that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land.

(3) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

* * * * *

(d) * * *

(1) lands within the proposed permit boundaries have not been historically used for cropland.

* * * * *

[FR Doc. 79-17981 Filed 6-8-79; 8:45 am]
BILLING CODE 4310-05-M

federal register

Monday
June 11, 1979

Part IV

Department of Energy

Office of the Secretary

Safeguarding of Restricted Data

DEPARTMENT OF ENERGY

Office of the Secretary

[10 CFR Part 795]

Safeguarding of Restricted Data

AGENCY: Department of Energy (DOE).

ACTION: Proposed Rule.

SUMMARY: The Department of Energy proposes a revision of 10 CFR Part 795 which concerns the requirements for the safeguarding and transmission of Secret and Confidential Restricted Data. Part 795 is applicable to all persons who receive or generate Restricted Data under an Access Permit issued pursuant to the regulations in Part 725 "Permits for access to Restricted Data" of 10 CFR, Chapter III.

Continual upgrading of security procedures by DOE, both for DOE held Restricted Data and that data held by DOE contractors, has left a considerable gap between these procedures and Part 795. In addition, areas such as automatic data processing systems are not within the scope of the present Part 795. In an effort to update and upgrade Part 795, this revision is proposed.

The changes vary in complexity and relate in general to the following matters: new definitions; submission of procedures by access permit holders; protection of Restricted Data in storage; establishment of security areas; qualification of protective personnel; certification of DOD and NASA personnel; preparation and transmission of classified documents; shipment of classified material; security of automatic data processing systems; and reports on foreign travel.

DATES: Comments must be received on or before July 11, 1979.

ADDRESSES: Comments should be sent to George Weisz, Director, Office of Safeguards and Security, Department of Energy, 20 Massachusetts Avenue, NW, Washington, D.C. 20545, (301) 353–5106.

FOR FURTHER INFORMATION CONTACT: W. E. Gilbert, Jr., Chief, Programs and Policy Branch, Office of Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545, 301/353–5690.

SUPPLEMENTARY INFORMATION: Significant changes to 10 CFR Part 795 which would be effected by the proposed revision are as follows:

1. "ERDA" and the titles of former ERDA officials would be changed to "DOE" and the titles of comparable DOE officials throughout the Part.

2. Definitions of the following terms would be added for clarity of the succeeding text.

§ 795.3(c) Automatic data processing system
(d) Authorized derivative classifier
(e) Data
(j) General Counsel
(k) Guard
(l) Information
(n) Material
(o) Matter
(s) Protective Personnel
(x) Security container
(y) Security inspector

3. The requirements of § 795.21(a) and 795.21(b) for protection of Restricted Data in storage would be upgraded for comparability with DOE standards established under the authority of the Atomic Energy Act of 1954, as amended.

4. New § 795.21(f) and 795.21(g) would provide additional procedural guidance for the selection and administrative control of lock combinations.

5. New § 795.21(h), 795.21(i), and 795.21(j) would provide additional procedural guidance for the surveillance and protection of unattended security repositories.

6. New § 795.25(c) and 795.25(e) would provide qualification standards for security inspectors employed for the protection of Restricted Data.

7. Section 795.31 would be revised to provide amplified guidance for the control of access to Restricted Data by employees of the DOD or NASA.

8. Sections 795.32(c), 795.32(d), and 795.32(e) would be revised to provide amplified guidance for the classification marking of Restricted Data documents, including drafts and letters or transmittal.

9. Section 795.33(d) would be revised to delete methods of transportation no longer available, to add additional authorized alternate methods of transportation, and to provide additional guidance for the protection of Restricted Data in transit.

10. New § 795.38 would add the requirement that ADP systems used for processing of Restricted Data must be approved by DOE.

11. New § 795.43(c) would require reports to DOE of travel to Soviet-bloc countries by Access Permittee employees who have had access to C–24 category of information.

Interested persons are invited to submit written comments with respect to the proposed regulations to the address provided above. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Safeguarding of Restricted Data." Fifteen (15) copies should be received by DOE by the deadline specified, in order to ensure consideration.

In accordance with section 501(c)(1) of the Department of Energy Organization Act, DOE has determined that these regulations present no substantial issue of fact or law, and are unlikely to have a substantial impact on the economy or large numbers of individuals or businesses. Accordingly, no public hearing is required.

Since this document is unlikely to have any significant effect on the environment, DOE has determined that the provisions of section 7(a)(2) of the Federal Energy Administration Act, as amended, requiring that proposals having such effect be submitted to the Environmental Protection Agency for review and comment, does not apply.

DOE has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107.

(Atomic Energy Act of 1954, as amended, Section 161.i., 68 Stat. 948, 42 U.S.C. 2201; Energy Reorganization Act of 1974, Section 104, 88 Stat. 1237, 42 U.S.C. 5814 and Section 165, 88 Stat. 1238, 42 U.S.C. 5815; Department of Energy Orgnization Act, Section 301, 91 Stat. 577, 42 U.S.C. 7140 and Section 641, 91 Stat. 598, 42 U.S.C. 7251)

Dated at Washington, D.C. this 14, of May 1979.

Duane C. Sewell,
Assistant Secretary for Defense Programs.

In accordance with the foregoing, it is proposed that Part 795 of 10 CFR Chapter III, be revised as set forth below.

PART 795—SAFEGUARDING OF RESTRICTED DATA

General Provisions

Physical Security

Control of Information

Authority: The provisions of Part 795 are issued under the Atomic Energy Act of 1954, as amended, section 161.i., 68 Stat. 948, 42 U.S.C. 2201; Energy Reorganization Act of 1974, section 104, 88 Stat. 1237, 42 U.S.C. 5814 and section 165, 88 Stat. 1238, 42 U.S.C. 5815; Department of Energy Organization Act, section 301, 91 Stat. 577, 42 U.S.C. 7140 and section 641, 91 Stat. 598, 42 U.S.C. 7251).

General Provisions

§ 795.1 Purpose.

The regulations in this part establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an Access Permit. This part does not apply to other categories of classified information.

§ 795.2 Scope.

The regulations in this part apply to persons who receive access to Restricted Data or develop Restricted Data under an Access Permit issued in accordance with the regulations in Part 725 of this chapter.

§ 795.3 Definitions.

(a) "Access authorization" means an administrative determination by DOE that an employee of DOE, a DOE contractor or subcontractor, an employee of a contractor or subcontractor of another Federal agency, an Access Permittee, or an employee of an Access Permittee is eligible for access to Restricted Data.

(b) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) "Automatic data processing" means data processing largely performed by an automatic system of electronic or electrical machines including input, processing, and output operations.

(d) "Authorized Derivative Classifier" means an individual who has been designated and authorized by competent Department of Energy (DOE) authority to classify information, work projects, documents, and other materials as Secret or Confidential Restricted Data.

(e) "Data" means all information and material containing Restricted Data, including any such facts or concepts set forth by an ADP system.

(f) "Document" means any piece of recorded information regardless of its physical form or characteristics.

(g) "DOD" means the Department of Defense or its duly authorized representatives.

(h) "DOE" means the Department of Energy or its duly authorized representatives.

(i) "DOE approved" means approved by the responsible DOE safeguards and security office.

(j) "General Counsel" is the principal Attorney of the Department of Energy.

