

FEDERAL REGISTER: 44 FR 12052 (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; Wyoming

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

SUMMARY: This proposed rulemaking is for the purpose of modifying the existing Federal/State cooperative agreement between the Department of the Interior and Wyoming (30 CFR 211.77(a)) 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) 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, environment 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 is warranted.

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 Wyoming laws and regulations referred to in the proposed agreement are available for inspection in the Denver, Colorado, Regional Office and in Room 120, South Interior Building, Washington, D.C., and in the office of the Wyoming Department of Environmental Quality, State Office Building West, Cheyenne, Wyoming.

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, Wyoming adopted new or amended regulations in order to implement Section 502 of the Surface Mining Act on lands regulated by the State. Wyoming's environmental protection and reclamation standards as set forth in Appendix A of the proposed cooperative agreement qualify for application to Federal lands because OSM believes they are as stringent as Federal standards in 30 CFR Part 211. The

review of Wyoming'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. Wyoming omitted certain standards relating to steep slope mining, the construction of valley and head-of-hollow fills, the construction of waste dams, the isolation of combustible materials and the erection of perimeter markers which are in effect in 30 CFR Part 211. As a result, with respect to those subject areas not addressed by the Wyoming regulations, Wyoming and the Secretary will base mine plan review and enforcement exclusively on the Federal regulations in 30 CFR Part 211. The definition of "subirrigation" in the Wyoming regulations included a second sentence not contained in the Federal definition which might be construed as excluding certain subirrigated lands from areas otherwise properly included within the definition of an "alluvial valley floor." In order to avoid confusion and ambiguity, the second sentence is not included in Appendix A and shall not be applicable to Federal lands.

In 1978, the Wyoming Legislature also amended the provisions of the Wyoming Environmental Quality Act (W.S. Sections 35-11-101 et seq., 1977) applicable to coal surface mining and reclamation operations (Enrolled Act No. 31, 44th Legislature of the State of Wyoming, 1978). These amendments added new or more stringent standards and enforcement procedures to the State law. Most of these amendments and other provisions of the State law relating to bonding and enforcement are also appended as additions to the proposed cooperative agreement.

2. *Adoption as Federal law.* Final approval of the proposed cooperative agreement as rulemaking will continue to authorize State jurisdiction over surface coal mining and reclamation 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 mine 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 to the proposed cooperative 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 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 Wyoming and Federal law, and be subject to forfeiture by either agency. Wyoming law governing the posting of bonds is adopted by the Secretary subject to the terms of the cooperative agreement. (See items 1. (a) xvii through xxiii of Appendix A to the cooperative agreement). Wyoming 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) xxix of Appendix A).

3. *Enforcement procedures.* In order to "fully comply with the initial regulatory procedures in Section 502," the cooperative agreement requires that Wyoming 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 Wyoming 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 a 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 Wyoming Department of Environmental Quality 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, Wyoming law does not authorize the Department of Environmental Quality 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 violation of Part 211 of this Title and the requirements of Wyoming 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 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 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 Hershler have signed the Wyoming 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 requirements 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.

HOFE 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(a)) to designate the State of Wyoming as the principal party to administer surface coal mining and reclamation operations on Federal lands in Wyoming effective February 1, 1977, to read as follows:

COOPERATIVE AGREEMENT

The State of Wyoming and the Department of the Interior enter into the following Cooperative Agreement:

Cooperative Agreement between the United States Department of the Interior and the State of Wyoming 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 Wyoming, acting by and through Ed Herschler, 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 Wyoming with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Wyoming. The basic purpose of this Agreement is to prevent duality of administration and enforcement of mining and 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 upon signing by the Secretary and the Governor and upon publication as rulemaking in the Federal Register and 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 February 1, 1977. S2 F.R. S644 (1977), 30 CFR Section 211.77(a).

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 Wyoming Department of Environmental Quality and the Environmental Quality Council (hereinafter referred to together 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 to carry out this Cooperative Agreement.

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of Wyoming listed in Appendix A, 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 listed 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 State Regulatory Authority agrees that the State will inspect all surface and 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 continued 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 listed in Appendix A. If this Cooperative Agreement has been carried out to the satisfaction of the Secretary, and if necessary funds have been appropriated, the Secretary shall reimburse the State of Wyoming as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under the Cooperative Agreement. Reimbursement shall be in the form of annual grants and applications for said grants shall be processed and awarded in a timely and prompt manner. The Secretary shall advise the State of Wyoming within a reasonable period of time after the effective date of this modification of this Cooperative Agreement 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 this 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 this Cooperative Agreement, or have access to such facilities and personnel.

K. *Variations.* In accordance with Section 35-11-112 of the Wyoming Environmental Quality Act, the State Regulatory Authority shall not grant any request for variances from any rule, regulation, standard, or permit if such variance would render any State requirement less stringent than a similar requirement contained in Sections 502(c), 510(d), and 516 of the Act, and regulations promulgated thereunder or any environmental protection and regulation provision of 30 CFR Part 211.

ARTICLE IV. MINING AND RECLAMATION PLANS AND PERMIT APPLICATIONS

A. State and Federal laws and regulations require the operator on Federal lands leased, permitted, or licensed for coal mining to receive approval from the State Regulatory Authority and the Secretary of a mining and reclamation plan and permit application, or amendment to an existing plan or permit (hereinafter referred to as the "application"), prior to conducting operations.

