

FEDERAL REGISTER: 44 FR 54493 (September 20, 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, North Dakota

ACTION: Proposed Rulemaking on Modified Cooperative Agreement with North Dakota.

SUMMARY: This proposed rulemaking is to modify the existing Federal/State cooperative agreement between the Department of Interior and the State of North Dakota (30 CFR 211.77(d)) in accordance with the requirements of Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) hereinafter referred to as the "Surface Mining Act," and Section 211.75 (b) and (c) of Title 30 CFR. 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 which must be received by 5 p.m. on October 22, 1979. A public hearing will be conducted if public comment warrants.

ADDRESSES: Written comments should be addressed to the Director, Office of Surface Mining, U.S. Department of the Interior, Room 212, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20245, 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 North Dakota laws and regulations referred to in the proposed agreement are available for inspection in the Denver, Colorado, Office and in Room 135, South Interior Building, Washington, D.C., and in the Office of the Public Service Commission, Capitol Building, Bismarck, North Dakota.

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 Agreement is to provide North Dakota with the opportunity to continue to regulate surface coal mining and reclamation on Federal lands in the State. Modification of an Agreement dated May 1, 1977, and published in 30 CFR 211.77(d), became necessary with enactment of the Surface Mining Act later in 1977. Section 523(c) of that Act authorizes states with existing agreements to request their modification under new requirements for the initial regulatory program set forth in Section 502 of the Act. North Dakota requested such modification, and the Secretary has determined that the State meets the new requirements.

Such agreement would be modified to (1) adopt new State statutes and amended regulations containing new environmental protection standards and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law; (2) require the State Regulatory Authority to exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to Section 521 of the Surface Mining Act; (3) clarify the procedures for the cooperative review and approval of mining and reclamation plans for surface coal mining and reclamation operations on Federal lands; (4) provide for the termination of such agreement in the event the State does not implement the permanent Federal lands program or receiver approval of a permanent regulatory program under Section 503 of the Surface Mining Act on lands regulated by the State; and (5) establish procedures for performance bonding.

The basic purpose is to reduce duplication of Federal and State regulation of surface coal mining and reclamation activities in North Dakota. To achieve that goal, the Agreement establishes specific requirements that the State must meet. Along with those summarized in the following items, the Agreement identifies the North Dakota Public Service Commission (Commission) as the sole agency to act on behalf of the State and stipulates that the agency have sufficient authority, funding, equipment, and personnel to implement the Agreement. In keeping with its cooperative nature, it specifies how the Commission and the Secretary will exchange information concerning their respective activities and organizations. {54494}

1. STATE STANDARDS. Prior to the signing of this Cooperative Agreement, North Dakota adopted new legislation and promulgated new or amended regulations in order to implement the Surface Mining Act, including Section 502, on lands regulated by the State. North Dakota's environmental protection and reclamation standards as set forth in Appendix A of the proposed cooperative agreement qualify for application to Federal lands because they are as stringent as Federal standards in

30 CFR Part 211. The review of North Dakota'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 Title 30 CFR upon the receipt of an application from the State.

2. ADOPTION AS FEDERAL LAW. Final approval of the proposed cooperative agreement after rulemaking would continue to authorize State jurisdiction over surface coal mining and reclamation operations on Federal lands so as to establish a uniform regulatory program applicable to both the State-regulated and Federal-land portions of a mine. State jurisdiction will be exercised pursuant to the requirements of State law for the review of mining plans, bonding and enforcement. In order to accomplish the application of State law and standards to Federal lands, specific provisions of the State statute and the State regulations identified in Appendix A of the proposed agreement would be adopted as substantive Federal law enforceable by both North Dakota and the Secretary.

3. ENFORCEMENT PROCEDURES. In order to "fully comply with the initial regulatory procedures in Section 502," the cooperative agreement requires that North Dakota 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 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 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 the Governor have signed the Cooperative Agreement, such action does not render the agreement effective. According to its terms (Article II), the Agreement does not become effective until published as final rulemaking. It was deemed desirable to sign the agreement prior to this proposed rulemaking to reflect the complete concurrence 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 in 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 Director and the Governor's representative met and agreed on the provisions of this cooperative agreement on November 20, 1978, thereby allowing the existing agreement to remain in effect until the modified agreement is finally approved. Delay in publication resulted from revisions in Appendix A due to North Dakota's subsequent legislation.

