

FEDERAL REGISTER: 44 FR 33647 (June 11, 1979)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement and Geological Survey, Interior.

30 CFR Part 211

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

ACTION: Final rule.

SUMMARY: This final rule completes the approval and promulgation of a Federal/State cooperative agreement between the Department of the Interior and the State of Utah for the regulation of surface coal mining and reclamation operations on Federal lands in Utah.

EFFECTIVE DATE: June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, 1823 Stout Street, Denver, Colorado 80202, (303) 837-5421.

SUPPLEMENTARY INFORMATION:

This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(b)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), "Surface Mining Act," and Section 211.75 (b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12046). The agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands, including but not limited to (1) the adoption of amended State statutes and regulations containing new or modified enforcement procedures environmental protection standards, and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law; (2) a requirement that the State regulatory authority 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) clarification of the procedures for the cooperative review and approval of mining and reclamation operations on Federal lands; and (4) provisions for the termination of such agreement.

In response to the proposed rulemaking, three comments were received. The comments raised six issues.

1. One comment was an objection to Utah's designation of the Utah Division of Oil, Gas and Mining, as the State regulatory authority responsible for administering the cooperative agreement. The commenter contends that this administrative arm of Utah's government is controlled by the mining and mineral interests. This, asserts the commenter, appears to be in violation of the Federal Act (Surface Mining Act), which prohibits any conflict of interest by employees, boards or commissions. The commenter provides no other substantive support for his argument, but does suggest that the (Utah) Division of State Lands or Department of Agriculture in cooperation with the Soil Conservation Service would be a more logical State regulatory authority designee.

The Office has no authority under the Surface Mining Act or regulations promulgated pursuant to the Act to designate a specific State agency as the regulatory authority. On the contrary, the Office believes that Congress intended to reserve such authority to the State. The Office, therefore, takes no position for or against the commenter's preferred State regulatory authority designee.

With respect to assertions concerning conflict of interest, the Surface Mining Act does prohibit conflict of interest by employees serving in certain capacities within the State regulatory authority. However, under Section 705.5 members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. As required by 30 CFR 705.11(a), employees covered by the regulations are required to file a statement of employment and financial interest. These filings are required periodically and are subject to thorough review. Irregularities must be corrected and, where warranted, criminal penalties may be imposed under Section 517(g) of the Surface Mining Act. Refusal of a State to enforce the required regulations concerning restrictions of financial interests of State employees (30 CFR Part 705) may be considered grounds for nullifying a State's eligibility for grants or financial reimbursement under the Act or continued responsibility as the primary regulatory authority over surface coal mining operations in the State. For these reasons, the Office believes that the public interest is adequately protected.

2. Another comment suggested that Article IV of the Agreement, which required the submission of identical mining and reclamation plans and permit applications, modifications or revisions to the State regulatory authority and Regional Director, implies that each regulatory authority shall conduct its own review and analysis of the permit application. The commenter suggests it would be more appropriate for the State regulatory authority to conduct a detailed review and analysis, while the Regional Director conducts a general overview of the State regulatory authority review.

The exact procedures and level of detail used by the Office to conduct an independent but concurrent review of a mine plan will be discretionary with the Regional Director. The level of the Federal analysis will depend upon the particular size, location, and complexity of the individual mine plan. In making a concurrent mine plan review, the Regional Director must also insure that the mine plan meets the requirements of the Mineral Leasing Act of 1920, the National Environmental Policy Act of 1969, the Endangered Species Act, the Historic Preservation Act and the provisions of other appropriate Federal laws. These requirements, along with the approval or disapproval of a mine plan, cannot be delegated by the Secretary pursuant to section 523(c) of the Act.

3. A third comment indicated that paragraph 6 of the Protocol, which requires the State regulatory authority to incorporate "matters into the draft letter at the Secretary's request * * *", tends to suggest that the Regional Director will review all draft letters from the State regulatory authority. This apparent requirement, asserts the commenter, will lead to delay in the permitting process. The commenter, therefore, recommends that all communications between the State regulatory authority and the operator be copied to the Regional Director, rather than having the Regional Director conduct a review of any or all draft communications.

The draft letter referred to in paragraph 6 of the Protocol, pertains only to new mining plans and permit applications, or modifications or revisions thereto. The requirement that such draft letter be forwarded to the Regional Director is to assure that matters needing further attention by the State or OSM, as determined in the independent but concurrent mine plan review, are accurately reflected in the letter prior to forwarding to the operator for necessary action. This procedure also insures that certain matters required of the Secretary relating to responsibilities under the Mineral Leasing Act or other Federal statutes, but not the State regulatory authority, are included in the letter. In this way, the Secretary is assured this his nondelegable responsibility for mine plan approval or disapproval is not compromised. For these reasons, the Office elected not to adopt the commenter's suggested revision.