(k) "Guard" means an individual, not necessarily uniformed, who is employed for, and charged with, the protection of classified matter or Government property. Guards shall be armed with non-lethal weapons such as billy-club, "Stum-Gun", or aerosol irritants.

(l) "Information", when automatic data processing is involved, means a representation of facts or concepts producted by an ADP system.

(m) "L(X) access authorization" means a determination by DOE that an individual is eligible for access to Confidential Restricted Data under an Access permit.

(n) "Material" means chemical substances, fabricated items, assemblies, machinery, or equipment.

(o) "Matter" means documents or material.

(p) "NASA" means the National Aeronautics and Space Administration or its duly authorized representatives.

(q) "Permittee" means the holder of an Access Permit issued pursuant to the regulations in part 725 of this chapter.

(r) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, any State or any political subdivision of, or any political entity within a State, or other entity; and (2) any legal successor, representative, representative, agent or agency of the foregoing.

(s) "Protective personnel" means guards or security inspectors.

(t) "Q(X) access authorization" means a determination by DOE that an individual is eligible for access to Secret and Confidential Restricted Data under an Access Permit.

(u) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

(v) "Security area" means a physically defined space containing classified matter and subject to physical protection and personel access controls.

(w) "Security clearance" means an administrative determination by DOE that an employee of another Federal government (as opposed to state and local) agency is eligible for access to Restricted Data.

(x) "Security container" means any of the following repositories:

(1) *A security filing cabinet*—a metal security container of a type approved by the General Services Administration for the storage of classified matter and marked "General Services Administration Approved Security Container". This container meets the Class 1 standards of Federal Specification AA–F–357, the Class 5 standards of Federal Specification AA–F–358, or the Class 5 standards of Federal Specification AA–F–363.

(2) *A safe*—a metal security container of a type approved by the General Services Administration for the storage of classified matter and marked "General Services Administration Approved Security Container". this container meets the standards of Federal Specification AA–S–1518A.

(3) *A vault*—a penetration-resistant, windowless enclosure which: (i) has walls, floor, and ceiling substantially constructed of materials which afford a forced penetration resistance at least equivalent to that of 8 inch thick reinforced concrete; (ii) has any openings greater than 96 square inches in area and over 6 inches in the smallest dimension protected by imbedded steel bars at least ⅝ inches in diameter on 6 inch centers both horizontally and vertically; (iii) has a built-in combination locked steel door which in existing structures is at least 1" thick exclusive of bolt work and locking devices and which for new structures at least meets the class 5 standards of Federal Specification AA–D–600B.

(4) *A security room*—one having combination-locked door(s) and protected by a DOE-approved intrusion alarm system actuated by any penetration of walls, floor, ceiling or openings, or by motion within the room.

(y) "Security inspector" means a uniformed individual who is authorized under appropriate state or local authority to carry firearms and who is employed for, and charged with, the protection of classified matter.

(z) "United States" when used in geographical sense, includes all Territories and Possessions of the United States, the Canal Zone and Puerto Rico.

§ 795.4 Communications.

Communications concerning rule making, i.e., petition to change Part 795, should be addressed to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, D.C. 20545. All other communications concerning the regulations in this part should be addressed to the Department of Energy at the USDOE Operations Office (listed in Appendix "B" of 10 CFR Part 725) administering access permits for the geographical area.

§ 795.5 Submission of procedures by Access Permit holder.

A Permittee is granted access to Restricted Data only after:

(a) submission to the Department of Energy field office administering the permit of a copy of his procedures for the safeguarding of Restricted Data and for the safeguards and security education of his employees, and

(b) Determination by the Manager of the Field Office or his designee and advice in writing to the Permittee that the procedures for the safeguarding of Restricted Data comply with the regulations in this part and the procedures for the safeguards and security education of employees assure that all employees who will have access to Restricted Data will be informed about and understand the regulations in this part.

§ 795.6 Specific waivers.

DOE may, upon application of any interested party, grant such waivers from the requirements of this part as it determines are authorized by law and will not constitute and undue risk to the common defense and security.

§ 795.7 Interpretation.

Except as specifically authorized by DOE in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of DOE other than a written interpretation by the General Counsel will be recognized to be binding upon DOE.

Physical Security

§ 795.21 Protection of restricted data in storage.

(a) Persons shall store Secret Restricted Data documents or material received under an Access Permit, while unattended or not in use, by one of the following methods:

(1) When not located within a security area:

(i) In a security container under either DOE-approved alarm protection or protective personnel (security inspector or guard) patrols no less frequent than once each 8-hour shift during non-working hours, or

(ii) In a dual-key bank safe deposit box, provided that the lock and keys to the box are changed immediately prior to such use and the customer's keys are furnished only to persons cleared for and authorized acess to the Restricted Data in the box.

(2) When located within a security area:

(i) In a security container or a commercial-type steel filing cabinet equipped with a built-in combination lock, provided the container or the cabinet is equipped with a DOE-approved alarm system or is under protective personnel patrol no less frequent than once every 8 hours during non-working hours.

(ii) In unlocked cabinets or open storage in a DOE-approved vault or security room.

(b) Confidential Restricted Data documents or material while unattended or not in use shall be stored:

(1) Under any of the methods used for Secret Restricted Data documents or material as set forth in paragraph (a) of this section, or

(2) In unlocked cabinets or open storage in a locked room equipped with a DOE-approved alarm system.

(c) *Changes of combinations.* (1) Combinations of locks of repositories containing Restricted Data shall be known only to those persons cleared for and otherwise authorized access to the category of Restricted Data stored therein.

(2) Each Permittee shall change the combination on the lock of a repository:

(i) Whenever the repository is placed in use;

(ii) Whenever a person knowing the combination no longer requires access to a repository. This may be as a result of a change in duties or location in the permittee's organization or termination of employment with the permittee;

(iii) Whenever the combination may have been subjected to compromise; and

(iv) In any event at least once a year.

(d) The record of the combination of a lock on a repository shall be controlled and afforded the same level of security protection required for the highest classification of the matter authorized to be stored in the repository.

(e) *Selection of combinations.* Each combination must require the use of three different numbers. In selecting combinations, multiples and a simple arithmetical ascending or descending series shall be avoided.

(f) *Cautions regarding combinations.* (1) Only a minimum number of persons should possess combinations to repositories.

(2) Combinations should be committed to memory insofar as practicable to reduce possibility of inadvertent compromise.

(3) When closing a combination lock, the dial must be turned at least four times in the same direction.

(4) Combinations shall be changed only by persons authorized access to Secret or Confidential Restricted Data depending upon the matter authorized to be stored in the repository.

(g) *Posted information.* (1) The names, addresses, and telephone numbers of custodians having knowledge of the combination shall be posted on the outside of each repository containing Restricted Data. A record of the date of last change of combination of each repository shall be maintained on each repository.

(2) A monitor sheet shall be posted on the security container approved for the storage of Restricted Data. In any situation when one monitor sheet includes several security containers located in a particular space or room, it shall be posted in an easily viewed place within, or at the entrance to, the room or space involved. The monitor sheet shall contain space for the date and initials of the persons locking and checking the container to assure it is secured. It shall be initialed at the end of each work day by the person locking the container(s) and except when not feasible, by one other person who has physically checked the lock(s), locked drawer(s), or door(s) and all exposed drawers to assure proper security of the container(s).