5. SIGNIFICANCE. The Department of 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. A copy of this determination is available at the Office of the Director, Room 212 South Interior Building, Washington, D.C. 20240.

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: September 13, 1979. Cecil D. Andrus, *Secretary*.

SECTION 211.10 [AMENDED]

In order to implement the proposed agreement, it is proposed that 30 CFR 211.10(e) (4) be amended as follows:

* * *

of Guidelines for Contacts With Employees and Offic(e) States with Section 211.75(c) agreements:

* * *

(4) *North Dakota.* A Federal coal lessee in the State of North Dakota who must submit a mining plan or permit application under both State and Federal law shall submit to the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and The Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, and the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.10(c).

COOPERATIVE AGREEMENT - NORTH DAKOTA

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

Cooperative agreement between the United States Department of Interior and the State of North Dakota 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 North Dakota, acting by and through the North Dakota Public Service Commission and the Governor (hereinafter referred to as the State Regulatory Authority and 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 North Dakota with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of North Dakota. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

ARTICLE II. EFFECTIVE DATE

This Cooperative Agreement is effective following signing by the Secretary, the Governor, and the State Regulatory Authority, and upon final publication as rulemaking in the Federal Register. This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supercedes that Cooperative Agreement effective May 1, 1977, 30 CFR 211.77(d).

ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor, the State Regulatory Authority, 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 North Dakota Public Service Commission (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 State of North Dakota on Federal lands throughout the State. {54495}

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 Chapter 38-14 of the North Dakota Century Code and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. EFFECTIVENESS OF STATE PROCEDURES. The procedures of the State Regulatory Authority for enforcing the requirements contained in Appendix A are and shall continue to be substantially 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 coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. ENFORCEMENT. The State Regulatory Authority 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 Regulatory Authority 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. The Secretary shall reimburse the State Regulatory Authority for costs associated with carrying out responsibilities in compliance with this Cooperative Agreement to the extent that funds have been appropriated. 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 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 Regulatory Authority had not entered into this Cooperative Agreement. {Page 54496}

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. *EQUIPMENT AND LABORATORIES*. The State Regulatory Authority shall have equipment, laboratories, and facilities with which all 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 equipment, laboratories and facilities.

ARTICLES IV. MINE 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 Regulatory Authority 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 to the State Regulatory Authority and the Office of Surface Mining (OSM) 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:

1. The information required by or necessary for the State Regulatory Authority or the Secretary, where applicable, to make an independent timely determination of compliance with:

a. *North Dakota Statutes*, Sections 38-14-02.1 and 38-14-04 of the North Dakota Century Code (Tn.d.c.c.);

b. North Dakota Regulations, Chapter 69-05-02 of the North Dakota Public Service Commission Surface Mining 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 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. Section 181 *et seq.*, to the extent it is not otherwise required by 1(a) and (b) above; {54495}

e. the requirements of 30 CFR 211.10, to the extent it is applicable and not otherwise required by 1(a) and (b) above;

f. Applicable terms and conditions of the lease or license to the extent it is not otherwise required by 1(a) and (b) above;

g. Applicable requirements of other Federal laws, and

h. The Secretary shall advise the State in writing promptly after the effective date of this cooperative Agreement of all of the Federal requirements addressed in 1(c), (d), (e), (f), and (g) above which are not otherwise required by 1(a) and (b) above.

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 designated recipient of the Secretary.

3. The State Regulatory Authority and the Office of Surface Mining on behalf of the Secretary shall review and act upon each mining and reclamation plan and permit application, or modifications or revisions thereto, in accordance with the following procedures:

a. 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 this Cooperative Agreement. With respect to mining plans pending approval and permit applications, 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.

b. The Office of Surface Mining will coordinate all activities relative to the review of mining plans and permit

applications for all concerned Interior and, as written agreements may permit, other Federal agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of Interior and other Federal agencies as written agreements may permit.

