

**FEDERAL REGISTER: 45 FR 53128 (August 11, 1980)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 211

Regulation of Coal Mining on Federal Lands in New Mexico

ACTION: Final rule.

**SUMMARY:** This final rule completes the amendment to 30 CFR 211.75(c)(3) to permit those States with terminated cooperative agreements to request the Secretary of the Interior to reinstate the terminated agreements. This final rule also modifies and reinstates a Federal/State cooperative agreement between the Department of the Interior and the State of New Mexico (30 CFR 211.77(c)) 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."

**EFFECTIVE DATES:**

a. Effective date of the amendment to the Regulations (30 CFR 211.75(c)(3)). The Department has determined that good cause exists to make the amendment to 30 CFR 211.75(c)(3) effective upon the date of publication in the Federal Register (August 11, 1980). The reasons for an immediate effective date are as follows. The amendment to 30 CFR 211.75(c)(3) enables the Governor of the State of New Mexico and the Secretary of the Interior to reinstate and modify a cooperative agreement which had terminated. Reinstatement of the cooperative agreement and making the cooperative agreement also effective immediately are necessary to aid in preventing duality of administration and enforcement, to permit a more uniform application of reclamation requirements on Federal lands, to reduce the administrative costs of implementing the program, and to reduce possible operator confusion by having a single set of standards for all lands within the State.

b. Effective date of the Cooperative Agreement. The Department has determined that good cause exists to make the cooperative agreement effective immediately for the reasons given in paragraph (a) above. Accordingly, although originally signed by the parties on April 15, 1980, this final cooperative agreement becomes effective on the date of publication in the Federal Register (August 11, 1980). See Article II of the cooperative agreement.

**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 43 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 New Mexico/ 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., N.W., Washington, D.C. 20240.

2. Pursuant to Section 702(d) of the Surface Mining Act, adoption of this rule is 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(e)(C)].

Dated: August 4, 1980.

Cecil D. Andrus, Secretary. {53129}

FOR FURTHER INFORMATION CONTACT: Donald Crane, Regional Director, Region V, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado, 80201, (303) 837-5421.

**SUPPLEMENT INFORMATION:**

This final rule amends 30 CFR 211.75(c)(3) to permit States having terminated cooperative agreements to request the Secretary to reinstate those agreements. In addition, the rule modifies and reinstates the cooperative agreement published at 30 CFR 211.77(c) between the State of New Mexico and the Secretary, in accordance with the requirements of

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). That Section of the Act provides that States with cooperative agreements pre-dating August 3, 1977 may elect to continue regulation of Federal lands within the State providing that the pre-existing cooperative agreement is modified to fully comply with the initial regulatory program set forth in Section 502 of the Surface Mining Act.

The bases and purposes of the amendment to 30 CFR 211.75(c)(3) appear in the preamble to the proposed rule published on April 21, 1980 (44 FR 26924-32). The full text of the proposed cooperative agreement and supplementary information on the terms of the agreement and New Mexico's request to reinstate also appear in the April 21, 1980 notice. The content of that notice is hereby incorporated by reference and will not be repeated here except as necessary to discuss comments.

The cooperative 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 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 enforceable by the State and the United States; (2) the 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) the creation of procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on Federal lands or on commingled State and/or private lands and Federal lands; (4) the termination of such agreement; and (5) the creation of requirements for joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

The Office of Surface Mining received comments from one individual on the proposed cooperative agreement with the State of New Mexico. These comments were apparently based on this individual's review of the New Mexico proposed permanent regulatory program which was submitted to the Office of Surface Mining on February 28, 1980. OSM published a Notice of receipt of New Mexico's State program submission on March 5, 1980 (45 FR 14230-31). His comments consist of a copy of a letter written to the State of New Mexico's Energy and Minerals Department on April 30, 1980, commenting on the State's proposed program submitted to the Department pursuant to Section 503 of the Act. The comments, therefore, are addressed to various provisions of New Mexico's laws and regulations intended to be applicable to the permanent program. Since this rulemaking is concerned with regulation of surface coal mining on Federal lands under the initial regulatory program (Sections 502 and 523(c) of the Surface Mining Act), the comments are not relevant to this rulemaking. Consequently, no changes in the agreement were made in response to these comments. There will be a separate rulemaking to receive comments on a permanent program cooperative agreement between the State of New Mexico and the Department if New Mexico elects to enter into such an agreement. See Sections 523(c) of the Act (first sentence) and 30 CFR Part 745.