(h) *Unattended repository found open.* In the event that an unattended repository containing Restricted Data is found unlocked, one of the custodians shall be notified immediately, the repository shall be secured by a designated person (e.g., a security inspector or guard) and the contents shall be checked not later than the next workday.

(i) *Security Container Checks.* Whenever protective personnel are required by §§795.21 or 795.23, they shall, as soon as possible after the close of each normal work day, and, thereafter, at least once every 24 hours of a nonworking period exceeding one day, physically check each approved security container to assure it is properly secured.

§ 795.22 Protection while in use.

While in use, documents and material containing Restricted Data shall be under the direct control of an appropriately cleared individual and the Restricted Data shall be protected from visual access by unathorized persons.

§ 795.23 Establishment of security areas.

(a) When, because of their nature, size, revealing characteristics, sensitivity or importance, documents or material containing Restricted Data cannot otherwise be effectively controlled in accordance with the provisions of §§ 795.21 and 795.22, a security area to protect such documents and material shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by designated appropriately cleared security inspectors, guards, receptionists or other persons assigned for that purpose at each unlocked entrance. Remote identification by television, or coded key card system, may be used where positive identification and access control is assured.

(3) During non-working hours, security areas shall be protected by protective personnel conducting patrols at such frequency, not less than once every 8 hours, as the responsible field office manager deems necessary, or by a DOE-approved alarm system.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

§ 795.24 Special kinds of classified material.

When the Restricted Data contained in material is not ascertainable by observation or examination at the place where the material is located and when the material is not readily removable because of size, weight, radioactivity, or similar factors, DOE may authorize the Permittee to provide such lesser protection than is otherwise required by §§ 795.21 to 795.23, inclusive, as DOE determines to be commensurate with the difficulty of removing the material.

§ 795.25 Protective personnel.

Whenever protective personnel are required by §§ 795.21 or 795.23, they shall:

(a) Possess a "Q", "Q(X)", "L" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential.

(b) Possess a "Q" or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(c) Be mentally and physically alert, capable of exercising good judgment, and fully instructed in their duties.

(d) Security inspectors should be armed with side arms of not less than .38 caliber.

(e) Security inspectors shall be initially trained, and refresher trained at least annually, in the safe handling and proficient use of the type of handgun with which they are armed while on duty, and to the extent of their legal authority to act in the protection of classified matter. Records of such training shall be maintained during the tenure of the individual.

Control of Information

§ 795.31 Access to restricted data.

(a) Except as DOE may authorize, no person subject to the regulations in this part shall receive or shall permit any individual to have access to Secret or Confidential Restricted Data in his possession, unless the individual has a "Q" or "Q(X)" access authorization, in the case of Secret Restricted Data, "Q", "QX", or "L" or "LX" access authorization in the case of Confidential Restricted Data and:

(1) The individual is authorized by an Access Permit to receive Restriced Data in the categories and at the classification levels involved.

(2) In the case of a DOE or DOE contractor or subcontractor employee, the individual needs access to the Secret or Confidential Restricted Data in connection with his duties.

(b) As an alternative to DOE access authorization, Department of Defense (DOD) and National Aeronautics and Space Administration (NASA) personnel, officers or employees of one of the services, officers or employees of DOD, NASA, or service contractors or subcontractors, or members of the Armed Forces may be granted access if a request set forth in paragraph (c) of this section is received from DOD or NASA. As an exception, DOE access authorization is required for access by NASA personnel to Restricted Data other than that associated with space or aeronautical programs or activities.

(c) Prior to granting access to individuals referenced in paragraph (b) of this section, a Request for Visit or Access Approval (Form DOE-277), NASA Form 405, or a memorandum or teletype containing the same information, signed by an authorized certifying official will be forwarded for approval to the field office manager who will coordinate with other offices as necessary.

(d) Inquires concerning the security clearance or access authorization status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to the field office administering the Access Permit or the contract.

§ 795.32 Classification and preparation of documents.

(a) *Classification.* Restricted Data originated by an Access Permit holder must be appropriately classified. "Guide to the Unclassified fields of Research,"a and other appropriate guides issued by the U.S. DOE Office of Classification, will be furnished each Permittee. In the event an Access Permit holder originates information within the definition of Restricted Data (§ 795.3(u)) or information which he is not positive is not within that definition and the guide does not provide positive classification guidance for such information, he shall mark and handle the information as Confidential Restricted Data and request classification guidance from DOE through the Classification Officer at the Operations Office administering the Permit, who will refer the request to the Director, Office of Classification, U.S. Department of Energy, Washington, D.C. 20545, if he does not have authority to provide the guidance.

(b) *Classification consistent with content.* Each document containing Restricted Data shall be classified Secret or Confidential according to its own content.

(c) *Classification markings.* The highest classification marking assigned to any portion of a document shall be placed in letters not less than one-quarter inch in height at the top and bottom of the outside of the front covers, on title pages, if any, the first page, the back page and on the outside of the back cover, if any.

(d) The balance of the pages shall be marked at the top and bottom either with:

(1) the highest classification marking assigned to the document, or

(2) the classification marking required by their individual content, or

(3) the marking UNCLASSIFIED if they have no classified content.

(e) The document shall bear the following additional marking on the first page and on the front cover:

Restricted Data

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to Administrative and Criminal Sanctions.

(f) Where the originator of the document is not an authorized derivative classifier, or is not responsible for the classification, the words "DERIVATIVELY CLASSIFIED BY" shall be typed on the face of the document followed by the name, title of position, and organization employing the authorized derivative classifier. The authorized derivative classifier shall sign when feasible.

(g) *Documentation.*

(1) All Secret Restricted Data documents shall bear on the first page a properly completed documentation stamp such as the following:

This document consists of —— pages.
Copy No. —— of —— Series ——.

(2) The series designation for finished copy shall be a capital letter beginning with the letter "A" designating the original set of copies prepared. Each subsequent set of copies of the same document shall be identified by the succeeding letter of the alphabet. The series designation for draft copies shall be identified in progressive numerical sequence, as "Draft 1", "Draft 2", etc.

(h) *Letter of transmittal.* (1) A transmittal letter containing no Restricted Data or other Classified information should be marked with the following markings:

(i) "Restricted Data transmittal" or "Document transmitted herewith contains Restricted Data",

(ii) With a classification at least as high as its highest classified enclosure, and

(iii) A stamp or marking such as the following:

When separated from enclosures handle this document as unclassified.

(2) A transmittal letter containing Restricted Data should be marked as follows:

(i) "Restricted Data" on its first page.

(ii) A classification at least as high as its highest classified enclosure or the classification of the letter itself, whichever is higher.

(iii) When the contents of the letter of transmittal warrant a lower classification, a stamp or marking such as the following:

"When separated from enclosure handle this document as (*lower classification*).

§ 795.33 External transmission of documents and material.

(a) *Restrictions.* (1) Documents and material containing Restricted Data shall be transmitted only to persons who possess appropriate security clearances or access authorization and are otherwise eligible for access under the requirements of § 795.31.

(2) In addition, such documents and material shall be transmitted only to persons who possess DOE-approved facilities for their physical security consistent with this part. Any person subject to the regulations in this part who transmits such documents or material shall have fulfilled his obligations under this subparagraph by securing a written certification from the responsible DOE safeguards and security office that the prospective recipient possesses DOE-approved facilities for physical security thereof consistent with this Part.

(3) Documents and material containing Restricted Data shall not be exported from the United States without prior authorization of DOE.

