. In order to accomplish the application of State law and standards to Federal lands, specific provisions of the State statute and the State regulations identified in Appendix A of the proposed agreement are adopted as substantive Federal law enforceable by both the State and the Secretary. Certain provisions of State law as identified in Appendix A to the proposed cooperative agreement relating to bonding, judicial review, and public participation in the mining review process are not adopted or have been adopted conditionally by the Secretary. Public participation in the Secretary's review of mining plans applicable to Federal rules, although implementation of Federal rules will be administratively coordinated with State practices to the greatest extent feasible. The cooperative agreement requires that bonds required for Federal lands comply with both Utah and Federal law, and be subject to forfeiture by either agency. Utah law governing the posting of bonds is adopted by the Secretary subject to the terms of the cooperative agreement (see Appendix A items 1. (a) vii and xii). State procedures for judicial review are also adopted by the Secretary, but only for the purpose of assuring State court jurisdiction over State regulatory actions on Federal lands. No action by the Secretary, including final denial or approval of mining plans, shall be subject to State judicial review. (See item 1. (a) ix of Appendix A.)

3. Enforcement procedures. In order to "fully comply with the initial regulatory procedures in section 502," the cooperative agreement requires that Utah take enforcement actions on Federal lands consistent with those required of the Secretary by sections 502(e) and 521 of the Surface Mining Act. The Secretary believes that Utah has adequate authority under State law to cease mining operations and to require the correction of conditions or practices which create an imminent danger to the health or safety of the public or are causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. Paragraph A, Article VI of the proposed agreement requires the exercise of such authority when a representative of the Utah Division of Oil, Gas and Mining finds any condition, practice, or violation which would authorize the issuance of an order pursuant to section 521(a)(2) if such condition, practice or violation had been found by a Federal inspector.

However, Utah law does not authorize the Division of Oil, Gas and Mining to implement the requirement of section 521(a)(3) that cessation of surface coal mining and reclamation operations shall be ordered when a violation subject to a prior violation notice has not been abated within the time allowed. In order to remedy this deficiency of State law, Paragraphs B and C of Article VI delegate the Secretary's authority under the Surface Mining Act to representatives of the State regulatory authority. State inspectors will be personally designated as "authorized representatives" of the Secretary within the meaning of that term as used in section 521(a)(3) for the purpose of issuing notices and orders related to violations of Part 211 of this Title and the requirements of Utah law adopted as Appendix A and thereby applicable to Federal lands. This delegation of authority is made pursuant to both section 521(a)(3) of the Surface Mining Act and sections 303 and 307 of the Federal Land Policy and Management Act of 1976, Pub. L. 94-579.

The proposed cooperative agreement preserves the power of the Secretary to inspect for violations of Federal law or the requirements of Appendix A and to initiate enforcement under the Surface Mining Act. This reservation of authority preserves the system of dual enforcement applicable to non-Federal lands regulated by a State during the initial regulatory program under section 502 of the Surface Mining Act. The Secretary has also reserved this statutory duty to approve mining plans, designate lands unsuitable for mining and regulate other activities on Federal lands.

4. Effective Date. Although the Secretary of Interior and Governor Matheson have signed the Utah Cooperative Agreement such action does not render the agreement effective. According to its terms (Article II), the agreement does not become effective until published as final rulemaking. It was deemed desirable to sign the agreement prior to the proposed rulemaking in order to insure that the proposed rulemaking reflects the complete understanding of the parties. However, such signing does not preclude amendments to the proposed agreement prior to final rulemaking in response to public comment. Further, Section 211.75(c), as amended by the notice published at 43 FR 49009 (October 20, 1978), terminates all existing agreements unless modifications required by section 523(c) of the Surface Mining Act are "agreed to" prior to November 20, 1978. The signed agreement between the parties contained in the proposed rulemaking fulfills the

requirement of the rule and thereby allows the existing agreement to remain in effect until the modified agreement is finally approved.

5. Significance. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

6. Drafting Information. Principal authors of this document are the following: Donald Crane, Regional Director, Region V, Office of Surface Mining and Robert Yuhnke, Assistant Regional Solicitor, Office of the Solicitor, Denver, Colorado.