4. A fourth issue raised in the comments suggested that paragraph 11 of the Protocol suggests that an environmental impact statement or assessment would be required for every mine plan or major modification or revision thereof. The commenter asserts this is neither the intent of NEPA nor of the Office of Surface Mining, and suggests that paragraph 11 be reworded to give the designated environmental impact statement team discretionary authority, consistent with applicable State and Federal law, to determine the significance of the action and the need for an environmental impact statement or environmental assessment.

The Office has reviewed the regulations published by the Council on Environmental Quality and has determined that the proposed surface coal mine operations (mine plans) or major modifications or revisions thereof do not qualify as a categorical exclusion under 40 CFR 1508.4. Therefore, it will be necessary to prepare as a minimum, an environmental assessment on all mine plan submissions or major modifications or revisions thereto. Paragraph 11 is intended to assure compliance with the requirements of the National Environmental Policy Act of 1969. For this reason, the Office did not adopt the commenter's suggestion to revise paragraph 11 of the Protocol.

5. One commenter suggested that the proposed Utah interim cooperative agreement is deficient because Utah has not met the preconditions for formulation of a cooperative agreement. Specifically, the commenter asserts that agreement provisions in Article VI paragraphs B and C delegating Federal Enforcement authority to State inspectors by the Secretary is neither legal nor effective. The commenter asserts that it will be challenged when the State inspectors seek to use their "federal authority".

The Office believes that the Secretary does have legal authority to delegate Federal enforcement responsibility to State inspectors. Through the cooperative agreement, the State agency responsible for administering and enforcing the terms of the agreement is acting as an authorized representative of the Secretary to regulate surface coal mining operations on Federal lands. This includes mine inspections. Section 521(a)(3) of the Act clearly states, "when, on the basis of a Federal inspection * * * the Secretary or his authorized representative determines * * * the Secretary or his authorized representative shall issue a notice to the permittee * * *." (Emphasis added). If the authorized representative issues a notice or order consistent with the pursuant to section 523(a)(3) and the permittee fails to comply, under the terms of Article VI (E) of the

agreement the State shall report the failure to comply to the Secretary, and under Article VI (F) the Secretary may take appropriate legal action to correct conditions that violate Federal law or to suspend the right to conduct surface coal mining and reclamation operations. For these reasons, the Office believes that delegation of inspection and enforcement responsibilities to State inspectors is in full compliance with the Act, and the authority in Article VI (F) provides an effective enforcement tool to require compliance with a State inspector's orders.

Notwithstanding the Secretary's authority to delegate Federal enforcement authority to State inspectors, on March 9, 1979, the State of Utah enacted new legislation which authorizes the State regulatory authority to issue notices and orders so that Federal delegation of enforcement authority will no longer be necessary. The cooperative agreement will be amended shortly to reflect the new State authority.

6. A final comment cites four sections of the Utah code which are believed inadequate to permit full compliance with and enforcement of the interim program. Specifically, sections 40-8-7; 40-8-16; 40-8-18; and 40-8-23 of the Utah code, asserts one commenter, contain certain statutory restrictions and, therefore, the State is without the legal authority to require an operator of an existing mine to comply with the rules or regulations implemented to meet the requirements of the Act. The commenter points out that the Office of Surface Mining has requested and the State has obtained waivers from the mining industry on the statutory restrictions preventing the retroactive application of new rules and regulations. However, the commenter contends that there is no guarantee that this action is legally binding or enforceable. The commenter further contends that until the State of Utah enacts legislation that allows full compliance with the requirements of the Federal Act, the Department should not enter into a cooperative agreement on Federal lands.

Concerning the commenter's assertion that Utah's code does not provide sufficient legal authority for administering the Act, the Office points out that Section 40-10-22 of the new Chapter 10 of Title 40, Utah Code Annotated 1953, specifically permits the issuance of cessation orders. Additionally, the statutory restrictions cited by the commenter as limiting the State's control over certain mining activities and functions have been replaced under the new Utah code. Sections 40-10-6(3), 40-10-6(4), 40-10-12(3), and 40-10-9 of the new law effectively deal with the commenter's concerns regarding the retroactive effect of regulations on reclamation plans. These sections provide for the establishment of a permit system which gives the responsible State agency much broader authority to review and, if necessary, revoke permits and require that all operators must submit permit applications for surface coal mining operations.

The State and the Secretary have mutually agreed that following publication of this final rule, the State/Federal cooperative agreement with the State of Utah, including Appendix A and all references thereto, will be amended to reflect the provisions, as appropriate, of Chapter 10 of Title 40, Utah Code Annotated. The Office believes that the passage of Utah's Act relating to the regulation of coal mining and reclamation operations and the subsequent amendment of the final modified State/Federal cooperative agreement with Utah is responsive to the commenter's concern that "Until the State of Utah enacts legislation that allows full compliance with the requirements of the Federal Act, the Department should not enter into a cooperative agreement on Federal lands."

