

FEDERAL REGISTER: 44 FR 12058 (March 5, 1979)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 211

Regulation of Coal Mining on Federal Lands; Federal/State Cooperative Agreements Montana; Public Hearing

ACTION: Proposed Rulemaking and Notice of Public Hearing on Modified Cooperative Agreement with Montana.

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 Montana (30 CFR 211.77(e)) in accordance with the requirements of Section 523(c) of the Surface Mining and 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 State statutes and amended regulations containing new 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 the 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.

ADDRESSES: Comments should be addressed to the Director, Office of Surface Mining, U.S. Department of the 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 the Interior, 1823 Stout Street, Denver, Colorado 80201. Copies of the Montana 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 in the Office of the Montana Department of State Lands, 1625 11th Avenue, Helena, Montana.

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, Montana adopted new or amended regulations in order to implement Section 502 of the Surface Mining Act on lands regulated by the State. Montana'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 Montana'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 Montana Strip and Underground Mine Reclamation Act relating to bonding and enforcement are also included 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 Montana and the Secretary. Certain provisions of State law as identified in Appendix A relating to bonding, judicial review and public participation in the mining plan 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 lands shall be governed by 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 Montana and Federal law, and be subject to forfeiture by either agency. Montana law governing the posting of bonds is adopted by the Secretary subject to the terms of the cooperative agreement. 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) xxii of Appendix A).

3. *Enforcement procedures.* In order to "fully comply with the initial regulatory procedures in Section 502," the cooperative agreement requires that Montana 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 Montana 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 Montana Department of State Lands finds any condition, practice or violation which would authorize the issuance of an order pursuant to Section 521(a)(92) if such condition, practice or violation had been found by a Federal inspector.

The Secretary also believes that Montana has adequate authority under State law 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. Paragraph B of Article VI requires the exercise of such authority when a representative of the Department of State Lands finds facts which would authorize the issuance of an order pursuant to Section 521(a)(3) of the Surface Mining Act. 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 Montana during the initial regulatory program under Section 502 of the Surface Mining Act. The Secretary has also reserved his 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 the Interior and governor Judge have signed the 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 this 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 Yunhnke, 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 CFR 211.77(e)) to designate the State of Montana as the principal party to administer surface coal mining and reclamation operations on Federal leases in Montana, effective June 10, 1977, to read as follows:

COOPERATIVE AGREEMENT

The State of Montana 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 Montana under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Montana, acting by and through Thomas L. Judge, 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 Montana with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Montana. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for State review and approval of mining and reclamation plans for operations on Federal lands, subject to the Secretary's authority to approve mine and reclamation plans on Federal lands and 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 Montana Department of State Lands, 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 effective June 10, 1977, 30 CFR 211.77(e).

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor 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 Montana Department of State Lands (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 of 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 the Montana Strip and Underground Mine Reclamation Act 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 Plans and Permits.* The Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and state permit application to the state and the Secretary which plan and permit application 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. The Revised Code of (Word Illegible) R.C.M. 1977.
- b. Administrative Rules of (Word Illegible) 2.10(10)-S10310.
- c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et. seq.*, 91 Stat. 445) and the (Word Illegible) pursuant thereto, to the extent it is not otherwise required by 1(a) and (b) above.
- d. The Mineral (Word Illegible) Act of (Word Illegible) as amended, 30 U.S.C. (Word Illegible) *et seq.*
- e. The (Word Illegible) of 30 CFR. Sections 211.10.
- f. Applicable terms and conditions of the lease unless such conditions would be contrary to the requirements of the Act.
- 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.

C. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol for Cooperative Review of Mining and Reclamation Plans, attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and (Word Illegible) review 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.

D. When acting upon mining and reclamation plans and permits, or modifications or revisions thereto, the State Regulatory Authority and the Secretary agree that lack 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 1 of this Article. The State Regulatory Authority shall promptly notify the Secretary of such action and the applicant of its action on the application. If the application is disapproved, a notice shall be sent to the applicant along with a statement of findings and conclusions in support of the action. The State Regulatory Authority shall in any approved plan, permit, or amendment, reserve the right to amend or rescind its action to conform with action taken or with terms or conditions imposed by the Secretary, and agreed to by the State Regulatory Authority, as a basis of his approval. The Secretary shall not delete any requirements included in the State Regulatory Authority's approval without the consent of the State. Prior to the Secretary disapproving the mining and reclamation plan, permit or request for amendment, in whole or in part, the Secretary shall consult with the State Regulatory Authority for the purpose of reaching agreement on revisions to the plan, permit, or amendment, to the extent allowable under State and Federal law.

E. When acting on 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 Montana state law as frequently as necessary, but as 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 operations 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 or diligent production 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, prepare a report adequately describing (1) the general condition 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 that 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 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 50-1050 R.C.M. 1947 of the Revised Code of Montana 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 pursuant to 50-1050 R.C.M. 1947 of the Revised Code of Montana which shall be consistent with the requirements of Section 521(a)(3) for the Act.

(2) When a notice of violation has been issued under B(1) 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 exercise the discretion authorized by 50-1050 R.C.M. 1947 of the Revised Code of Montana to suspend the permit of an operator until the violation has been abated.

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

D. 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 any requirement under federal law or Appendix A incorporated into federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to mine in accordance with 30 CFR 211.71 or assess civil penalties in accordance with 30 CFR 211.78.

E. 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 conditional 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 advise 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 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 Agency 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 Agency 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 paragraph 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.

3. Following promulgation of a federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that Montana lack the necessary personnel, legal authority, or funding to fully implement the federal lands program in accordance with the provisions of the Act.