Dated: February 28, 1979.

HOPE M. BABCOCK, *Deputy Assistant Secretary for Energy and Minerals.*

1. It is proposed that the Department enter into and approve a modification of the Cooperative Agreement (30 FR 211.77(b)) published in the FEDERAL REGISTER at 42 FR 18068, April 5, 1977, to designate the State of Utah as an authorized State Regulatory Authority for the purpose of regulating surface coal mining and reclamation operations on Federal lands in Utah, to read as follows.

COOPERATIVE AGREEMENT

The State of Utah and the Department of the Interior enter into a State/Federal Cooperative Agreement, to read as follows:

Cooperative Agreement between the United States Department of the Interior and the State of Utah under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Utah, acting by and through Scott M. Matheson, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

ARTICLE I. PURPOSE

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Utah with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Utah. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for state regulation of surface coal mining and reclamation operations on Federal lands within the State.

ARTICLE II. EFFECTIVE DATE

This Cooperative Agreement is effective following signing by the Secretary and the Governor, approval by the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources, and upon final publication as rulemaking in the Federal Register. This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supersedes that Cooperative Agreement published at 42 FR 18068, effective April 5, 1977, 30 CFR Section 211.77(b).

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The State of Utah and the Secretary affirm that they will comply with all of the provisions of this Cooperative Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Utah Division of Oil, Gas, and Mining (hereinafter referred to as the "State Regulatory Authority") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor on Federal lands throughout the State.

B. *Authority of State Agency.* The State Regulatory Authority designated in paragraph A of this Article has, and shall continue to have, authority under State law to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of Title 40 Chapter 8 Utah Code Annotated 1953 (as amended), and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement, will provide protection of the environment at least as stringent as would occur

under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. *Effectiveness of State Procedures.* The procedures of the State for enforcing the requirements contained in Appendix A are and shall continue to be as effective as the procedures of the Department of the Interior.

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative Agreement. If the State Regulatory Authority complies with the terms of this Agreement, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

H. *Reports and Records.* The State Regulatory Authority shall make reports to the Secretary containing information respecting its compliance with the terms of this Cooperative Agreement, as the Secretary shall from time to time require. The State Regulatory Authority and the Secretary shall exchange, upon request, information developed under the Cooperative Agreement.

I. *Personnel.* The State Regulatory Authority shall have the necessary personnel to fully implement this Cooperative Agreement in accordance with the provisions of the Act.

J. *Equipment and Laboratories.* The State Regulatory Authority shall have equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses, can be performed or determined, and which are necessary to carry out the requirements of the Cooperative Agreement, or have access to such facilities and personnel.

ARTICLE IV. MINING AND RECLAMATION PLANS

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for surface coal mining operations to receive approval from the State Regulatory Authority and the Secretary of a mining plan and permit prior to conducting operations.

B. *Contents of Mining Plan and Permits.* The State of Utah by its Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical federal mining and reclamation plan and state permit application which shall be in the form required by the State Regulatory Authority and include any supplemental forms required by the Secretary. Such plan and application shall include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:
 - a. Utah Code Annotated 1953 as amended.
 - b. Mined Land Reclamation General Rules and Regulations and Rules of Practice and Procedure. M-3, and coal mining regulations MC-715 *et seq.*
 - c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201. *et seq.*; 91 Stat. 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1(a) and (b) above.
 - d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sections 181 *et seq.*, to the extent it is not otherwise required by 1(a), 1(b), and 1(c) above.
 - e. The requirements of 30 CFR Section 211.10.
 - f. Applicable terms and conditions of the lease or license.
 - g. Applicable requirements of other Federal laws.
2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.

3. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall jointly review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and mutually revise said Protocol as deemed necessary in accordance with the terms of the Protocol, Article XI of this Agreement to the contrary notwithstanding. Any revisions to the Protocol shall become effective upon notice published in the FEDERAL REGISTER.

