

FEDERAL REGISTER: 48 FR 2266 (January 18, 1983)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 731, 732, and 795

Permanent Regulatory Program; Submission of State Programs,
Procedures and Criteria for Approval or Disapproval of State Programs and Small Operator Assistance

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its rules which relate to State Program submission requirements and approval or disapproval criteria for Small Operator Assistance, and which relate to revised standards for administration of the Small Operator Assistance Program (SOAP) under a permanent State regulatory Program or Federal regulatory program. The purpose of the revisions is to provide States with the flexibility needed for compliance with Section 507(c) of the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: February 17, 1983.

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SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Rules Adopted and Responses to Public Comments on Proposed Rules.
- III. Procedural Matters.

I. BACKGROUND

On June 25, 1982 (*47 FR 27744*), OSM proposed revisions to its Small Operator Assistance Program rules in 30 CFR Part 795 and revisions to allow States to determine for themselves the best way of meeting the small operator assistance requirements of the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201 et seq.* (the Act). Public comments were received until July 26, 1982.

The Act requires the implementation of permanent programs to regulate surface coal mining and reclamation operations in each State where coal is or may be mined. The Small Operator Assistance Program is authorized under Sections 201, 501, 502, and 507(c) of the Act. Section 401(b)(1) of the Act provides for a maximum of ten percent of the fees assessed on the production of coal for the Abandoned Mine Land reclamation program to be made available for the SOAP. Furthermore, funds from the abandoned Mine Lands Reclamation Fund for the SOAP cannot exceed \$10,000,000 during any year. Section 507(c) of the Act authorizes assistance to any coal surface mining operator whose probable total annual production at all locations will not exceed 100,000 tons. If the operator is found eligible, a qualified laboratory will provide the determination of probable hydrologic consequences and the statement of results of test borings or core sampling required by Sections 507(b)(11) and 507(b)(15) of the Act.

This document contains revisions to rules so that the regulatory authority, under an approved State or Federal permanent regulatory program, will regulate and administer the SOAP.

II. RULES ADOPTED AND RESPONSES TO PUBLIC COMMENTS ON PROPOSED RULES

A. STATE PROGRAM SUBMISSION REQUIREMENTS

Part 731 prescribes the minimum requirements for State program submission. Previous Section 731.14(g)(16) is being amended by revising the requirement that a State program include a small operator assistance grants component. It will require the State's submission to include a narrative description of how the State will meet the requirements of Section 507(c) of the Act to provide for small operators a determination of the probable hydrologic consequences of mining and a statement of the results of test borings or core samplings. Thus, under the revised rule, States will have the option of

requesting grant assistance for funds appropriated for the SOAP and establishing a Small Operator Assistance Program in accordance with the requirements in new Part 795 which are discussed below or proposing alternative ways to meet the requirements of Section 507(c) of the Act. This revision recognizes that there are a variety of mechanisms through which the State may provide the required section 507(c) analyses and statements, including use of the State's existing technical staff, without requiring the States to participate in the SOAP grants program. Costs for providing SOAP services using alternative mechanisms would be eligible for funding under the State's Administration and Enforcement grant as outlined in 30 CFR Part 735. Overall, this change is expected to be particularly significant in those States that have relatively few and intermittent small operations, and where the administrative expense involved with staffing, administering, and maintaining a separate SOAP grants program may exceed the benefits from the program.

No comments were received on this paragraph which is adopted as proposed.

B. CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

Part 732 contains the criteria for approval or disapproval of state programs. A companion to the change in Section 731.14, Section 732.15(b)(13) is amended to require small operator assistance provisions in State programs. Unlike the previous Section 732.15(b)(13), such provisions will not have to parallel the SOAP program under 30 CFR Part 795. Under the new rule, State program submissions will be evaluated on their merits, whether they are similar to Part 795 or contain alternative mechanisms for meeting the requirements of section 507(c) of the Act.

No comments were received on this paragraph which is adopted as proposed.