OTHER INFORMATION

1. 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 33 CFR Part 14. This "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Utah and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social, economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

2. Pursuant to section 702(d) of the Surface Mining Act, adoption of this rule is a part of the Secretary's implementation of the Federal Lands Program and is, therefore, exempt from the requirement to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

3. Because of the delay in the publication of this rule and the necessity to implement the provisions of the cooperative agreement, the Department has determined that good cause exists to make the rule effective upon the date of publication.

Dated: June 6, 1979.

Cecil D. Andrus, Secretary. {33649}

1. Accordingly, Title 30 CFR 211.10(e)(2) is amended as follows:

SECTION 211.10 EXPLORATION AND MINING PLANS.

* * *

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

(2) Utah. A Federal coal lessee in the State of Utah who must submit a mining plan or permit under both State and Federal law shall submit to 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 be 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 information required by:

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

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

(iii) 30 CFR 211.10(c); and

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

* * *

2. 30 CFR 211.77(b) is amended as follows:

SECTION 211.77 STATES WITH COOPERATIVE AGREEMENT.

* * *

(b) Utah. The administration and enforcement of reclamation requirements of Federal coal leases in Utah, subject to this Part, shall be done according to the cooperative agreement between the State of Utah and the Department which became effective June 10, 1977, as modified on October 18, 1978, and published on June 11, 1979.

3. The State of Utah and the Department enter into a modified Cooperative Agreement to designate the State of Utah as the principal party to administer surface coal mining and reclamation operations on Federal leases in Utah to read as follows:

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE STATE OF UTAH under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"), 30 U.S.C. 1273(c), between the State of Utah, acting by and through Scott M. Matheson, Governor (hereinafter referred to as the Governor), and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

ARTICLE I. PURPOSE

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

ARTICLE II. EFFECTIVE DATE

This Cooperative Agreements is effective following signing by the Secretary and the Governor, approval by the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources, and upon final publication as rulemaking in

the Federal Register. This Cooperative Agreement shall remain in effect until terminated as provided in Article XI. This Cooperative Agreement constitutes a modification to, an extension of, and supercedes that Cooperative Agreement published at 42 FR 18068, effective April 5, 1977, 30 CFR 211.77(b).

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

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

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

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

C. State Reclamation Law. Enforcement of the environmental performance standards and reclamation requirements of Title 40 Chapter 8 Utah Code Annotated 1953 (as amended), and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement, will provide protection of the environmental 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. {33650}

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

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:
 - a. Utah Code Annotated 1953 as amended.
 - b. Mined Land Reclamation General Rules and Regulations and Rules of Practice and Procedure M-3, and coal mining regulations MC-715 et seq.
 - c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.; 91 Stat 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1 (a) and (b) above.
 - d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 et seq., to the extent it is not otherwise required by 1(a), 1(b), and 1(c) above.
 - e. The requirements of 30 CFR 211.10.
 - f. Applicable terms and conditions of the lease or license.
 - g. Applicable requirements of other Federal laws.
2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.
3. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall jointly review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the Protocol attached hereto and incorporated as a part of this Cooperative Agreement. The parties may review and mutually revise said Protocol as deemed necessary in accordance with the terms of the Protocol, Article XI of this Agreement to the contrary notwithstanding. Any revisions to the Protocol shall become effective upon notice published in the Federal Register.
4. Any final approval of a mining and reclamation plan and permit application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. When acting upon mining and reclamation plans and permits, or modification or revisions thereto, the State Regulatory Authority and the Secretary agree that each of them will not approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph 1 of this Article.
5. When acting upon a mine plan, the Secretary reserves the right to impose such additional conditions or requirements not required by the Act or Appendix A of this Cooperative Agreement which are authorized or required by law or by his general authority to supervise the activities of persons on Federal lands.

ARTICLE V. INSPECTIONS

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

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

C. For the purpose of evaluating the manner in which this Cooperative Agreement is being carried out and to insure that performance and reclamation standards are being met, the Secretary may conduct inspections of surface coal mining and reclamation operations on Federal lands, and shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary may be made in association with regular inspections by the State. {33651}

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

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

ARTICLE VI./ ENFORCEMENT

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

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

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

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

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

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

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

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

ARTICLE VII. BONDS

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

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

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

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

ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT

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

ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT

This Cooperative Agreement may be terminated as follows:

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

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

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

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

1. When no longer authorized by Federal laws and regulations or Utah laws and regulations; {33652}
2. When a State program is finally disapproved, pursuant to Section 503 of the Act.
3. Within 120 days of the approval of a permanent State program pursuant to Section 503 of the Act.
4. Following promulgation of a Federal lands program pursuant to Section 523(a) of the Act in the event the Secretary determines in writing that the State Regulatory Authority lacks the necessary personnel, legal authority, or funding to fully implement the Federal lands program in accordance with the provisions of the Act.