c. Based upon the coordinated review and to the extent practicable, 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, or modifications or revisions thereto 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, as soon as practicable after receipt of the plan and application. The Office of Surface Mining will communicate to the State Regulatory Authority within a reasonable time any proposed additions or modifications to the letter requested by Interior agencies. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting or telephone conference will be held between 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, the draft letter will be revised to incorporate the agreed upon changes, if any, and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining. If such objections are not resolved, then both the State Regulatory Authority and the Secretary may communicate separately with the operator.

d. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to consult with the State Regulatory Authority and propose additions or modifications to all significant written correspondence from the State Regulatory Authority regarding mining plans in accordance with the procedures of Paragraph c hereof.

e. Copies of all significant written communications, data, or documents applicable to a pending mining plan and application, or modifications or revisions thereto 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. The Secretary and the State Regulatory Authority agree to inform each other of any other significant communications received from the operator regarding any matter subject to this Agreement, including copies of any significant written correspondence. {54496}

f. Meetings with the operator regarding a substantial review of the proposed mining plan affecting Federal lands can be scheduled by either the Office of Surface Mining or the State Regulatory Authority, provided adequate advance notice is given to the other party so it has the opportunity to participate in said meeting.

g. Comprehensive site inspections as related to mining plan and permit review on Federal lands can be conducted by either representatives of the Secretary or the State Regulatory Authority, provided that when time and circumstances permit adequate advance notice is given to the other party so it has the opportunity to participate in said inspection.

h. 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 promptly notify the Secretary and the applicant of its action on the application. If the application is disapproved, a notice shall be sent to the applicant and the Secretary along with a statement of findings and conclusions in support of the action. If the State Regulatory Authority approves the mining and reclamation plan and permit application 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, except that those lands within the plan, permit or amendment which are private or State lands can be approved for final action without Secretarial approval.

The State Regulatory Authority shall in any approved plan, permit or amendment, reserve the right to amend or rescind its action to conform with action taken or with terms or conditions imposed by the Secretary, and agreed to by the State Regulatory Authority, as a basis of his approval. The Secretary shall not delete any requirements included in the State Regulatory Authority's approval without the consent of the State. Prior to the Secretary disapproving the mining and reclamation plan, permit application or request for amendment, in whole or in part, the Secretary shall consult with the State Regulatory Authority for the purpose of attempting to reach agreement on curative revisions to the plan, permit application or amendment, to the extent allowable under State and Federal law.

4. Any final approval of a mining and reclamation plan and permit authorizing surface coal mining operations on Federal lands, or modifications or revisions thereto, by the parties which will create a right of appeal by any aggrieved person shall not be complete, except on private and State lands which is complete upon action by the State Regulatory Authority, until the document recording such action is signed by both the Secretary (or his authorized delegate) and the authorized officer of the State Regulatory Authority.

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 North Dakota state law as frequently as necessary, but not less than one partial inspection per month and one complete inspection per calendar quarter, the area of operations as defined by the approved mining and reclamation plan, the permit area of the applicable state permit, and any other areas outside the area of operations which are or may be affected by the surface coal mining and reclamation operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all applicable 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 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: *Provided*, That when circumstances and time permit adequate advance notice will be given the State Regulatory Authority so its representatives have the opportunity to participate in said inspection. Subsequent to conducting any inspection, the Secretary shall provide the State Regulatory Authority with a copy of the report. Inspections by the Secretary are encouraged to be made in association with regular inspections by the State.

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

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

ARTICLE VI. ENFORCEMENT

A. If the State Regulatory Authority finds any conditions or practices, or violations of the requirements of subSections 1 and 4 of Section 38-14-05.1 N.D.C.C. which would authorize the issuance of an order of cessation under Section 521(a) (2) of the Act by a representative of the Secretary, the State Regulatory Authority or its authorized representative shall immediately exercise the power authorized by subSection 8 of Section 38-14-05.1 N.D.C.C. to cease the operations.

B. (1) When based upon an inspection, the State Regulatory Authority determines that any operator is in violation of any requirement of Appendix A, or any other applicable environmental reclamation requirements 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 State Regulatory Authority, or its authorized representative, shall issue a notice of noncompliance with remedial measures and an abatement schedule to the operator pursuant to subSection 1 of Section 38-14-06.1 N.D.C.C. which shall be consistent with the requirements of Section 521(a) (3) of the Act.