B. *Contents of Mining and Reclamation Plans and Permit Applications.*

The Governor, the State Regulatory Authority, and the Secretary agree, and hereby require that an operator on Federal lands must submit a single application, which application must be submitted in the form required by the State Regulatory Authority along with any supplemental forms required by the Secretary and must 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. Wyoming State Statutes Sections 35-11-406(a), (b)(i)-(ix), and (xiii)-(xviii), and (c).

- b. Wyoming Land Quality Rules and Regulations.
 - 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 thereof.
 - d. The Mineral Leasing Act of 1970, as amended, 30 U.S.C. Sections 161 *et seq.*
 - e. The environmental protection and regulation requirements, and resource sonmeruation requirements of 30 CFR Part 211.
 - f. Applicable conditions of the lease or license unless such conditions would be contrary to the requirements of the Act.
 - g. The information required by applicable requirements of other federal laws.
2. A statement certifying that identical copies of the application have been given to both the State Regulatory Authority and the Secretary.
3. Upon receipt of each application the Office of Surface Mining shall designate a single contact person as its representative on all matters concerning that application and all communications concerning review of and final action on that application by either the State Regulatory Authority of the Secretary shall be conducted with or through this representative or with the Secretary.
4. If the State Regulatory Authority requires the operator to submit additional information, the operator shall submit the information to the State Regulatory Authority and to the Secretary. If the Secretary requires additional information, such request shall be directed to the operator through the State Regulatory Authority, and the operator shall submit the information to the State Regulatory Authority and the Secretary.
5. The State Regulatory Authority and the Secretary shall review the application concurrently and shall promptly notify each other of their proposed action on the Application, including proposed conditions and stipulations if approval of the application is proposed. Upon receipt of notice of the proposed action of the Secretary, the State Regulatory Authority shall modify its proposed action on the application to include those matters and conditions in the Secretary's proposed action which were not included in the proposed action of the State Regulatory Authority, and shall consult with the Secretary's contact person for the purpose of agreeing to the final actions to be taken by the Secretary and the State Regulatory Authority on the application.
6. Any final approval of an application, or modification 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. The State Regulatory Authority and the Secretary agree that each of them will not take final action approving an application which fails to comply with the requirements of the laws and regulations listed in paragraph B of this Article. The Secretary agrees that he will not take final action approving an application which fails to comply with an environmental protection requirement of the State which is more stringent than the requirements of Federal law.
7. In the event the State Regulatory Authority and the Secretary's contact person cannot agree to the final actions to be taken by the State Regulatory Authority and the Secretary on the application, the matter shall be referred to the Governor and the Secretary for resolution.
8. 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 (Word Illegible) inspect without prior notice to the operator, as authorized by Wyoming state law as frequently as necessary, but at least quarterly, the area of operations as defined by the approved mining plan and 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, all environmental and reclamation requirements of the approved mining plans or permits, but not to determine compliance with the development, diligent production, and resource recovery requirements established under the Mineral Leasing Act, as amended, or to regulate other activities an Federal lands not subject to the Act.

B. The State Regulatory Authority shall, subsequent to conducting any inspection, file with the Secretary a report adequately describing (1) the general conditions of the lands under lease, permit and 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 office 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 shall 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 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 requirements of Appendix A hereof or of an approved mining 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 35-11-412 of the Wyoming Environmental Quality Act to suspend or revoke the license of an operator.

B. (1) When, during any inspection, any representative of the State Regulatory Authority who has been designated an authorized representative of the Secretary determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall:

a. Report such (violations) to the Administrator of the Land Quality Division, Wyoming Department of Environmental Quality (DEQ) and to the Director of the DEQ, who shall issue an order and Notice of Violation pursuant to W.S. 35-11-701; and

b. Issue a notice and abatement schedule to the operator consistent with and pursuant to Section 521(a)(3) of the Act. Nothing in this Agreement prohibits the issuance of an order and Notice of Violation under Wyoming law concurrent with the action required by this paragraph.

(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 who has been designated an authorized representative of the Secretary 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 the 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. 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.

E. 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).

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 assist 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 of 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 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 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 requirement 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 Wyoming laws and regulations;

2. When a State program is finally disapproved, pursuant to Section 503 of this Act, or an approved State program is suspended or revoked pursuant to the Act or regulations promulgated pursuant thereto. Provided further that upon suspension of an approved State Program this Cooperative Agreement shall be suspended for the same period of time and shall be deemed reinstated upon reinstatement of the State Program.

3. If the Secretary determines that this Cooperative Agreement is not adequate for the purpose of implementing the permanent regulatory program requirements after approval of a State Program pursuant to Section 503 of the Act. Notice of this determination shall be given in writing to the State Regulatory Authority and shall specify the inadequacies of this Agreement. This Cooperative Agreement shall terminate within 120 days of said notice unless amended by mutual

agreement of the State Regulatory Authority and the Secretary to remedy the inadequacies identified by the Secretary in his notice.

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 Wyoming 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 or law 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 of Wyoming 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 six 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. [PAGE ILLEGIBLE]

BILLING CODE [4310-05-M]