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

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

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

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the Federal Register, and the place shall be in the State.
2. Within thirty (30) days of the date of the written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements, and other documents relative to the proposed termination.

3. The hearing will be conducted by the Secretary. A record shall be made of the hearing and the State shall be entitled to obtain a copy of the transcript. The State shall be entitled to have legal and technical and other representatives present at the hearing or conference, and may present, either orally or in writing, evidence, information, testimony, documents, records, and materials as may be relevant and material to the issues involved.

F. Notice of Withdrawal of Approval of Cooperative Agreement.

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

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

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

ARTICLE X. REINSTATEMENT OF COOPERATIVE AGREEMENT

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

ARTICLE XI. AMENDMENTS OF COOPERATIVE AGREEMENT

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

ARTICLE XII. CHANGES IN STATE OF FEDERAL STANDARDS

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

ARTICLE XIII. CONFLICT OF INTEREST

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

ARTICLE XIV. EXCHANGE OF INFORMATION

A. Organizational and Functional Statement. The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, telephone numbers, addresses, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such. {33653}

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

ARTICLE XV. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the State of Utah and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(B) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

ARTICLE XVI. DEFINITIONS

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

Dated: October 20, 1978.
Scott M. Matheson , Governor of Utah.

Dated: October 20, 1978.
Cleon Feight, Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.
Cecil D. Andrus, Secretary of the Interior.

APPENDIX A

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

1. Laws of the State of Utah:

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

(i) Section 40-8-1.

(ii) Section 40-8-2.

(iii) Section 40-8-3.

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

(v) Section 40-8-5.

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

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

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

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

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

(xi) Section 40-8-11.

(xii) Section 40-8-12.

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

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

(xv) Section 40-8-15.

(xvi) Section 40-8-16(2), (3), and (4).

(xvii) Section 40-8-17.

(xviii) Section 40-8-18.

(xix) Section 40-8-19.

(xx) Section 40-8-20.

(xxi) Section 40-8-21.

(xxii) Section 40-8-22.

(xxiii) Section 40-8-23.

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

(i) The preamble of the rules pp. 66-67.

(ii) M-3 The paragraph following (h) due to the confidentiality portion which is not in conformity with the Act.

(iii) M-4.

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

I. PURPOSE.

The Protocol is intended by the Utah Division of Oil, Gas, and Mining (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 State of Utah by its Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof. {33654}

II. PROCEDURES.

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.
2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.
3. The Office of Surface Mining will coordinate all activities relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.
4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate.
5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining, within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. The Office of Surface Mining will communicate to the State Regulatory Authority within a reasonable time any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.
6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.
7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence from the State Regulatory Authority in accordance with paragraph 5 hereof.
8. Copies of all written communications, data, documents, or other information received by the State Regulatory Authority from operators will be forwarded to the Office of Surface Mining by the State Regulatory Authority or sent directly to the Office of Surface Mining by the operator when requested to do so by the State Regulatory Authority.
9. The Secretary and the State Regulatory Authority agree to inform each other of any communications received from the

operator regarding any matter subject to this Protocol.

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

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will designate an Environmental Impact Statement team and coordinate the drafting of an Environmental Assessment or Environmental Impact Statement which will comply with the National Environmental Policy Act and any applicable requirements of State law. It is understood and agreed by the parties that no formal, final action regarding approval or disapproval of any pending plan and permit may be taken by either party until said requirement of law is met. In addition, the State Regulatory Authority shall take action as is necessary to prevent approval of the application by default under State law. {33655}

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations. After receipt of concurrence with any such action from the respective Interior agencies with responsibilities for the review of mining plans under any Federal statute or regulation other than the Act, and upon concurrence with any such action by the Regional Director for the Office of Surface Mining, and following completion of any procedures referenced in paragraph 11 hereof, a joint recommendation by the Regional Director, Office of Surface Mining, on behalf of all Interior agencies and the State Regulatory Authority will be forwarded to the Secretary or his authorized delegee for final action. If the Regional Director and the State Regulatory Authority cannot agree upon such a recommendation, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representatives of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. If the State Regulatory Authority approves the mining and reclamation plan or permit or request for amendment in whole or in part, it shall condition any approval on obtaining approval of the plan, permit or amendment from the Secretary so that mining cannot commence on Federal lands until the Secretary approves the mining and reclamation plan.

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

III. INTERPRETATION.

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

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

IV. REVISIONS TO PROTOCOL.

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

Dated: October 20, 1978.

Scott M. Matheson, Governor of Utah.

Dated: October 20, 1978.

Cleon Feight, Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.

Cecil D. Andrus, Secretary of the Interior.

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