C. SMALL OPERATOR ASSISTANCE

The rules for small operator assistance in 30 CFR Part 795 are removed from Subchapter G, which contains the procedures regarding permitting and coal exploration and added as a new separate Subchapter H. The CFR part designation, Part 795, remains the same. This change recognizes that small operator assistance is a separate program and not a part of the permit requirements for surface coal mining and reclamation operations.

The regulations in 30 CFR Part 795 establish procedures for providing assistance to eligible small operators to obtain technical data required for permit applications under the permanent regulatory program. Comments on the proposed regulations were received from eight commenters and are discussed below.

Two commenters recommended that general editorial changes be made in the proposed rule. The first commenter suggested that the sections of the proposed rule be numbered sequentially for the sake of clarity. OSM accepts this suggestion. Accordingly, Sections 795.10 and 795.11, as proposed, are renumbered as final Sections 795.4 and 795.5, respectively. Sections 795.13, 795.14, 795.15, 795.16, 795.17, 795.18, and 795.19 of the proposed rule are renumbered as Sections 795.6, 795.7, 795.8, 795.9, 795.10, 795.11 and 795.12 of the final rule. The second commenter felt that all references to "he or she" and "his or her" in the proposed rules should be replaced by the usual and customary usage of "he". This suggestion was not adopted. It is no longer customary to refer to one gender when people of both sexes may apply for assistance.

SECTION 795.1

Section 795.1, as proposed, contained a general statement of the scope and purpose of the rules governing the Small Operator Assistance Program (SOAP). It provided that the part comprises the small operator assistance program (SOAP) and governs the procedures for providing assistance to qualified small mine operators by the program administrator. That statement has been adopted with two editorial changes, one of which replaces the phrase "qualified small mine operators" with the term "eligible operators."

One commenter noted that Section 795.1 of the proposed rule failed to explain the purpose of the SOAP. OSM agrees with this comment and a statement of purpose has been added. The new Section 795.1 makes clear that Part 795 is an elective means for a regulatory authority to satisfy the requirements of Section 507(c) of the Act. The stated purpose is to provide eligible operators with a determination of probable hydrologic consequences and a statement of results of test borings or core samplings that must be submitted with a permit application.

SECTION 795.2

Section 795.2, as proposed, would have stated that OSM could elect to implement a Federal Small Operator Assistance Program (SOAP) in a State under three circumstances. Under proposed Section 795.2(a), OSM had the option to implement a Federal SOAP in a State which had declared its intention not to submit a permanent regulatory program. Section 795.2(b), as proposed, allowed OSM to implement a Federal SOAP in a State which has received final disapproval of its permanent regulatory program if the State has failed to indicate its intention to file again for permanent program approval. Under Section 795.2(c), as proposed, OSM could choose to implement a Federal SOAP in a State which requests OSM to implement an interim program on behalf of the State. Upon further consideration, OSM has determined that it is not necessary to adopt a section in Part 795 that provides for the implementation of a Federal SOAP. The provisions of 30 CFR Parts 733 and 736 already allow a Federal SOAP to be established if required and an additional section would be repetitive.

One commenter recommended that a new paragraph be added to Section 795.2 of the proposed rule. Paragraph (d), as suggested by the commenter, would allow for the implementation of a Federal SOAP in a State which "requests OSM to implement the Program based on a demonstration that the State has relatively few, if any, requests for assistance." The commenter advocated the addition of such a provision to the proposed rule since the administrative expenses of staffing, administering, and maintaining a separate Federal grants program would exceed the benefits to be derived from such a program in States having few, if any, requests for SOAP assistance. This commenter contended that his proposed alternative would only require OSM to administer the program since efforts to identify data requirements could be coordinated by the State and OSM.