4. Any final approval of a mining and reclamation plan and permit application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. When acting upon mining and reclamation plans and permits, or modifications or revisions thereto, the State Regulatory Authority and the Secretary agree that each of them will not approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph B1 of this Article.

5. When acting upon a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

ARTICLE V. INSPECTIONS

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by Utah state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining and reclamation plan, the permit area of the applicable state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operation on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all environmental and reclamation requirements of approved mining and reclamation plans or permits, but not to determine compliance with development, diligent production and resource recovery requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority will, subsequent to conducting any inspection, file with the Secretary a report adequately describing (1) the general conditions of the lands under lease, permit or license, (2) the manner in which the operations are being conducted, and (3) whether the operator is complying with applicable performance and reclamation requirements. A copy of this inspection report shall be furnished to the Secretary in accordance with regulations adopted pursuant to the Surface Mining Control and Reclamation Act. A copy of this report shall be furnished to the operator, upon request, and shall be made available for public inspection during normal business hours at the offices of the State Regulatory Authority and the Office of Surface Mining.

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary may conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be made in association with regular inspections by the State.

D. The Secretary may also conduct inspections to determine whether the operator is complying with requirements which are unrelated to environmental protection and reclamation.

E. Personnel of the State and representatives of the Secretary shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VI. ENFORCEMENT

A. If the State Regulatory Authority finds any conditions or practices, or violations of the Act, the requirements of Appendix A hereof, or of an approved mining and reclamation plan or permit which would authorize the issuance of an order of cessation under Section 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by Section 40-8-6 of the Utah Code Annotated 1953, as amended, to suspend the license of an operator.

B. 1) When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator consistent with and pursuant to Section 521(a)(3) of the Act.

2) When a notice and abatement schedule have been issued under B(1)(b) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with Section 521(a)(3) of the Act, the representative shall immediately issue an order consistent with and pursuant to Section 521(a)(3) of the Act.

C. For the purposes of implementing paragraphs B(1) and (2) of this Article, the Secretary delegates his authority to issue notices and orders pursuant to Section 521(a)(3) of the Act to representatives of the State Regulatory Authority who shall each be identified by a letter of authorization signed by the Director of the Office of Surface Mining. Such letters of authorization shall be rendered null and void upon the termination of this Agreement or upon revocation by the Director.

D. Appeals or requests for relief from any action taken by an authorized representative of the Secretary acting in his capacity as the Secretary's representative pursuant to paragraphs B(1) or (2) of this Article shall be filed in accordance with the rules of procedure adopted by the Secretary (43 CFR Part 4).

E. The State shall promptly notify the Secretary of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to the Agreement and of all actions taken with respect to such violations.

F. This Agreement does not limit the Secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate Federal law or Appendix A incorporated into Federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to conduct surface coal mining operations on Federal lands in accordance with 30 CFR Section 211.72 or assess civil penalties in accordance with 30 CFR Section 211.78.

G. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits, and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement.

ARTICLE VII. BONDS

A. *Amount and Responsibility.* The State Regulatory Authority and the Secretary shall require all operators on Federal lands to submit a single bond payable to both the United States and the State Regulatory Authority. Such bond shall be of sufficient amount to comply with the requirements of both State and Federal law and shall be conditioned upon compliance with all applicable requirements of Federal law and Appendix A hereof.

B. *Notification.* Prior to releasing the operator from his obligations under the bond required by State law for Federal lands, the State Regulatory Authority shall consult with and obtain the advice and consent of the Secretary.

C. *Release of Bond.* The State Regulatory Authority shall hold the operator responsible and liable for successful reclamation as required by the State law.

D. Either the State Regulatory Authority or the Secretary may forfeit the bond under State or Federal law.

ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

The Secretary may, in his sole discretion, and without instituting or commencing proceedings for withdrawal of approval of the Cooperative Agreement, notify the State Regulatory Authority that it has failed to comply with the provisions of the Cooperative Agreement. The Secretary shall specify how the State has failed to comply and shall specify and state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him that the State remedied the defects in administration and is in compliance with and has met the requirements of the Secretary. The period of time specified shall not be less than 30 days. Upon failure of the State Regulatory Authority to meet the requirements of the Secretary within the time specified, the Secretary may institute proceedings for withdrawal of approval of the Cooperative Agreement as set forth in Article IX.

ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be terminated as follows:

A. *Termination by the State.* The Cooperative Agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the Cooperative Agreement shall be terminated, but which date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary.* The Cooperative Agreement may be terminated by the Secretary pursuant to paragraphs D, E, and F of this Article whenever the Secretary finds, after giving due notice to the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement; or
2. That the State Regulatory Authority has failed to comply with any assurance given by the State upon which this Cooperative Agreement is based, or any condition or requirement which is specified in Article III.

C. *Termination by Operation of Law.* This Cooperative Agreement shall terminate by operation of law under any of the following circumstances:

1. When no longer authorized by Federal laws and regulations or Utah laws and regulations;
2. When a State program is finally disapproved, pursuant to Section 503 of the Act.
3. Within 120 days of the approval of a permanent State program pursuant to Section 503 of the Act.
4. Following promulgation of a Federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that the State Regulatory Authority lacks the necessary personnel, legal authority, or funding to fully implement the Federal lands program in accordance with the provisions of the Act.

D. *Notice of proposed Termination.* Whenever the Secretary proposes to terminate the Cooperative Agreement he shall:

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.
2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.
3. The Secretary shall also publish a notice in the Federal Register containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. *Opportunity for Hearing.* Whenever the Secretary proposes to terminate this Cooperative Agreement pursuant to paragraph B hereof, in addition to the notice required by paragraph D, he shall:

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the Federal Register, and the place shall be in the State.
2. Within thirty (30) days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.
3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. *Notice of Withdrawal of Approval of Cooperative Agreement.*

1. After a hearing has been held with respect to a proposed termination of this Agreement under paragraph B of this Article, or the right to a hearing has been waived or forfeited by the State, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulatory Authority of his intended withdrawal of approval of the Cooperative Agreement, and afford the State an opportunity to present evidence satisfactory to the Secretary that the State has remedied the specified defects in its administration of this Cooperative Agreement. The Secretary shall state the period of time within which the defects in administration shall be remedied and satisfactory evidence presented to him, and upon failure of the State to do so within the time stated, the Secretary may thereupon withdraw his approval of the Cooperative Agreement without any further opportunity afforded to the State for a hearing.

2. After the close of the comment period required by paragraph D.3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating his reasons therefor.

G. Nothing in this Article shall be construed as a waiver of any right the State Regulatory Authority may have to seek judicial review of any decision by the Secretary to terminate this Cooperative Agreement.

ARTICLE X. REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Cooperative Agreement has been terminated, it may be reinstated upon application by the State and upon giving evidence satisfactory to the Secretary that the State can and will comply with all the provisions of the Cooperative Agreement, and has remedied all defects in administration for which this Cooperative Agreement was terminated.

ARTICLE XI. AMENDMENTS OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be amended by mutual agreement of the Governor and Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection. If accepted, the amendment shall be adopted after rulemaking.

ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior and/or the State of Utah may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have 6 months in which to make such changes. For changes which require legislative authorization, the State has until the close of its next legislative session at which such legislation can be considered in which to make the changes. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX may be invoked.

ARTICLE XIII. CONFLICT OF INTEREST

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR 705.

ARTICLE XIV. EXCHANGE OF INFORMATION

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, telephone numbers, addresses, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

B. *Laws, Rules and Regulations.* The State Regulatory Authority and the Secretary shall provide each other with copies of their respective laws, rules and regulations and standards pertaining to the enforcement and administration of this Cooperative Agreement and promptly furnish copies of any final revision of such laws, rules, regulations and standards when the revision becomes effective.

ARTICLE XV. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the State of Utah and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to

result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(B) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

ARTICLE XVI. DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR Part 710 shall be given the meanings set forth in said definitions.

Dated: October 20, 1978.

Scott M. MATHESON, *Governor of Utah.*

Dated: October 20, 1978.