(b) *Preparation of documents.* Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape. The appropriate classification and the Restricted Data marking referred to in § 795.32(e) shall be placed on both sides of the inner envelope.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt, which identifies the document, the date of transfer, the recipient and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred.

(c) *Preparation of material.* Material, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The material shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the material, the date of shipment, the recipient, and the person transferring the material shall accompany the material and the recipient shall sign such receipt and return it to the sender whenever the custody of Secret Restricted Data is transferred.

(d) *Methods of transportation.* (1) Documents and material containing Secret Restricted Data shall be transported only by one of the following methods:

(i) U.S. registered mail.

(ii) Individuals possessing appropriate DOE security clearance or access authorization who have been given written authority by their employers, in cases of operational necessity when U.S. registered mail or classified messenger service is not available or sufficiently timely. The office of departure shall keep a record of the classified matter so transported until the matter has been returned or a classified matter receipt has been received from a consignee.

(iii) Aircraft under DOE contract with pilots holding "Q" access authorization, or U.S. Government aircraft with pilots holding DOE "Q" access authorization or DOD final type Secret clearance, and who maintain continuous custody of the matter entrusted to them.

(iv) Motor vehicles in sealed van service.

(v) Common carrier (rail, truck, or air) approved by the responsible field office manager and meeting the requirements of paragraph (d)(3)(xi) of this section.

(2) Documents and material containing confidential Restricted Data shall be transported by one of the methods set forth in paragraph (d)(1) of this section or by one of the following methods:

(i) U.S. first class or certified mail, if approved by the Field Office Manager administering the permit. Certified or first class mail may not be used in any transmission of Confidential documents to Alaska, Hawaii, the Canal Zone, Puerto Rico, or any United States territory or possession.

(ii) Aircraft under DOE contract, or U.S. Government aircraft, with pilots holding DOE "L" access authorization or DOD final type Secret clearance.

(iii) Common carrier service (rail, truck, or air) as approved by the field office manager and meeting the requirements of subparagraph (3)(xi) below.

(3) Approved means of shipment for Restricted Data are subject to the

following additional general conditions as appropriate:

(i) Contents shall be securely packaged, and as required containers shall meet appropriate Department of Transportation regulations as to structural strength and materials.

(ii) Contents shall be so packaged that attempted openings or unauthorized inspection will be readily detected en route or upon arrival at destination.

(iii) Contents shall be checked against shipping papers as promptly as practicable after arrival and any unresolved discrepancy shall be reported immediately to the responsible DOE safeguards and security office.

(iv) Additionally, any suspected criminal violations of federal laws or loss of Secret or confidential material outside a security area or loss within a security area if there is no immediate explanation to account for the loss shall be reported to the responsible DOE security office and the Federal Bureau of Investigation.

(v) The classification of the contents shall be indicated inside the package or container to preclude errors in handling and storage after delivery.

(vi) Seals shall be used whenever practicable and shall be placed on cars or van doors, containers, or other positive fastening devices by, or in the presence of a DOE, DOE contractor representative or security cleared permittee employee. Seals shall be serially numbered or distinctively designed and appropriate entry shall be made in bills of lading or other shipping papers. Seal numbers shall be verified by the consignee upon arrival.

(vii) Combination or key padlocks shall be used whenever practicable on shipping containers in addition to seals.

(viii) Receipts, listings, and other papers revealing classified information shall be appropriately marked and wrapped.

(ix) shipping or transfer documents which could reveal classified weights or quantities of material shall be appropriately marked.

(x) Notification of Secret or Confidential Restricted Data shipments, other than packages sent by mail, shall be transmitted prior to departure either to the consignee or to the DOE office exercising administrative jurisdiction over the consignee, with sufficient information to enable proper handling at destination.

(xi) Common carriers shall provide all of the following security procedures:

(A) Surveillance by an authorized carrier employee when the material is outside of the vehicle.

(B) A hand-to-hand signature receipt system which traces the movement of the classified matter from the time it is shipped until the time it is received.

(C) When storage is required, Restricted Data must be stored in an alarmed or guarded storage area with immediate response by a carrier employee, commercial guard, or police.

(D) Verification of the identity and authorization of persons who pick up material.

(E) Pick-up and delivery in a closed, locked van.

(e) Electrical Transmission of Information. Restricted Data shall not be transmitted electrically unless a system approved by DOE is used.

(f) Telephone Conversations. No discussion of classified information is permitted during a telephone conversation except over secure telephone systems approved by DOE.

§ 795.34 Accountability for matter comprising restricted data.

Each Permittee possessing matter containing Secret Restricted Data shall establish an accountability procedure and shall maintain for a period of 5 years records to clearly show the identification and disposition of all such matter which has been in his custody at any time.

§ 795.35 Authority to reproduce.

Nothing in this part shall be deemed to prohibit any person possessing documents containing Restricted Data from reproducing any Confidential documents, or any Secret documents originated by the Access Permittee by whom he is employed. He shall not reproduce any external generated documents containing Secret Restricted Data without prior authorization from DOE or from the originator of the document.

§ 795.36 Changes in classification.

(a) Documents containing Restricted Data shall not be downgraded to a lower classification or declassified except as authorized by DOE. Requests for downgrading or declassification shall be submitted to the DOE Operations Office administering the Permit, or U.S. Department of Energy, Washington, D.C. 20545, Attention: Office of Classification. If the Department approves a change of classification or declassification, the previous classification marking shall be canceled and the following statement, properly completed, shall be placed on the first page of the document.

Classification canceled (or changed to)————(Insert appropriate classification) by authority of————(Person authorizing change in classification) by————(Signature of person making change and date thereof).

(b) Any person making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on his records.

§ 795.37 Destruction of documents or material containing restricted data.

(a) Documents containing Restricted Data may be destroyed only by shredding and burning, pulping, or by any other method that assures complete destruction of the information which they contain. If the document contains Secret Restricted Data, a record of the subject, title and report number of the document, if any, its date of preparation, its series designation and copy number, and the date of destruction shall be signed by the person destroying the document and shall be maintained in the office of the last custodian for a period of 5 years after the date of destruction.

(b) Restricted Data contained in material, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data. A record of destruction of Secret material destroyed shall be maintained for 5 years after the date of destruction of the material.

§ 795.38 Security of automatic data processing systems.

Restricted Data shall not be processed or produced on an ADP system unless the system has been approved by DOE.

§ 795.39 Suspension or revocation of access authorization.

In any case where the access authorization of an individual subject to the regulations in this part is suspended or revoked in accordance with the procedures set forth in Part 710 of this chapter, such individual shall, upon due notice from DOE of such suspension or revocation and demand by DOE deliver to DOE any and all documents or material in his possession containing Restricted Data for safekeeping and such further disposition as DOE determines to be just and proper.

§ 795.40 Expiration, suspension or revocation of access permit.

(a) Upon expiration of an Access Permit, the person to whom such Permit has been issued may, except as provided in paragraph (b) of this section shall:

(1) deliver all documents or material in his possession containing Restricted

Data to DOE or to a person authorized to receive them and file with DOE a certificate of non-possession of Restricted Data; or

(2) destroy them, and file with DOE a certificate of nonpossession, or

(3) file with DOE a certified inventory of Restricted Data attached to a request for approval of retention of such data. A person retaining Restricted Data must maintain an active Access Permit unless otherwise authorized by DOE.