OSM has not accepted this suggestion. In amending Section 731.14(g)(16) OSM has indicated it will evaluate and consider all reasonable alternatives by a State to provide for small operator assistance. OSM does not require a separate organization within the structure of the regulatory authority to provide services to a limited number of small operators, but requires only that the mechanism to provide services be in place. For example, one unit within the regulatory authority could be responsible for other functions as well as small operator assistance. This flexibility is being provided specifically so that states with few requests for assistance can satisfy the mandate of Section 507(c) of the Act without setting up a separate formal SOAP.

SECTION 795.3

Section 795.3, as proposed, specified definitions for the terms "program administrator" and "qualified laboratory." Final Section 795.3 defines the State or Federal official having authority and responsibility for overall management of the SOAP to be the "program administrator."

The new rule also defines a "qualified laboratory" to include any designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrological consequences or statement of results of test borings or core samplings under the SOAP.

One commenter felt that the definition of "probable hydrologic consequences" ought to be reinserted into the final version of Section 795.3 since the term was not defined elsewhere in the rules. This commenter argued that such a definition was necessary to provide guidance on the objectives to be achieved by the SOAP.

An explanation of what is needed for a probable hydrologic consequences determination will be provided in the revisions to Section 780.21(g) and 784.14(g) which are being accomplished in a separate rulemaking and is also included in the existing permitting regulations. To discuss the concept again here would be redundant.

SECTION 795.4

Proposed Section 795.10 provided that the information collection requirements contained in proposed Section 795.14, 795.15, and 795.17 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0014, 1029-0060, and 1029-0062.

No comments were received on this section. This section is being renumbered as Section 795.4 for the final rule and is discussed in more detail in the Procedural Matters portion of this preamble.

SECTION 795.5

Under Section 795.11, as proposed, a State intending to administer a SOAP under a grant from OSM could submit a grant application to OSM for funding of the program under the procedures of 30 CFR Part 735.

No comments were received on this section. This section is being adopted and renumbered as Section 795.5 for the final rule.

SECTION 795.6

Section 795.13, as proposed, set forth the criteria governing an applicant's eligibility for assistance under SOAP. This section is being renumbered as Section 795.6 for the final rule. New section 795.6 renders an applicant eligible for assistance if he or she meets all four of the criteria of paragraph (a). The first criterion requires that an applicant intend to apply for a permit under the Act. This is contained in Section 795.6(a)(1).

The second set of criteria are contained in Section 795.6(a)(2) which was proposed as Section 795.13(a)(2). Under Section 795.6, an applicant is eligible for assistance if he or she establishes that his or her probable total actual and attributed production from all locations will not exceed 100,000 tons during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter.

One commenter felt that the phrase, "during the term of his or her permit" in Section 795.13(a)(2) of the proposed rule ought to be described to a greater extent. The same commenter asked whether the term of the permit expires when the operator has completed mining or when the bond has been released.

Permits are issued for specified terms not to exceed five years except when longer terms are authorized by the regulations. Complete bond release is not tied specifically to the permit term and occurs only after completion of all mining and reclamation activities and not before the end of the 5- or 10-year period of extended liability. Under new Sections 795.6(a)(2) and 795.12(a)(2), operator liability under the SOAP is related to total production after the permit is issued for a period not to exceed five years.

Specific provisions governing the attribution of production are also included for purposes of determining eligibility for SOAP assistance under new Sections 795.6(a)(2)(i) through 795.6(a)(2)(iv).

Referring to the standards for attribution of production in proposed Section 795.13(a)(2), one commenter disputed the view expressed by OSM in the preamble to the proposal (*47 FR 27745-27750*, June 25, 1982) characterizing the proposed regulations as "more concrete and easier to apply." This commenter contended that the Act authorized OSM to promulgate rules which would approve individual State eligibility standards that comply with the 100,000 tons per year limitation provided in Section 507(c). The same commenter asserted that Section 795.14(b), as proposed, took away the States' option to establish their own eligibility standards by requiring State regulatory authorities to comply with OSM's criteria on eligibility for assistance. On the latter point, the commenter felt that OSM should not expect coal-producing States to budget monies for SOAP beyond OSM's existing or proposed eligibility standards in view of the severe budget restraints on the States.