CLEON FEIGHT *Director, Division of Oil, Gas, and Mining.*

Dated: October 18, 1978.

CECIL D. ANDRUS, *Secretary of the Interior.*

APPENDIX A

This Appendix A identifies the laws of the State of Utah and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Utah and the Secretary of the Interior pursuant to Article III. C. of said Cooperative Agreement. This Appendix is approved as part of the Cooperative Agreement. The requirements contained in the laws and regulations identified in this Appendix shall be applicable to surface coal mining and reclamation operations on Federal lands in accordance with the terms of the Cooperative Agreement. Included in this Appendix are:

1. Laws of the State of Utah:

(a) The provisions of the Utah Mined Land Reclamation Act Title 40, Chapter 8, Utah Code Annotated, 1953, as amended, which are specifically identified in (i)-(xxiii) hereof:

(i) Section 40-8-1.

(ii) Section 40-8-2.

(iii) Section 40-8-3.

(iv) Section 40-8-4, provided, however, that the 500-ton per year exclusion contained in the definition of "mining operations" shall not be included in Appendix A and shall not apply on Federal lands.

(v) Section 40-8-5.

(vi) Section 40-8-6, provided, however, that the 500-ton per year exclusion contained in the definition of "mining operations" shall not be included in Appendix A and shall not apply on Federal lands.

(vii) Section 40-8-7(1), provided, however, that with respect to the application of subsection (1)(e) any bond applicable to the performance of duties on or affecting Federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of state law.

(viii) Section 40-8-8(1), (2), and (3).

(ix) Section 40-8-9, provided, however, that this section shall be limited to actions taken by the State Regulatory Authority under state law pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by or pursuant to authority delegated by the Secretary, including the denial or approval of mining plans.

(x) Section 40-8-10, provided, however, that this section shall be limited to actions taken by the State Regulatory Authority under state law pursuant to this Cooperative Agreement and nothing in this section or in this Cooperative Agreement shall be construed so as to govern actions taken by or pursuant to authority delegated by the Secretary, including the denial or approval of mining plans.

(xi) Section 40-8-11.

(xii) Section 40-8-12.

(xiii) Section 40-8-13(1), (3), (4), provided, however, that the "one time only" publication requirement relating to a "tentative decision" on a proposed agency action to approve a mining operation is not incorporated into this Appendix and shall not apply to Federal lands.

(xiv) Section 40-8-14, provided, however, that any cash or securities posted in lieu of bond under this section conform to the requirements of Article VII of this Cooperative Agreement and applicable requirements of federal law; and provided, further that any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement; and also provided further that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

- (xv) Section 40-8-15.
- (xv58i) Section 40-8-16(2), (3), and (4).
- (xvii) Section 40-8-17.
- (xviii) Section 40-8-18.
- (xix) Section 40-8-19.
- (xx) Section 40-8-20.
- (xxi) Section 40-8-21.
- (xxii) Section 40-8-22.
- (xxiii) Section 40-8-23.

2. Rules and Regulations of the Utah Board of Oil, Gas, and Mining, Division of Oil, Gas, and Mining including the amendments approved as Surface Mining Reclamation and Enforcement Provisions for coal adopted on May 25, 1978, except:

- (i) The preamble of the Rules pp. 66-67.
- (ii) M-3 The paragraph following (h) due to the confidentiality portion which is not in conformity with the

Act.

- (iii) M-4.

PROTOCOL FOR COOPERATIVE REVIEW OF MINING AND RECLAMATION PLANS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

I. PURPOSE.

This Protocol is intended by the Utah Division of Oil, Gas, and Mining (hereafter the "State Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the State of Utah by its Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof.

II. PROCEDURES.

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.

4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining, within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. The Office of Surface Mining will communicate to the State Regulatory Authority within a reasonable time any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.

6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.

7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence from the State Regulatory Authority in accordance with paragraph 5 hereof.

8. Copies of all written communications, data, documents, or other information received by the State Regulatory Authority from operators will be forwarded to the Office of Surface Mining by the State Regulatory Authority or sent directly to the Office of Surface Mining by the operator when requested to do so by the State Regulatory Authority.