In the April 21, 1980 notice of proposed rulemaking, OSM identified a revegetation regulation of the State of New Mexico which was in compliance with the corresponding provision of the permanent program (30 CFR 816.114 and 817.114) but technically not in compliance with the initial program regulation (30 CFR 715.20). See discussion of rulemaking regulation at 45 FR 26925, April 21, 1980. The Secretary proposed to require the State to develop specific criteria for elimination of the mulching requirement under the State's regulation, and requested public comment on whether the criteria should be made a condition of the cooperative agreement. (Id. ) No comments were received on this issue.

OSM and the State of New Mexico have had preliminary discussions with respect to the development of specific criteria for omitting mulching. Development of these criteria by the State of New Mexico will constitute an "assurance given by the State upon which this Cooperative Agreement is based" pursuant to Article IX (B)(2) of the Cooperative Agreement.

As noted above, no changes in the Cooperative Agreement previously signed by the Governor, the Secretary of the Interior, and the Secretary, Energy and Minerals Department on April 15, 1980 were made as a result of public comment. In addition, no other changes based on the Department's internal review are necessary. Accordingly, there is no need for the parties to execute another version of the Cooperative Agreement.

1. Title 30 CFR 211.10(e)(3) is revised as follows: {53130}

**SECTION 211.10 - EXPLORATION AND MINING PLANS.**

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

(3) New Mexico. A Federal coal lessee in the State of New Mexico 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).

2. Title 30 CFR 211.75(c)(3) is revised as follows:

**SECTION 211.75 - APPLICABILITY OF STATE LAW.**

(c) \* \* \*

(3) The governor of any State that wishes to modify a cooperative agreement existing on August 3, 1977, shall notify the Secretary in writing of the State's intent to modify the cooperative agreement. The notice of intent to modify the cooperative agreement must have been received by the Secretary prior to December 31, 1977, and the modification to the existing cooperative agreement agreed to by November 20, 1978 (90 days from the publication of the August 22, 1978, amended 30 CFR Part 211 regulations). Failure to give notice or to timely complete the modification shall result in termination of any cooperative agreement executed prior to August 3, 1977. On and after December 31, 1979, the governor of any State whose pre-Act existing cooperative agreement is terminated as a result of inability of the parties to complete a modified cooperative agreement may request reinstatement of the terminated cooperative agreement. Such request shall be in writing, must be received by April 3, 1980, and the modification agreed to by May 3, 1980.

3. Title 30 CFR 211.77(c) is revised as follows:

**SECTION 211.77 - STATES WITH COOPERATIVE AGREEMENTS.**

(c) New Mexico. The administration and enforcement of reclamation requirements of Federal coal leases in New Mexico, subject to this part, shall be done according to the modified cooperative agreement between the State of New Mexico and the Department 11, 1980. The State of New Mexico and the Department enter into a modified cooperative agreement to designate the State of New Mexico as the principal party to administer surface coal mine reclamation operations on Federal land in New Mexico to read as follows:

**COOPERATIVE AGREEMENT**

Cooperative Agreement between the United States Department of the Interior, and the State of New Mexico under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (hereinafter referred to as the "Act"), 30 U.S.C. 1273(c), between the State of New Mexico (hereinafter referred to as the State), acting by and through Bruce King, Governor (hereinafter referred to as the Governor), and the United States Department of the Interior acting by and through the Secretary of the Interior (hereinafter 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 New Mexico with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of New Mexico. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for State review and approval of mining and reclamation

plans for operations on Federal lands, subject to the Secretary's authority to approve mine and reclamation plans on Federal lands and State regulation of surface coal mining and reclamation operations on Federal lands within the State.

## **ARTICLE II. EFFECTIVE DATE**

This Cooperative Agreement is effective upon signing by the Secretary and the Governor, approval by the New Mexico Energy and Minerals Department, and upon publication as rulemaking in the Federal Register (August 11, 1980).