(2) When a notice of violation has been issued under B(1) of this Article and 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 State Regulatory Authority, or its authorized representative shall immediately issue a cessation order as authorized by subSection 6 of Section 38-14-05.1 N.D.C.C. to cease the operation until the violation has been abated, or alternatively, the State Regulatory Authority can act to suspend the permit pursuant to subSection 2 of Section 38-14-06.1 N.D.C.C.

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

D. This Agreement does not limit the Secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate any requirement under Federal law or Appendix A incorporated into Federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to 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.

E. Failure of the State Regulatory Authority to enforce approved mining and reclamation plans, permits and applicable laws and standards and regulations in accordance with this Agreement, shall be grounds for termination of this Cooperative Agreement. {[Page 54497]}

ARTICLE VII. BONDS

A. *Amount and Responsibility.* The State Regulatory Authority shall require all operators on Federal lands to submit a performance bond as required by State law payable to both the State and the United States of America. The Secretary shall require a Federal performance bond sufficient to comply with the requirements of Federal law and shall reduce the portion of the Federal bond required for reclamation purposes by the amount of the bond required by the State Regulatory Authority.

B. *Notification.* Prior to releasing 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. *Bond Forfeiture.* Either the State Regulatory Authority or the Secretary, in consultation with one another, may forfeit the bond under the appropriate 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 Regulatory Authority 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 Regulatory Authority has 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 Governor or the State Regulatory Authority 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 substantially 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 North Dakota laws and regulations, provided that if the Secretary intends to make such a determination, he complies with the notice requirements of paragraph D of this Article;

2. When a State program is finally disapproved, pursuant to Section 503 of the Act;

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 by the Secretary shall be given in writing to the State Regulatory Authority and shall specify the inadequacies of this Agreement. This Cooperative Agreement shall then terminate not less than 120 days after said notice is received by the State Regulatory Authority 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 North Dakota lacks the necessary personnel or funding to fully implement the Federal lands program in accordance with the provisions of the Act, provided that the Secretary complies with all of the notice and hearing requirements of this Article.

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 written notice the grounds upon which he proposes to terminate this Cooperative Agreement.
3. 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, except for circumstances set forth in paragraph C.1., hereon, 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 Regulatory Authority will be afforded the 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 30 days of the date of the written notice specifying the date of the hearing, the State Regulatory Authority 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 the termination which the State Regulatory Authority 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 30 days shall constitute a waiver of the opportunity for hearing, but the State Regulatory Authority 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 or the right to a hearing has been waived or forfeited by the State Regulatory Authority, the Secretary, after consideration of the evidence, information, testimony, and arguments presented to him shall advise the State Regulatory Authority in writing of his decision. If the Secretary determines to withdraw approval of this Cooperative Agreement, he shall notify the State Regulator the Cooperative Agreement, and afford the State Regulatory Authority 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 Regulatory Authority 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 actions, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating his reasons therefor. {Page 54498}}

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 Regulatory Authority and upon giving evidence satisfactory to the Secretary that the State Regulatory Authority 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 State Regulatory Authority, the Governor, and the 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 or the State of North Dakota may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the State Regulatory Authority 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 require legislative authorization, the State Regulatory Authority has until the close of its next legislative session at which such legislation can be considered in which to make the necessary changes. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes, unless such rulemaking is prevented by the issuance of an injunction or similar order by any court of competent jurisdiction in which event the six month time period shall not commence until the applicable litigation has been finally resolved. If changes which are necessary for the State Regulatory Authority to have the authority to administer and enforce Federal Requirements are not made, then the 744, 783, provisions 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 Part 705.

ARTICLE XIV. EXCHANGE OF INFORMATION

A. *Organizational and Functional Statements.* 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 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, addresses and telephone numbers, and the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

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

ARTICLE XV. RESERVATION OF RIGHTS

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the State Regulatory Authority, the Governor, and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and reclamation Act of 1977, the Constitution of the 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 Section 2(a), 2(B), and 2(a) (3) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the

designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

ARTICLE XVI. DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR Part 700 or Part 710 shall be given the meanings set forth in said definitions.

Approved.

Dated: September 13, 1979.