(b) In any case where an Access Permit has expired or has been suspended or revoked and DOE has determined that further possession by the former Access Permit holder of documents or materials containing Restricted Data would endanger the common defense and security, such former Access Permit holder shall upon due notice from DOE of such expiration, suspension, or revocation and of such determination, deliver to DOE any and all documents and material in his possession containing Restricted Data for safekeeping and such further disposition as DOE determines to be just and proper.

§ 795.41 Termination of employment or change of duties.

Each Permittee shall furnish promptly to DOE written notification of the termination of employment of each individual who possesses an access authorization under his Permit or whose duties are changed so that access to Restricted Data is no longer needed. Upon such notification, DOE may:

(a) terminate the individual's access authorization, or

(b) transfer the individual's access authorization to the new employer of the individual to allow continued access to Restricted Data where authorized pursuant to DOE regulations.

§ 795.42 Continued applicability of the regulations in this part.

The expiration, suspension, revocation or other termination of security clearance or access authorization or Access Permit shall not relieve any person from compliance with the regulations in this part.

§ 795.43 Reports.

Each Permittee shall report promptly to the DOE office administering the Access Permit:

(a) All losses of Restricted Data documents or material.

(b) Statutory violations, i.e., any alleged or suspected violation of the Atomic Energy Act or the Espionage Act. An immediate report shall also be made to the nearest office of the Federal Bureau of Investigation.

(c) Proposed foreign travel to Soviet-bloc countries, at least 30 days in advance of proposed travel by any of their employees, who has had access to C-24 information, and inform the same office when the employee returns.

§ 795.44 Inspection.

DOE may make such inspection of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act.

§ 795.45 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates, attempts to violate or conspires to violate any provision of the Act or any regulation or order issued thereunder, including the provisions of this part, may be guilty of a crime and upon conviction may be punished by fine or imprisonment, or both, as provided by law.

[FR Doc. 79-18038 Filed 6-8-79; 8:45 am]
BILLING CODE 6450-01-M

federal register

Monday
June 11, 1979

Part V

Department of the Interior

Office of Surface Mining, Reclamation and Enforcement, and Geological Survey

Regulation of Coal Mining on Federal Lands in Montana, Utah, and Wyoming; Federal/State Cooperative Agreement

DEPARTMENT OF INTERIOR

Office of Surface Mining, Reclamation and Enforcement, and Geological Survey

30 CFR Part 211

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

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

ACTION: Final rule.

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

EFFECTIVE DATE: June 11, 1979.

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

SUPPLEMENTARY INFORMATION: The cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(e)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95–87), "Surface Mining Act," and § 211.75 (b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12058). The purpose of the agreement is to establish 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) a requirement that the State Regulatory Authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) establishing procedures for the cooperative review and approval of integrated mining and reclamation plans for surface coal mining and reclamation operations on Federal lands or which include both State-regulated lands and Federal lands; (4) provide for the termination of such agreement; and (5) requirements for the joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations which include Federal lands.

In response to the proposed rulemaking, one comment was received. The comment raised three issues.

1. The commenter objects to the provision of Article VII which requires that performance bonds for operations which include Federal lands be payable to both the State and the United States. The objection is grounded on a fear that if both agencies forfeit on the bond, the surety would be subject to double liability. It is not the intent of the State or the Secretary to create double liability. Our intent rather is to relieve the operator of the burden of filing separate bonds with both the State and the United States while assuring that each agency retains the legal authority to forfeit on the bond. This procedure allows the Secretary adequate authority to insure the completion of reclamation obligations on Federal lands or adjacent lands which might adversely affect reclamation on Federal lands and preserves the State's authority to ensure reclamation as required under State law. Double liability is not created by the terms of the cooperative agreement. If necessary, clarification regarding this question can be achieved in the bond instrument.

2. The second objection requests clarification of what will happen if the agencies do not mutually consent to the release of a performance bond. The answer is no different than if there were a single obligee and release were denied. Whatever remedy which would be available to the operator to seek or compel release by an agency which refused release, would also be available against that same agency if it were the sole party refusing to allow release of the bond under the cooperative agreement.

3. The final objection requests that differences of opinion between the State and the Secretary regarding the requirements of a mining plan being reviewed under the Protocol, be communicated to the operator/applicant. The Secretary rejects this request as being an unnecessary restriction on his discretion in such circumstances. Communciations regarding mining plans and permits under review will be made as determined appropriate by the agencies.

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. The "Determination of Significance" document prepared by the Office of Surface Mining concludes that because a State/Federal cooperative agreement between the State of Montana 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 reordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

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

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

Dated: June 6, 1979.

Cecil D. Andrus,

Secretary.

1. Accordingly, Title 30 CFR 211.10(e)(5) is amended as follows:

§ 211.10 Exploration and mining plans.

* * * * *

(e) * * *

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

and the requirements of 30 CFR 211.10(c).

§ 211.76-1 [Deleted]

2. Title 30 CFR 211.76-1 is deleted in its entirety.

3. Title 30 CFR 211.77(e) is amended as follows:

§ 211.77 States with cooperative agreements.

* * * * *

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

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

Cooperative Agreement Between the U.S. Department of the Interior and the State of Montana under section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act") 30 U.S.C. 1273(c), between the State of Montana, acting by and through Thomas L. Judge, Governor (hereinafter referred to as the Governor) and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

Article I. Purpose

This Cooperative Agreement provides for a cooperative program between the United States Department of the Interior and the State of Montana with respect to regulation of surface coal mining and reclamation operations on Federal lands within the State of Montana. The basic purpose of this Agreement is to reduce duality of administration and enforcement of surface reclamation requirements by providing for state review and approval of mining and reclamation plans for operations on federal lands, subject to the Secretary's authority to approve mine and reclamation plans on federal lands and state regulation of surface coal mining and reclamation operations on Federal lands within the State.

Article II. Effective Date

This Cooperative Agreement is effective following signing by the Secretary and the Governor, approval by the Montana Department of State Lands, and upon final publication as rulemaking in the **Federal Register.** This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, and extension of, and supercedes that Cooperative Agreement effective June 10, 1977, 30 CFR § 211.77(e).

Article III. Requirements for Cooperative Agreement

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

A. *Responsible Administrative Agency.* The Montana Department of State Lands (hereinafter referred to as the "State Regulatory Authority") is, and shall continue to be, the sole agency responsible for administering this Cooperative Agreement on behalf of the Governor 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 Montana Strip and Underground Mine Reclamation Act and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

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

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative Agreement. If the State Regulatory Authority complies with the terms of this Agreement, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

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

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

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

Article IV. Mining and Reclamation Plans

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

B. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree, and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and state permit application to the state and the Secretary which plan and permit application shall be in the form required by the State Regulatory Authority and include any supplemental forms required by the Secretary. Such plan and application shall include the following information:

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. The Revised Code of Montana 50–1039 R.C.M. 1977.

b. Administrative Rules of Montana 26–2.10(10)–S10310.

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 *et seq.*; 91 Stat. 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1(a) and (b) above.

d. The Minteral Leasing Act of 1920, as amended, 30 U.S.C. § 181 *et seq.*

e. The requirements of 30 CFR Section 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 the Protocol, Article XI of this Agreement to the contrary notwithstanding. Any revisions to the Protocol shall become effective upon notice published in the **Federal Register.**

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

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

Article V. Inspections

A. The State Regulatory Authority shall inspect without prior notice to the operator, as authorized by Montana state law as frequently as necessary, but 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 appoved mining and reclamation plans or permits, but not to determine compliance with development or diligent production requirements established under the Mineral Leasing Act, as amended, or to regulate other activities on Federal lands not subject to the Act.