## **ARTICLE III. REQUIREMENTS FOR COOPERATIVE AGREEMENT**

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

A. Responsible Administrative Agency. The Energy and Minerals Department of the State of New Mexico (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 the New Mexico Surface Mining Act and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

D. Effectiveness of State Procedures. The procedures of the State for enforcing the requirements contained in Appendix A are and shall continue to be as effective as the procedures of the Department of the Interior. {53131}

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 502(e)(4) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

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

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

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

#### **ARTICLE IV. MINING AND RECLAMATION PLANS**

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

B. Contents of Mining Plans and Permits . The Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and state permit application to the State and the Secretary which plan and permit application shall be in the form required by the State Regulatory Authority and include any supplemental data or information 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. Section 69-25A-10 and 14 N.M.S.A., 1978 (1979 Replacement Pamphlet).
- b. The Energy and Minerals Department Rule 79-1, Section 2.
- 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 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 .
- e. The requirements of 30 CFR 211.10.
- f. Applicable terms and conditions of the lease unless such conditions would be contrary to the requirements of the Act.
- g. Applicable requirements of other Federal laws.

2. A statement certifying that identical copies of the mining and reclamation plan and permit application have been given to both the State Regulatory Authority and the Secretary.

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

D. When acting upon mining and reclamation plans and permits, or modifications or revisions thereto, the State Regulatory Authority and the Secretary agree that neither of them will 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 B.1 of this Article. 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 along with a statement of findings and conclusions in support of the action. The State Regulatory Authority shall in any approved plan, permit, or amendment, reserve the right to amend or rescind its action to conform with action taken or with terms or conditions imposed by the Secretary, and agreed to by the State Regulatory Authority, as a basis of his approval. The Secretary shall not delete any requirements included in the State Regulatory Authority's approval without the consent of the State. Prior to the Secretary disapproving the mining and reclamation plan, permit or request for amendment, in whole or in part, the Secretary shall consult with the State Regulatory Authority for the purpose of reaching agreement on revisions to the plan, permit, or amendment, to the extent allowable under State and Federal law.

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

## **ARTICLE V. INSPECTIONS**

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by New Mexico 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 operations on Federal lands. Such inspections shall be conducted for the purpose of determining whether the operator has complied with all applicable requirements of the Act and Appendix A hereof, and all environmental and reclamation requirements of approved mining and reclamation plans or permits, but not be determine compliance with development or diligent production requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

B. The State Regulatory Authority will, subsequent to conducting any inspection, prepare a report adequately describing (1) the general 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 be operator and shall be made available for public inspection during normal business hours at the office of the State Regulatory Authority and the Office of Surface Mining.

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

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

E. Personnel of the State and representatives of the Secretary shall be 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 69-25A-25A N.M.S.A. 1978 to issue a cessation order halting mining and reclamation operations or the portion thereof relevant to the condition, practices or violation.

B. 1. When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator pursuant to section 69-25A-25B N.M.S.A. 1978 which shall be consistent with the requirements of section 521(a)(3) of the Act. {53132}

2. When a notice of violation has been issued under B(1) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or subsequently extended consistent with section 521(a)(3) of the Act, the representative shall immediately exercise the discretion authorized by section 69-25A-25A N.M.S.A. 1978 to order a cessation of mining and reclamation operations or the portion thereof relevant to the violation, until the violation has been abated.

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

D. This Agreement does not limit the secretary's authority to seek cancellation of a Federal coal lease under Federal laws and regulations, or prevent the Secretary from taking appropriate legal or other actions to correct conditions or practices that violate any requirement under Federal law or Appendix A incorporated into Federal law as a part of this Cooperative Agreement, or to suspend or revoke the right to mine in accordance with 30 CFR 211.72 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.

## **ARTICLE VII. BONDS**

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

B. Notification . Prior to releasing the operator from his obligations under the bond required by State law for Federal lands, the State Regulatory Authority shall consult with and obtain the 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. Forfeiture . Either the State Regulatory Authority or the Secretary may forfeit the bond under State or Federal law.