Cecil D. Andrus, *Secretary of the Interior.*

Arthur A. Link, *Governor, State of North Dakota.*

Richard A. Elkin, *President, North Dakota Public Service Commission.*

Ben J. Wolf, *Commissioner, North Dakota Public Service Commission.*

Bruce Hagen, *Commissioner, North Dakota Public Service Commission.*

APPENDIX A

This Appendix A identifies the laws of the State of North Dakota and the regulations of the State Regulatory Authority which are incorporated into the 1979 Federal-State Cooperative Agreement between the State of North Dakota 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. The provisions of the North Dakota Century Code, Chapter 38-14.1 - Reclamation of Surface-Mined Lands, Sections 38-14.1-01 through 38-14.1-43, which are specifically identified in (1)-(xxxviii) hereof:

(i) 38-14.1-01.

(ii) 38-14.1-02, except that subSection (33) shall not be applicable on Federal lands.

(iii) 38-14.1-03, EXCEPT THAT SUBSECTIONS (19) and (23) shall not be applicable on Federal lands.

(iv) 38-14.1-07.

(v) 38-14.1-10.

(vi) 38-14.1-11.

(vii) 38-14.1-12.

(viii) 38-14.1-13.

(ix) 38-14.1-14.

(ix) 38-14.1-14.

(x) 38-14.1-15.

(xi) 38-14.1-16, provided, however, that any bond or any cash or securities posted in lieu of bond under this Section 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, and provided further that the bond may also be forfeited by the Secretary under Federal law pursuant to Article VII of this Cooperative Agreement.

(xii) 38-14.1-17, provided, however, 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.

(xiii) 38-14.1-18.

(xiv) 38-14.1-19.

(xv) 38-14.1-20.

(xvi) 38-14.1-21.

(xvii) 38-14.1-22.

(xviii) 38-14.1-23.

(xix) 38-14.1-24, provided, however, that Section 38-14.1-24(3) (a) shall not be included in this Appendix A and shall not apply on Federal lands and provided, further, that the following words and phrases shall not be included in this Appendix A and shall, therefore not apply on Federal lands: "to the extent possible using the best technology currently available" in Section 38-14.1-24(8) (e); "natural" in Section 38-14.1-24(8) (f); and provided further that the State Regulatory Authority agrees to exercise the discretion contained in Section 36-14-1-24(5) in a manner consistent with and as stringent as Section 515(b) (5) of the Act and regulations adopted pursuant thereto. {[Page 54499]}

(xx) 36-14.1-25.

(xxi) 38-14.1-26.

(xxii) 38-14.1-27.

(xxiii) 38-14.1-28.

(xxiv) 38-14.1-29, provided, however, that the imposition of a civil penalty by the state pursuant to this Section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or 30 CFR 743.

(xxv) 38-14.1-30.

(xxvi) 38-14.1-31.

(xxvii) 38-14.1-32, provided, however, that the imposition of a civil or criminal penalty by the State pursuant to this Section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or 30 CFR 743, or from seeking criminal prosecutions under applicable Federal law.

(xxviii) 38-14.1-33.

(xxix) 38-14.1-34.

(xxx) 38-14.1-35, provided, however, that this Section shall be limited to actions taken by the state under state law in accordance with this Cooperative Agreement, and nothing in this Section or this Cooperative Agreement shall be construed so as to create jurisdiction in a state court over actions taken by the Secretary, including the denial or approval of mining plans.

(xxxi) 38-14.1-36.

(xxxii) 38-14.1-37.

(xxxiii) 38-14.1-38.

(xxiv) 38-14.1-39.

(xxxv) 38-14.1-40.

(xxxvi) 38-14.1-41.

(xxxvii) 38-14.1-42.

(xxxviii) 38-14.1-43.

2. Rules and Regulations for Reclamation of Surface Mined Lands of the State of North Dakota, Reclamation Division of the North Dakota Public Service Commission, including amendments and revisions promulgated July 1, 1979, cited as Article 69-05.1 of the North Dakota Administrative Code provided, however, that 69-05.1-16-02(1) and the phrase "to the extent possible" in Section 69-05.1-11-10(2) shall not be included in this Appendix A and shall not be applicable on Federal lands.

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