OSM believes that it has the authority and responsibility under the Act to set minimum standards, in this instance relating to eligibility. States in turn can develop eligibility standards that are no less effective than those established in this rulemaking and be fully reimbursed through the grants programs. Since Part 795 is an elective means of complying with Section 507(c) of the Act, setting less stringent standards for eligibility is not strictly prohibited. However, under new Section 795.6(b), such alternative criteria may not be used as the basis for SOAP grant requests which exceed those that would be authorized under the criteria prescribed under Section 795.6(a).

Under paragraph (i) of the proposed rule, the pro rata share of coal produced by operations in which the applicant owns more than a 5-percent interest must be attributed to the applicant.

No comments were received on Section 795.6(a)(2)(i) and this paragraph is adopted as proposed.

Paragraph (ii) of the proposed rule required that the pro rata share of coal produced in other operations by persons owning more than 5 percent of the applicant's operation shall be attributed to the applicant, but only to the extent of the percentage of ownership of those operations. Paragraph (iii) of the proposed rule provided that all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of ownership or direction of the management shall be attributed to the applicant, but only to the extent of the percentage of ownership of those operations.

One commenter complained that the criteria for determining eligibility for assistance under Section 795.13(a)(2)(iii), as proposed, were still unclear. This commenter noted that although paragraph (iii) of the proposed rule seemed to overlap proposed paragraph (ii) with respect to a person owning the applicant's operation, the former provision omitted the five percent criterion. Paragraphs (ii) and (iii) have been restructured. Paragraph (ii) describes control through ownership, while paragraph (iii) describes control through direction of management. The 5 percent criterion is not included in new Section 795.6(a)(2)(iii) because under that paragraph control of the applicant will not be specifically related to a fixed ownership percentage. Program administrators will be expected to examine carefully to determine whether indirect control of the applicant exists in fact, for instance, through contract mining arrangements.

The proposed references to "(A)ll coal produced * * * but only to the extent of the percentage of ownership of those other operations" was criticized by one commenter. OSM agrees with this comment in part. A change has been made to new Section 795.6(a)(2) (ii) and (iii) which does not adopt the phrase "but only to the extent of the percentage of ownership of those operations." OSM believes that determination of the percentage of ownership of any operation other than the one for which the permit is sought becomes unnecessarily complex. Furthermore, the ownership information for outside operations may not be available to the regulatory authority.

One example illustrates the applicability of Section 795.6(a)(2)(ii). Where a person who owns ten percent of the applicant also owns 50 percent of the production at another mine, the applicant must attribute to its operation ten percent of the entire production of the other mine. Although there could be other methods of determining the attributable production (e. g. 10 percent of 50 percent of the other mine's production, as was proposed), the method adopted is simple to administer and enables the regulatory authority to avoid considering the often complex and confusing ownership web of the other operations. This final provision is similar to but less restrictive than Section 795.13(b)(3) of the previous rules.

Under paragraph (iv) of the proposed rule, all coal produced by operations owned by members of the applicant's family and their relatives had to be attributed to the applicant, unless it is established that there is no direct or indirect business relationship between or among them.

One commenter felt that the reference to "family and their relatives" in Section 795.13(a)(2)(iv), as proposed, ought to be more specifically described. Accordingly, this commenter suggested that the proposed rule be revised to refer to the "applicant's family and their relatives who live under the same roof as the applicant."

OSM believes this suggestion would place too restrictive an interpretation on this term and could result in abuse and financial loss in the Program. The term family and relatives is commonly meant to include those persons related by blood or marriage. OSM deems this to be an appropriate interpretation as it may relate to attributed production in the SOAP and the proposed section is included in Section 795.6(a)(iv).

Section 795.13(a)(3), as proposed, provided that an applicant is eligible for SOAP assistance if he or she is not restricted in any manner from receiving a permit under the permanent regulatory program. This was intended to deny assistance to those applicants who would be ineligible to receive permits, for instance, in cases of non-payment of reclamation fees required under Title IV of the act or where other necessary permit findings could not be made by the regulatory authority.