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

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

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

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

Article VI. Enforcement

A. If the State Regulatory Authority finds any conditions or practices, or violations of the Act, the requirements of Appendix A hereof, or of an approved mining and reclamation plan or permit, which would authorize the issuance of an order of cessation under § 521(a)(2) of the Act, the State Regulatory Authority shall immediately exercise the discretion authorized by 50–1050 R.C.M. 1947 of the Revised Code of Montana to suspend the license of an operator.

B. (1) When, during any inspection, any representative of the State Regulatory Authority determines that any operator is in violation of the Act, any requirement of Appendix A, or any requirement of an approved mining and reclamation plan or permit, but such violation would not require an action in accordance with paragraph A of this Article, the representative shall issue a notice and abatement schedule to the operator pursuant to 50–1050 R.C.M. 1947 of the Revised Code of Montana which shall be consistent with the requirements of § 521(a)(3) of the Act.

(2) When a notice of violation has been issued under B(1) of this Article and a representative of the State Regulatory Authority determines that the operator has failed to abate the violation within the time fixed or

subsequently extended consistent with § 521(a)(3) of the Act, the representative shall immediately exercise the discretion authorized by 50–1050 R.C.M. 1947 of the Revised Code of Montana to suspend the permit of an operator until the violation has been abated.

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

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

Article VIII. Opportunity To Comply With Cooperative Agreement

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

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

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

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

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

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

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

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

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

2. When a permanent State program is finally disapproved and the State has failed to remedy the deficiencies within the time allowed by Section 503(c) of the Act.

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

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

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

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

3. The Secretary shall also publish a notice in the **Federal Register** containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

E. *Opportunity for 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.

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

Article X. Reinstatement of Cooperative Agreement

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

Article XI. Amendments of Cooperative Agreement

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

Article XII. Changes in State or Federal Standards

The Secretary of the Interior and/or the State Regulatory Authority may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. The Secretary and the Governor shall immediately inform the other of any final changes in their respective laws or regulations. Each party shall, if it determines it to be necessary to keep this Cooperative Agreement in force, change or revise its respective laws or regulations. If changes which are necessary for the State to have authority to administer and enforce Federal requirements are not made, then the termination provision of Article IX, paragraph C, may be invoked, provided, however, that the State shall be given reasonable and necessary time to make the required changes.

Article XIII. Conflict of Interest

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

Article XIV. Exchange of Information

A. *Organizational and Functional Statement.* The State Regulatory Authority and the Secretary shall advise each other of the organization, structure, functions, and duties of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in personnel, officials, heads of a department or division, or a change in the functions or duties of persons occupying the principal offices within the organization. The State Regulatory Authority and the Secretary shall advise each other in writing of the location of its various offices, 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 or State laws, nor shall this Agreement be construed so as to result in the transfer of the Secretary's duties under sections 2(a), 2(b), and 2(a)(3) of the Federal Mineral Leasing Act, as amended, or his duty to approve mine plans, or his responsibilities with respect to the designation of Federal lands as unsuitable for mining in accordance with Section 522 of the Act, or to regulate other activities taking place on Federal lands.

Article XVI. Definitions

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

Thomas L. Judge,

Governor of Montana.

Leo Berry,

Commissioner, Department of State Lands.

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 Montana Department of State Lands (hereinafter the "State Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, P.L. 95–87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof.

II. Procedures

1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities 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 data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate. When detailed review is deemed to be necessary, Interior agencies may conduct a detailed review of all aspects of the plan and application, or modifications or revisions thereof, but as the program develops, Interior's review will be concentrated on major functions such as hydrology and revegetation, or where special attention is deemed to be necessary.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining. It will be the goal of the State Regulatory Authority to send such letter within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. It will be the goal of the Office of Surface Mining to communicate to the State Regulatory Authority within 20 days any proposed additions or modifications to the letter. If any such proposed, additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, 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 communciations, 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 communciations received from the operator regarding any matter subject to this Protocol.

10. Either the Secretary or the State Regulatory Authority may request and schedule meetings with the Operator or

site inspections. No meeting with the operator or site inspection will be scheduled by either the Secretary or the State Regulatory Authority without adequate advance notice.

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

12. Upon completion of review and evaluation of the plan and application, or modifications or revisions thereto, by the State Regulatory Authority, the State Regulatory Authority shall notify the Regional Director, Office of Surface Mining, of any proposed action to be taken regarding approval or disapproval, including any proposed special conditions or stipulations. Following notification of the Regional Director of the proposed action, the Regional Director will inform the State Regulatory Authority of concurrence or disagreement with the proposed action. If the Regional Director and the State Regulatory Authority cannot agree upon the proposed action, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss what final action may be appropriate under the circumstances of the case. The parties shall make reasonable efforts to resolve the differences and to reach a mutually agreeable decision on the proposed action.

III. Interpretation

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

(b) If any question of legal interpretation is raised by either party with respect to any matter subject to this Protocol, both the State Regulatory Authority and the Secretary shall defer to the opinion of the State Attorney General where interpretations of State law or regulations are involved, and to opinions of the solicitor of the Department of Interior where interpretations of Federal law or regulations are involved. This provision shall not be interpreted to prevent either party from challenging in court any opinion or interpretation of the State Attorney General with regard to state law or regulation or solicitor with regard to federal law or regulations.

IV. Revisions to Protocol

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

Thomas L. Judge,
Governor of Montana.

Leo Berry, Commissioner,
Department of State Lands.

Cecil D. Andrus,
Secretary of the Interior.

Appendix A

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

1. Laws of the State of Montana:

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

(i)–(xxii) hereof:

(i) § 50–1034.

(ii) § 50–1035.

(iii) § 50–1036; provided, however, that in paragraph (1) the words "and uranium" shall not be included in this Appendix A.

(iv) § 50–1037.

(v) § 50–1039, provided, however, that with respect to subsection (8)(a), the phrase "nor more than twenty-five hundred dollars ($2,500)" is not included in Appendix A and shall not apply to Federal lands; and provided further that any bond applicable to the performance of duties on or affecting Federal lands shall conform to the requirements of Article VII of this Cooperative Agreement in addition to the requirements of State law.

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

(vii) § 50–1040.

(viii) § 50–1042.

(ix) § 50–1043.

(x) § 50–1044, provided, however, that with respect to subsection (5), any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xi) § 50–1045.

(xii) § 50–1046.

(xiii) § 50–1047, provided, however, that with respect to subsection (3), any bond applicable to the performance of duties on or affecting federal lands may be released only on consent of the Secretary in accordance with Article VII of this Cooperative Agreement.

(xiv) § 50–1048.

(xv) § 50–1050.

(xvi) § 50–1051.

(xvii) § 50–1052.

(xviii) § 50–1053.

(xix) § 50–1054, provided, however, that the bond may also be forfeited by the Secretary under federal law pursuant to Article VII of this Cooperative Agreement.

(xx) § 50–1055, provided, however, that subsections (1) and (2) shall not be construed as applying to any federal officer.