## **ARTICLE VIII. OPPORTUNITY TO COMPLY WITH COOPERATIVE AGREEMENT**

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

## **ARTICLE IX. TERMINATION OF COOPERATIVE AGREEMENT**

This Cooperative Agreement may be terminated as follows:

A. Termination by the State . The Cooperative Agreement may be terminated by the State upon written notice from the Governor, 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 Governor and the State Regulatory Authority and affording the State Regulatory Authority an opportunity for a hearing:

1. That the State Regulatory Authority has failed to comply substantially with a provision of this Cooperative Agreement, or

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

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

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

1. When no longer authorized by Federal laws and regulations or Ne Mexico laws and regulations;

2. When a permanent State program is disapproved and the State has failed to remedy the deficiencies within the time allowed by Section 503(c) of the Act, or where a Federal program for the State is promulgated and implemented pursuant to Section 504 of the Act.

3. Within 120 days of the approval of a permanent State program pursuant to Section 503 of the Act.

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

1. Give written notice to the Governor and to the State Regulatory Authority specified in Article III.

2. Specify and set out in the written notice the grounds upon which he proposes to terminate this Cooperative Agreement.

3. The Secretary shall also publish a notice in the Federal Register containing items 1 and 2 of this paragraph, and specifying a minimum of 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 written notice specifying the date of the hearing, the State shall file a written notice with the Secretary stating whether or not it will appear and participate in the hearing. The notice shall specify the issues and grounds specified by the Secretary for termination which the State will oppose or contest and a statement of its reasons and grounds for opposing or contesting. Failure to file a written notice in the Office of the Secretary within thirty (30) days shall constitute a waiver of the opportunity for hearing, but the State may present or submit before the time fixed for the hearing written arguments and reasons why the Cooperative Agreement should not be terminated, and within the discretion of the Secretary may be permitted to appear and confer in person and present oral or written statements and other documents relative to the proposed termination.

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

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

2. After the close of the comment period required by paragraph D. 3. of this Article with respect to a proposal to terminate this Cooperative Agreement pursuant to paragraph C. of this Article, the Secretary shall consider the comments received and after a review of the questions of law presented, shall publish notice of final action, either terminating the Cooperative Agreement or withdrawing the proposed termination, and stating the reasons therefor. {53133}

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, for cause, pursuant to paragraph B of Article IX, 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 the Secretary. An amendment proposed by one shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after rulemaking and the party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

## **ARTICLE XII. CHANGES IN STATE OR FEDERAL STANDARDS**

The Secretary of the Interior and/or the State Regulatory Authority may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months to make such changes. For changes which may 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 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, paragraph C., may be invoked, provided, however, that the State shall be given reasonable and necessary time to make the required changes as set forth in this paragraph.

## **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 key 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, addresses, telephone numbers, and the names, location, telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible, and of any changes in such.

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

## **ARTICLE XV. RESERVATION OF RIGHTS**

This Cooperative Agreement shall not be construed as waiving or preventing the assertion of any rights the Governor and the Secretary may have under the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, the Constitution of the United States, the Constitution of the State of State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the 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. DEFINITION**

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.

Dated: February 13, 1980.

Bruce King, Governor of New Mexico.

Dated: February 13, 1980.

Larry Kehoe, Secretary, Energy and Minerals Department .

Dated: April 15, 1980.

Cecil D. Andrus, Secretary of the Interior .

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

### **I. PURPOSE**

This Protocol is intended by the New Mexico Energy and Minerals Department (hereinafter the "State Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on Federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the Governor and the Secretary dated August 11, 1980 and are incorporated therein and made a part thereof.

### **II. PROCEDURES**

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.
2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding 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. {53134}
3. The Office of Surface Mining will coordinate all activities including coal conservation and postmining land use, 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 date or documentation submitted in support thereof, will be conducted jointly by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate. When detailed review is deemed to be necessary, Interior agencies may conduct a detailed review of all aspects of the plan and application, or modifications or revisions thereof, but as the program develops, Interior's review will be concentrated on major functions such as hydrology and revegetation, or where special attention is deemed to be necessary.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver Regional Office, Office of Surface Mining. It will be the goal of the State Regulatory Authority to send such letter within 60 days of receipt of the plan and application. The Office of Surface Mining will, whenever possible, coordinate review of the draft letter on behalf of Interior agencies. It will be the goal of the Office of Surface Mining to communicate to the State Regulatory Authority within 30 days any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, 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 regarding an operator's mining and reclamation plan from the State Regulatory Authority in accordance with paragraph 5 hereof.