No comments were received and this paragraph is adopted as proposed in new Section 795.6 (a) (3).

As proposed, Section 795.13(a)(4) precluded an applicant from being eligible for SOAP assistance if he or she organizes or reorganizes his or her company solely for the purpose of obtaining assistance.

No comments were received and this paragraph is adopted as proposed as new Section 795.6(a)(4).

Under Section 795.13 (b), as proposed, a State could provide alternate criteria or procedures for determining the eligibility of an operator under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of paragraph (a) of proposed Section 795.13. This paragraph has been adopted as Section 795.6 (b).

SECTION 795.7

Section 795.14, as proposed, established the requirements for filing SOAP assistance applications. This section is being renumbered as Section 795.7 for the final rule.

Proposed Section 795.14 (a) required each application for assistance to include a statement of the operator's intent to file a permit application. No comments were received and this paragraph is adopted as proposed as Section 795.7 (a).

Section 795.14(b), as proposed, provided that each application for assistance shall include the names and addresses of (1) the permit applicant, and (2) the operator if different from the applicant. No comments were received and this paragraph is adopted as proposed as Section 795.7(b).

Section 795.14(c), as proposed, required an application for SOAP assistance to include a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under proposed Section 795.13. Proposed Section 795.14(c) also specified four informational requirements which must be included in the schedule for each location: (1) The operator or company name under which coal is or will be mined; (2) the permit number and Mine Safety and Health Administration (MSHA) number; (3) the actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under proposed Section 795.13; and (4) the estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit. No comments were received on proposed Section 795.14(c) which is adopted as proposed as new Section 795.7(c).

Section 795.14(d) (1) and (2) of the proposed rule required each application for SOAP assistance to include descriptions of the proposed method of coal mining and the anticipated starting and termination dates of mining operations. No comments were received on these paragraphs which are adopted as proposed as new Section 795.7(d) (1) and (2).

As proposed, Section 795.14 (d)(3) provided that an application for assistance shall contain a description of the number of acres of land to be affected by the proposed mining operation. Under Section 795.14(d)(4) of the proposed rule, the application was required to provide a general statement on the probable depth and thickness of the coal resource, including a statement of reserves in the permit area and the method by which they were calculated. Section 795.14(d)(5), as proposed, required a description of the mining equipment that will be used to be included in an application for assistance.

One commenter suggested that Section 795.14 (d)(3) and (d)(4) be eliminated from the rule, as finally adopted, to simplify the operator's task of preparing an application for SOAP assistance. According to this commenter, elimination of the requirements would allow the operator to complete the application on his own. The commenter also observed that the laboratory could provide information on these items during the data collection stage.

Another commenter recommended that OSM seriously consider whether a statement of reserves in the permit area and a description of the mining equipment that will be used are really necessary to determine the reasonable accuracy of the operator's production information. This commenter characterized the information as proprietary and in most cases, sensitive. For this reason, the commenter felt that OSM should assure confidential treatment for such data as well as provide strict limitations on its use.

OSM agrees with these comments in part. Provisions have been adopted in Section 795.7(d) (3) and (4). The information requirement of new Section 795.7(d)(3) deals with the permit area, should be readily known, and is needed in defining the scope of the SOAP services to be provided. The information required in paragraph (d)(4) is a general statement and in many cases can be developed by the applicant. As discussed in the preamble to the proposed rule, this

information is valuable in substantiating estimated production and thereby reducing the potential for initiating reimbursement procedures. OSM views this as protection for the applicant as well as for the regulatory authority. Finally OSM will assure that the information pertaining to the coal seam itself is exempt from public disclosure in accordance with provisions in 30 CFR 786.15. The provision in proposed Section 795.7(d)(5) on mining equipment has not been adopted.