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

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

2. Regulations of the Montana Department of State Lands, including

the amendments adopted by the State Board of Land Commissioners on July 17, 1978, except: (i) § 26-2.10-S 10270(6).

[FR Doc. 79-18121 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 211

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

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

ACTION: Final rule.

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

EFFECTIVE DATE: June 11, 1979.

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

SUPPLEMENTARY INFORMATION: This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(b)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), "Surface Mining Act," and § 211.75 (b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12046). The agreement establishes conditions for State regulation of surface coal mining and reclamation operations on Federal lands, and requirements for such operations on Federal lands, including but not limited to (1) the adoption of amended State statutes and regulations containing new or modified enforcement procedures, environmental protection standards, and reclamation requirements applicable to surface coal mining and reclamation operations as substantive Federal law; (2) a requirement that the State regulatory authority exercise State enforcement powers on Federal lands so as to achieve results consistent with those which would be achieved by Federal enforcement pursuant to section 521 of the Surface Mining Act; (3) clarification of the procedures for the cooperative review and approval of mining and reclamation operations on Federal lands; and (4) provisions for the termination of such agreement.

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

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

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

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

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

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

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

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

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

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

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

The Office believes that the Secretary does have legal authority to delegate Federal enforcement responsibility to State inspectors. Through the cooperative agreement, the State agency responsible for administering and enforcing the terms of the agreement is acting as an authorized representative of the Secretary to regulate surface coal mining operations on Federal lands. This includes mine inspections. Section 521(a)(3) of the Act clearly states, "when, on the basis of a Federal inspection * * * the Secretary *or his authorized representative* determines * * * the Secretary or his *authorized representative* shall issue a notice to the permittee * * *." (emphasis added). If the authorized representative issues a notice or order consistent with and pursuant to section 523(a)(3) and the permittee fails to comply, under the terms of Article VI (E) of the agreement the State shall report the failure to comply to the Secretary, and under Article VI (F) the Secretary may take appropriate legal action to correct conditions that violate Federal law or to suspend the right to conduct surface coal mining and reclamation operations. For these reasons, the Office believes that delegation of inspection and enforcement responsibilities to State inspectors is in full compliance with the Act, and the authority in Article VI (F) provides an effective enforcement tool to require compliance with a State inspector's orders.

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

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

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

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

Other Information

1. *Significance.* The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 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 Utah and the Department has been in effect for quite some time, the modified agreement in question does not incorporate any changes or revisions which would impose a major social,

economic, or recordkeeping burden on any level of Federal, State, or local government or upon industry. This document is available for public inspection in the Director's Office, Office of Surface Mining, Room 233, South Interior Building, 1951 Constitution Ave., NW., Washington, D.C. 20240.

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

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

Dated: June 6, 1979.

Cecil D. Andrus,

Secretary.

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

§ 211.10 Exploration and mining plans.

* * * * *

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

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

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

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

(iii) 30 CFR 211.10(c); and

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

* * * * *

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

§ 211.77 States with cooperative agreement.

* * * * *

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

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

Cooperative Agreement Between the United States Department of the Interior and the State of Utah under Section 523(c) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (hereinafter referred to as the "Act"), 30 U.S.C. 1273(c), between the State of Utah, acting by and through Scott M. Matheson, Governor (hereinafter referred to as the Governor), and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the Secretary).

Article I. Purpose

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

Article II. Effective Date

This Cooperative Agreement is effective following signing by the Secretary and the Governor, approval by the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources, and upon final publication as rulemaking in the **Federal Register**. This Cooperative Agreement shall remain in effect until terminated as provided in Article IX. This Cooperative Agreement constitutes a modification to, an extension of, and supercedes that Cooperative Agreement published at 42 FR 18068, effective April 5, 1977, 30 CFR 211.77(b).

Article III. Requirements for Cooperative Agreement

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

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

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

C. *State Reclamation Law.* Enforcement of the environmental performance standards and reclamation requirements of Title 40 Chapter 8 Utah Code Annotated 1953 (as amended), and the regulations promulgated pursuant thereto as set forth in Appendix A of this Cooperative Agreement, will provide protection of the environment at least as stringent as would occur under the exclusive application of the standards and procedures set forth in the Act, and the regulations promulgated thereunder.

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

E. *Inspection of Mines.* The Governor affirms that the State will inspect all surface coal mining operations on Federal lands located in the State, in accordance with the minimum schedules in Article V.

F. *Enforcement.* The State affirms that it will enforce the requirements contained in Appendix A in a manner that ensures effective protection of the environment and public health and safety consistent with the requirements of Article VI of this Agreement.

G. *Funds.* The State has devoted and will continue to devote, adequate funds to the administration and enforcement of the requirements contained in Appendix A of this Cooperative

Agreement. If the State Regulatory Authority complies with the terms of this Agreement, and if necessary funds have been appropriated, the Secretary shall reimburse the State as provided in Section 705(c) of the Act, for costs associated with carrying out responsibilities under this Cooperative Agreement. Reimbursement grants shall be made at least on an annual basis. The Secretary shall advise the State Regulatory Authority within a reasonable period of time after the effective date of this modification of the amount the Federal Government would have expended if the State had not entered into this Cooperative Agreement.

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

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

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

Article IV. Mining and Reclamation Plans

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

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

1. The information required by, or necessary for the State Regulatory Authority and the Secretary to make a determination of compliance with:

a. Utah Code Annotated 1953 as amended.

b. Mined Land Reclamation General Rules and Regulations and Rules of Practice and Procedure, M-3, and coal mining regulations MC-715 *et seq.*

c. The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*; 91 Stat 445) and the regulations promulgated pursuant thereto, to the extent it is not otherwise required by 1 (a) and (b) above.

d. The Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*, to the extent it is not otherwise required by 1(a), 1(b), and 1(c) above.

e. The requirements of 30 CFR 211.10.

f. Applicable terms and conditions of the lease or license.

g. Applicable requirements of other Federal laws.

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

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

4. Any final approval of a mining and reclamation plan and permit application, or modifications or revisions thereto, by the State Regulatory Authority or the Secretary which would create a right of appeal by an aggrieved person shall be mutually acceptable to the State Regulatory Authority and the Secretary, and shall be concurrent. When acting upon mining and reclamation plans and permits, or modification or revisions thereto, the State Regulatory Authority and the Secretary agree that each of them will not approve any plan and permit, or modification or revision thereto, which fails to comply with the requirements of the laws and regulations listed in paragraph 1 of this Article.

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

Article V. Inspections

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

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

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

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

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

Article VI. Enforcement

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

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

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

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

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

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

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

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

Article VII. Bonds

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

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

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

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

Article VIII. Opportunity To Comply With Cooperative Agreement

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

Article IX. Termination of Cooperative Agreement

This Cooperative Agreement may be terminated as follows:

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

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

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

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

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

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

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

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

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

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

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

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

3. The Secretary shall also publish a notice in the **Federal Register** containing items 1 and 2 of this paragraph, and specifying a minimum 30 days for comment by interested persons.

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

1. Specify in the notices required by paragraph D the date and place where the State will be afforded an opportunity for hearing and to show cause why this Cooperative Agreement should not be terminated by the Secretary. The date of such hearing shall be not less than 30 days from the date of the publication in the **Federal Register**, and the place shall be in the State.