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

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

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings or site inspections with the operator. 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 each other.

11. Upon receipt of a mining and reclamation plan and permit application, or major modification or revision thereto, the State Regulatory Authority and the Office of Surface Mining will, when appropriate, cooperate so that one Environmental Assessment and Environmental Review will be produced. When an Environmental Impact Statement is necessary, the State Regulatory Authority and the Office of Surface Mining will designate, when appropriate, one Environmental Impact Statement team to produce an EIS which will comply with the National Environmental Policy Act.

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations.

Following notification of the Regional Director of the proposed action, the Regional Director will inform the State Regulatory Authority of concurrence or disagreement with the proposed action. If the Regional Director and the State Regulatory Authority cannot agree upon the proposed action, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. The parties shall make reasonable efforts to resolve the differences and to reach a mutually agreeable decision on the proposed action.

### **III. INTERPRETATION.**

1. 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.

2. 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 the Interior where interpretations of Federal law or regulations are involved. This provision shall not be interpreted to prevent either party from challenging in court any opinion or interpretation of the State Attorney General with regard to State law or regulation or Solicitor with regard to Federal law or regulations.

#### **IV. REVISIONS TO PROTOCOL.**

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

Dated: April 15, 1980.

Bruce King, Governor of New Mexico .

Larry H. Kehoe, Secretary, Energy and Minerals Department .

Cecil D. Andrus, Secretary of the Interior .

#### **APPENDIX A**

This Appendix A identifies the laws of the State of New Mexico and the regulations of the State Regulatory Authority which are incorporated into the Federal-State Cooperative Agreement between the State of New Mexico 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 NEW MEXICO:**

(a) The provisions of the New Mexico Surface Mining Act, Sections 69-25A-1, et seq. being laws of New Mexico 1979 Chapter 291 which are specifically identified in (i)-(xxxiii) hereof: {53135}

(i) 69-25A-1 NMSA.

(ii) 69-25A-2 NMSA 1978.

(iii) 69-25A-3 NMSA 1978, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.

(iv) 69-25A-4 NMSA 1978.

(v) 69-25A-5.

(vi) 69-25A-6.

(vii) 69-25A-7.

(viii) 69-25A-8.

(ix) 69-25A-9.

(x) 60-25A-10, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.

(xi) 69-25A-11, provided that no waiver or reduction of the requirements of Section 69-25A-11(a) shall be permitted without the express concurrence of the Secretary.

(xii) 69-25A-12.

(xiii) 69-25A-13, 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 the 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.

(xiv) 69-25A-14.

(xv) 69-25A-15.

(xvi) 69-25A-16.

(xvii) 69-25A-17.

(xviii) 69-25A-18.

(xix) 69-25A-19, provided, however, that the term "prime farmland" shall have the same meaning as that in 30 USC 1291(20) for purposes of this Cooperative Agreement.

(xx) 69-25A-20.

(xxi) 69-25A-21.

(xxii) 69-25A-22, provided, however, that the imposition of a civil or criminal penalty by the State pursuant to this section shall not be construed as barring the Secretary from assessing a civil penalty pursuant to 30 CFR 211.78 or from requesting criminal prosecutions under applicable Federal law.

(xxiii) 69-25A-23, provided, however, that any bond applicable to the performance of duties on Federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xxiv) 69-25A-24, 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.

(xxv) 69-25A-25.

(xxvi) 69-25A-27.

(xxvii) 69-25A-28.

(xxviii) 69-25A-29, provided, however, that actions of the Secretary are not reviewable by the Director of the Mining and Minerals Division or the Coal Surface Mining Commission pursuant thereto.

(xxix) 69-25A-30, 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.

(xxx) 69-25A-31.

(xxx) 69-25A-32.

(xxxii) 69-25A-33, provided, however, that nothing in this section or this Cooperative Agreement shall be construed to delegate the Secretary's responsibility for approving experimental practices.

(xxxiii) 69-25A-35.

**2. REGULATIONS OF THE NEW MEXICO ENERGY AND MINERALS DEPARTMENT ADOPTED BY THE COAL SURFACE MINING COMMISSION AS RULE 79-1.**

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