Proposed Section 795.14(e) provided that an application for assistance shall include a topographic map which meets the requirements set forth in Section 795.14(e) (1) through (4). The map must show the area of land to be affected by the proposed operation. OSM believes that the information in paragraph (e)(1) is necessary to determine the extent of the assistance to be provided. No comments were received and this paragraph is adopted as proposed as new Section 795.7(e)(1).

Section 795.14(e)(2), as proposed, would have required that the names of property owners within the permit area and potentially impacted offsite areas be shown on the map included with the application for assistance.

One commenter suggested that the proposed rule be revised to require the names of owners contiguous to the permit area since a portion of the SOAP study would have to be conducted to determine which offsite areas would be potentially impacted by the applicant's proposed mining operation.

OSM concurs that requiring information relative to the "potentially impacted offsite area" would require a technical conclusion at a time when the study has not been initiated. Furthermore, the Office has decided not to adopt the information requirements of proposed Section 795.14(e)(2) for several reasons. First, the information has no direct bearing on eligibility determinations. Second, it is not necessary in developing the scope of SOAP services to be provided. Finally, it may be duplicative in part of the information available through new Section 795.17(f)(2).

As proposed, Section 795.14(e) (3) and (4) required the map to show the location of any existing or proposed test borings as well as the location and extent of known workings of any underground mines. No comments were received and these sections are adopted as proposed in Section 795.7(e) (2) and (3). These requirements must only be provided by the applicant if they are known. Such information may be supplemented or revealed as a result of the SOAP study.

Proposed Section 795.14(f)(1) provided that an application for SOAP assistance shall include copies of documents showing the applicant's legal right to enter and commence mining within the permit area. No comments were received and this paragraph is adopted as proposed as new Section 795.7(f)(1).

As proposed, Section 795.14(f)(2) also required the application for assistance to include copies of documents which show that a legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and potentially impacted offsite areas for collection of environmental data or installation of necessary instruments.

One commenter suggested that this requirement be eliminated since the potential impact of all offsite areas may not be known by the operator at the time of filing for assistance and since such areas will be determined during the assistance process of the SOAP.

Following the rationale given under the discussion of Section 795.14(e)(2), as proposed, the Office will replace the term "potentially impacted offsite" with "adjacent". Otherwise, OSM believes having access to both the permit and adjacent areas is essential to performing the required SOAP studies and is adopting the requirement in new Section 795.7(f)(2). Even if the precise impact on lands outside the permit area is not known, in general the applicant will know which lands are likely to be impacted and for which the right of entry is necessary.

SECTION 795.8

Proposed Section 795.15 established the requirements for application approval and assistance. Section 795.15(a), as proposed, obliged the program administrator to provide the applicant written notice of the approval of his application for assistance if the administrator finds the applicant eligible and he or she does not have information readily available which would preclude issuance of a permit for mining in the area proposed.

One commenter suggested that the language "and he or she does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed," be deleted from the proposed rule since the same matter had been addressed in Section 795.13(a)(3) of the proposed rule. OSM accepts this recommendation. Final rule Section 795.8(a), as adopted by OSM, will provide that an applicant shall be informed in writing of the approval of his application if the program administrator finds the applicant eligible.

Under Section 795.15(b) of the proposed rule, an applicant found ineligible for SOAP assistance had a right to written notice of the denial of his application, including a statement of reasons for the denial. No comments were received on this provision and this paragraph is adopted as proposed as Section 795.8(b).

As proposed, Section 795.15(c) would have provided that the granting of assistance shall not be a factor in decisions by the State or OSM on a subsequent permit application.

One commenter suggested that proposed Section 795.15(c) should not be adopted because it is not a condition of receiving assistance. OSM accepts this suggestion. Because permit issuance is not related to SOAP assistance, there is no need to make such a statement in the assistance regulations.