9. The Secretary and the State Regulatory Authority agree to inform each other of any communications received from the operator regarding any matter subject to this Protocol.

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings with the operator or site inspections. No meeting with the operator or site inspection will be scheduled by either the Secretary or the State Regulatory Authority without adequate advance notice to the other party and an opportunity to participate.

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will designate an Environmental Impact Statement team and coordinate the drafting of an Environmental Assessment or Environmental Impact Statement which will comply with the National Environmental Policy Act and any applicable requirements of State law. It is understood and agreed by the parties that no formal, final action regarding approval or disapproval of any pending plan and permit may be taken by either party until said requirement of law is met. In addition, the State Regulatory Authority shall take action as is necessary to prevent approval of the application by default under State law.

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations. After receipt of concurrence with any such action from the respective Interior agencies with responsibilities for the review of mining plans under any Federal statute or regulation other than the Act, and upon concurrence with any such action by the Regional Director for the Office of Surface Mining, and following completion of any procedures referenced in paragraph 11

hereof, a joint recommendation by the Regional Director, Office of Surface Mining, on behalf of all Interior agencies and the State Regulatory Authority will be forwarded to the Secretary or his authorized delegatee for final action. If the Regional Director and the State Regulatory Authority cannot agree upon such a recommendation, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director. Office of Surface Mining, and such other representatives of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. If the State Regulatory Authority approves the mining and reclamation plan or permit or request for amendment in whole or in part, it shall condition any approval on obtaining approval of the plan, permit or amendment from the Secretary so that mining cannot commence on Federal lands until the Secretary approves the mining and reclamation plan.

13. Any final approval of the mining plan and permit, or modifications or revisions thereto, by the parties which will create a right of appeal by any aggrieved person shall not be complete until the document recording such action is signed by both the Secretary (or his authorized delegatee) and the authorized representative of the State Regulatory Authority.

III. INTERPRETATION.

(a) This Protocol shall be construed so as to give effect to the intent of the parties as set out in the Cooperative Agreement of which this is a part. Any words or phrases used in this protocol shall be defined in accordance with Article XVI of said Agreement.

(b) If any question of legal interpretation is raised by either party with respect to any matter subject to this Protocol, both the State Regulatory Authority and the Secretary shall defer to the opinion of the State Attorney General where interpretations of State law or regulations are involved, and to opinions of the Solicitor of the Department of Interior where interpretations of Federal law or regulations are involved.

IV. REVISIONS TO PROTOCOL.

As a part of the Cooperative Agreement referenced in Part I hereof, this Protocol may be revised at any time during the duration of said Cooperative Agreement with the consent of the appropriate officer of the State Regulatory Authority and the Regional Director. Such revision shall become effective upon publication in the FEDERAL REGISTER.

Dated: October 20, 1978.

SCOTT. M. MATHESON, *Governor of Utah.*

Dated: October 20, 1978.

CLEON FEIGHT, *Director, Division of Oil, Gas, and Mining.*

Dated: October 18, 1978.

CECIL D. ANDRUS, *Secretary of the Interior.*

SECTION 211.10 [AMENDED]

In order to implement the proposed agreement, it is proposed that 211.10(e)(2) be amended as follows:

(e) *States with 211.75(c) agreements:*

* * *

(2) Utah. A Federal coal lessee in the State of Utah who must submit a mining plan or permit under both State and Federal law shall submit to the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and The Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, and the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement;

(i) Utah Code Ann., 1953, as amended, Section 40-8-13;

(ii) Rule M-3 of the Utah Division of Oil, Gas and Mining, except the paragraph following (h) Due to confidentiality portion which is not in conformity with the Surface Mining Control and Reclamation Act of 1977.

(iii) 30 CFR 211.10(c); and

(iv) Any final action by the State Regulatory Authority or the Secretary with respect to a mining plan or revision or modification submitted for approval shall be in accordance with Article IV of the Modified Cooperative Agreement.

[FR Doc. 79-6459 Filed 3-2-79; 3:45 am]
BILLING CODE [4310-05-M]