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 Montana laws and regulations;
2. When a permanent State program is finally disapproved and the state has failed to remedy the deficiencies within the time allowed by Section 503(c) of the Act.
3. Within 120 days of the approval of a permanent State program pursuant to Section 503 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 Hearings.* 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 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 the reasons therefore.

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 amendment shall be adopted after rulemaking and 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.

ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary of the Interior and/or the State Regulatory Authority 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. 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, paragraph C, may be invoked, provided, however, that the state shall be given reasonable and necessary time to make the required changes.

ARTICLES XIII. CONFLICT OF INTEREST

The State Regulatory Authority shall require its employees to comply with the requirements of 30 CFR Part 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 organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, addresses, telephone numbers, 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 Governor 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 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)(3) 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 700 or Part 710 shall be given the meanings set forth in said definitions.

THOMAS L. JUDGN, *Governor of Montana.*

LEO BERRY, *Commissioner, Department of State Lands.*

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

Dated October 18, 1979.

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 Montana Department of State Lands (hereinafter 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 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 matter 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 including coal conservation and postmining land use, relative be 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. When detailed review is deemed to be necessary, Interior agencies may conduct a detailed review of all aspects of the plan and application, or modifications or revisions thereof, but as the program develops, Interior's review will be concentrated on major functions such as hydrology and revegetation, or where special attention is deemed to be necessary.

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. It will be the goal of the State Regulatory Authority to send such letter 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. It will be the goal of the Office of Surface Mining to communicate to the State Regulatory Authority within 20 days 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, in 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. 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

6. The Secretary may at his discretion incorporate into the of Surface Mining. Secretary is required to address under any federal statute or State Regulatory Authority and which the and approval which are not within the jurisdiction of the draft letter any matters related to mining plan review regulation other than the Act. The State Regulatory Authority, with a copy to the Regional Director, Office 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 regarding an operator's mining and reclamation plan from the State Regulatory Authority in accordance with paragraph 5 hereof.

8. Copies of all written communications, data, documents, or other information pertinent to a mining permit or permit application 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.

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, when appropriate, cooperate so that one Environmental Assessment and Environmental Review will be produced. When an Environmental Impact Statement is necessary, the State Regulatory Authority and the Office of Surface Mining will designate, when appropriate, one Environmental Impact Statement team to produce an EIS which will comply with the National Environmental Policy Act and the Montana Environmental Policy Act.

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. Following notification of the Regional Director of the proposed action, the Regional Director will inform the State Regulatory Authority of concurrence or disagreement with the proposed action. If the Regional Director and the State Regulatory Authority cannot agree upon the proposed action, 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 what final action may be appropriate under the circumstances of the case. The parties shall make reasonable efforts to resolve the differences and to reach a mutually agreeable decision on the proposed action.

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. This provision shall not be interpreted to prevent either party from challenging in court any opinion or interpretation of the State Attorney General with regard to state law or regulation or Solicitor with regard to federal law or regulations.

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.

THOMAS L. JUDGE, *Governor of Montana* .

LEO BERRY, *Commissioner, Department of State Lands.*

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

Dated: October 18, 1978.

APPENDIX A

This Appendix A identifies the laws of the State of Montana and the regulations of the State Regulatory Authority which are incorporated into the 1978 Federal-State Cooperative Agreement between the State of Montana 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 Montana:

(a) The provisions of the Montana Strip and Underground Mine Reclamation Act Title 50 Chapter 10 of the Revised Codes of Montana 1947, as amended, which are specifically identified in (i)-(xxii) hereof:

(i) Section 50-1034.

(ii) Section 50-1035.

(iii) Section 50-1036: *Provided, however,* That in paragraph (1) the words "and uranium" shall not be included in this Appendix A, 11.

(iv) Section 50-1037.

(v) Section 50-1039: *Provided, however,* That with respect to subsection (8)(a), the phrase "nor more than twenty-five hundred dollars (\$2,500)" is not included in Appendix A and shall not apply to Federal lands: *and Provided further,* That 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.

(vi) Section 50-1039.1, except that this section shall not apply where the surface owner is the United States in which case the laws of the United States shall exclusively apply.

(vii) Section 50-1040.

(viii) Section 50-1042.

(ix) Section 50-1043.

(x) Section 50-1044: *Provided, however,* That with respect to subsection (5), 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.

(xi) Section 50-1045.

(xii) Section 50-1046.

(xiii) Section 50-1047: *Provided, however,* That with respect to subsection (3), 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.

(xiv) Section 50-1048.

(xv) Section 50-1050.

(xvi) Section 50-1051.

(xvii) Section 50-1052.

(xviii) Section 50-1053

(xix) Section 50-1054: *Provided, however,* That the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

(xx) Section 50-1055: *Provided, however,* That subsections (1) and (2) shall not be construed as applying to any federal officer.

(xxi) Section 50-1056: *Provided, however,* That the imposition of a civil or criminal penalty by the state pursuant to this section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or from requesting criminal prosecutions under applicable federal law.

(xxii) Section 50-1057: *Provided, however,* That this section shall be limited to actions taken by the state under state law in accordance with this Cooperative Agreement, and nothing in this section or this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary, including the denial or approval of mining plans.

2. Regulations of the Montana Department of State Lands, including the amendments adopted by the State Board of Land Commissioners on July 17, 1978, except: (i) Section 26-2.10-S 10270(6).

SECTION 211.10 [AMENDED]

2. In order to implement the proposed agreement, it is proposed that 30 CFR 211.10(e)(5) be amended as follows:

* * *

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

(5) *Montana.* A Federal coal lessee in the State of Montana who must submit a mining plan under both State and Federal law shall submit to both 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, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.10(c).

* * *

3. It is proposed that 30 CFR Section 211.76-1 be deleted in its entirety:

Section 211.76-1 Applicability of the Requirements of Montana's Reclamation Laws and Regulations. [Deleted.]

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