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

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

F. *Notice of Withdrawal of Approval of Cooperative Agreement.*

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

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

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

Article X. Reinstatement of Cooperative Agreement

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

Article XI. Amendments of Cooperative Agreement

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

Article XII. Changes in State or Federal Standards

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

Article XIII. Conflict of Interest

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

Article XIV. Exchange of Information

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

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

Article XV. Reservation of Rights

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

Article XVI. Definitions

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

Dated: October 20, 1978.

Scott M. Matheson

Governor of Utah.

Dated: October 20, 1978.

Cleaon Feight,

Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.

Cecil D. Andrus,

Secretary of the Interior.

Appendix A

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

1. Laws of the State of Utah:

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

(i) § 40–8–1.

(ii) § 40–8–2.

(iii) § 40–8–3.

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

(v) § 40–8–5.

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

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

(viii) § 40–8–8(1), (2), and (3).

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

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

(xi) § 40–8–11.

(xii) § 40–8–12.

(xiii) § 40–8–13(1), (3), (4), provided, however, that the "one time only" publication requirement relating to a "tentative decision" on a proposed agency action to approve a mining operation is not incorporated into this Appendix and shall not apply to Federal lands.

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

(xv) § 40–8–15.

(xvi) § 40–8–16(2), (3), and (4).

(xvii) § 40–8–17.

(xviii) § 40–8–18.

(xix) § 40–8–19.

(xx) § 40–8–20.

(xxi) § 40–8–21.

(xxii) § 40–8–22.

(xxiii) § 40–8–23.

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

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

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

(iii) M–4.

Protocol for Cooperative Review of Mining and Reclamation Plans for Surface Coal Mining and Reclamation Operations on Federal Lands

I. *Purpose.* This Protocol is intended by the Utah Division of Oil, Gas, and Mining (hereinafter the "State

Regulatory Authority") and the Secretary to establish procedures governing the conduct of the respective Interior agencies and the State Regulatory Authority regarding the coordinated review of mining and reclamation plans, or modifications or revisions thereto for surface coal mining and reclamation operations on Federal lands pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (hereinafter referred to as the "Act"). These procedures are intended to implement the requirements of Article IV of the State/Federal Cooperative Agreement (hereinafter referred to as "Cooperative Agreement") between the State of Utah by its Governor and the Secretary dated , 1978, and are incorporated therein and made a part thereof.

II. *Procedures.* 1. Operators shall be required to submit identical copies of mining and reclamation plans and permit applications, or modifications or revisions thereto, to both the State Regulatory Authority and the Regional Director, Denver Region, Office of Surface Mining. The number of copies submitted to the State Regulatory Authority and the Regional Director shall be specified by regulation by each agency and may be changed according to need.

2. The State Regulatory Authority will be the point of contact for operators regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement. Following the initial submission of the mining plan and permit application, all correspondence from the State Regulatory Authority and the Secretary regarding matters subject to the requirements of the Act and Appendix A of the Cooperative Agreement will be coordinated and sent from the State Regulatory Authority on behalf of both. Interior agencies will not independently initiate contacts with operators regarding the completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of a State Regulatory Authority under the Act, provided that any matters of concern raised on behalf of the Secretary are adequately addressed by the State Regulatory Authority in accordance with the provisions of this Protocol.

3. The Office of Surface Mining will coordinate all activities relative to the review of mining plans and permit applications for all concerned Interior agencies and will act as the point of contact for communications between the State Regulatory Authority and the Department of the Interior.

4. Review and evaluation of each mining plan and permit application, or modifications or revisions thereto, and the data or documentation submitted in support thereof, will be conducted independently, but concurrently, by the State Regulatory Authority and the respective Interior agencies having responsibility for review of mine plans. During such review and evaluation, the staffs of the State Regulatory Authority and each Interior agency will coordinate their respective activities through the Office of Surface Mining by informal contacts as appropriate.

5. Based upon the coordinated review, the State Regulatory Authority will draft a response letter to the operator outlining the status of the completeness and deficiencies of the plan and application with respect to the requirements of the Act and Appendix A to the Cooperative Agreement. Such draft letter will be sent to the Denver regional office, Office of Surface Mining, within 60 days of receipt of the plan and application. The Office of Surface Mining will coordinate review of the draft letter on behalf of Interior agencies. The Office of Surface Mining will communicate to the State Regulatory Authority within a reasonable time any proposed additions or modifications to the letter. If any such proposed additions or modifications are objected to by the State Regulatory Authority, a meeting will be held between the Regional Director, Office of Surface Mining, and the State Regulatory Authority to resolve the specified objections. If the Regional Director and the State Regulatory Authority cannot resolve such objections, the State Regulatory Authority and the Regional Director shall summarize their disagreement in writing and request a meeting with the Director, Office of Surface Mining, and such other representative of the Secretary as may be appropriate, to discuss a resolution of such objections. Following the resolution of such objections or in the absence of any such objections, the draft letter will be revised to incorporate the language proposed by the Office of Surface Mining and sent to the operator by the State Regulatory Authority, with a copy to the Regional Director, Office of Surface Mining.

6. The Secretary may at his discretion incorporate into the draft letter any matters related to mining plan review and approval which are not within the jurisdiction of the State Regulatory Authority and which the Secretary is required to address under any federal statute or regulation other than the Act. The State Regulatory Authority agrees to incorporate such matters into the draft at the Secretary's request. Failure to incorporate such matters into the draft letter shall not deprive the Secretary of the right to contact an operator directly regarding such matters. Whenever written communications regarding such matters are made directly between an Interior agency and an operator, the State Regulatory Authority shall be supplied with a copy.

7. The Secretary, acting by and through the Office of Surface Mining, will be given an opportunity to review and propose additions or modifications to all substantive written correspondence from the State Regulatory Authority in accordance with paragraph 5 hereof.

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

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

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

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

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

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

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

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

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

Dated: October 20, 1978.

Scott M. Matheson,

Governor of Utah.

Dated: October 20, 1978.

Cleon Feight,

Director, Division of Oil, Gas, and Mining.

Dated: October 18, 1978.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 79-18122 Filed 6-8-79; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 211

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

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

ACTION: Final rule.

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

EFFECTIVE DATE: June 11, 1979.

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

SUPPLEMENTARY INFORMATION: This cooperative agreement modifies the prior cooperative agreement (30 CFR 211.77(a)) in accordance with the requirements of section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), "Surface Mining Act," and § 211.75(b) and (c) of Title 30 CFR. This cooperative agreement was published as a proposed rule on March 5, 1979 (44 FR 12052). This 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 in the event the State does not implement the permanent Federal lands program or receive approval of a permanent regulatory program under section 503 of the Surface Mining Act; 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.

Three comments were received in response to the proposed rulemaking. Two of the comments raised a similar issue:

The commenters object to the provision of Article IX that allows the proposed interim program agreement to become the permanent program agreement without any action by the Secretary. The commenters argue that the provision is inconsistent with Section 523(c) of the Surface Mining Act and Part 745 of 30 CFR. One of the commenters suggested alternate language for the agreement that would provide for automatic termination 120 days after the approval of a permanent State program unless the Secretary does not notify the State of inadequacies in the proposed permanent State program.

The objections appear to be grounded in a concern that the interim program agreement will become the permanent program agreement following approval of a permanent State program for Wyoming without the benefit of Secretarial and public review as set forth in 30 CFR Part 745.

The Secretary believes that the agreement is consistent with Section 523