SECTION 795.9

In new Section 795.9, OSM is combining the provisions of former Section 795.12(a) and proposed Section 795.16. OSM proposed to delete previous Section 795.12 which was the general provision in the SOAP program that directed the regulatory authority to select and pay a qualified laboratory to make the determination and prepare the statement required by Section 507(c) of the Act. The rationale for the proposed deletion was to avoid repeating language contained in proposed Section 795.16. After further consideration, OSM has concluded that the two former sections should be combined but that a statement of the basic program services is necessary. Accordingly, new Section 795.9(a) will provide that to the extent possible with available funds the program administrator shall select and pay a qualified laboratory to make the determination and statement referenced in Section 507(c) of the Act for eligible operators who request assistance. The regulatory authority through the program administrator shall not be required by OSM to provide funds for the purpose of Section 795.9(a) beyond those funds authorized by Section 401(b)(1) of the Act and appropriated by Congress. Through this statement, OSM is enlarging upon, but not changing the intent of Section 795.12 of the previous SOAP rules. Section 795.9(b) explains the determination and statement needed and new Section 795.10 sets forth the standards for qualified laboratories.

New Section 795.9(b) requires the program administrator to determine the data that must be collected for each applicant or group of applicants. It has been revised from proposed Section 795.16(a) in response to a comment that recommended that the final rule reference the correct revised sections of OSM's hydrology and geology rules. Although the revisions to the other rules have not been completed, the proposed paragraph numbers are being referenced with the understanding that no decision has been made to adopt the proposed hydrology and geology rules. The final SOAP rule will require that data collected by the qualified laboratories and the results provided to the program administrator shall be sufficient to satisfy the requirements for: (1) The determination of the probable hydrologic consequences (phc) of the mining and reclamation operations in the proposed permit area and adjacent areas in accordance with 30 CFR 780.21(g) and 784.14(g) and any other applicable provisions; and (2) the statement of the results of test borings or core samplings for the proposed permit area required in accordance with 30 CFR 780.22(b) and 784.22(b) and any other applicable provisions. Until such time as proposed Sections 780.21(g) and 784.14(g) for hydrology and Sections 780.22(b) and 784.22(b) for geology become finalized, existing Sections 779.13-779.14, 780.21(c), 783.13, 783.14, and 784.14(c) and any other applicable provisions are in effect to delineate the necessary requirements for the phc determination and the statement of results of test borings.

Proposed Section 795.16(b) which allowed data collection and analysis under SOAP to proceed concurrently with the development of the operators mining and reclamation plans is adopted in new Section 795.9(c).

As proposed, Section 795.16(c) provided that data collected under the SOAP shall be made available in accordance with 30 CFR 786.15, the section governing public availability of information in permit applications. As no comments were received to the contrary, OSM is adopting this provision as proposed in Section 795.9(d). Proposed Section

795.16(c) further obligated the program administrator to develop procedures for interstate coordination and exchange of data. No comments were received and this paragraph will be adopted as proposed.

SECTION 795.10

Proposed Section 795.17, which is being renumbered as Section 795.10 for the final rule, has been revised. As proposed, Section 795.17(a) would have continued the requirement of the previous Section 795.17(a) that a list of qualified laboratories be maintained and published in the Federal Register. The proposed rule would have allowed States to qualify laboratories and those that did so would have been required to coordinate with OSM to maintain the required list. States, at their option would have been allowed to continue to have OSM qualify laboratories on behalf of the State. The entire qualification procedure would not have been tied to particular applications for SOAP assistance.

Two comments were received on the proposed provision. One commenter cited several reasons for the Office to be responsible for laboratory qualifications. The other commenter favored a joint responsibility with the option of choice belonging to each State.

OSM has given serious thought to the entire concept of laboratory qualification including time and costs involved, benefits gained, and effectiveness of the qualification program based on its experience to date under the previous regulations in which it had the major responsibility to qualify laboratories. In retrospect, the laboratory qualification program has been of limited value to the States and to OSM as part of several Federal SOAPs. Furthermore, the program has had the unintended effect of unrealistically raising the expectations of firms qualified with regard to receiving contracts for SOAP services.

Section 507(c) of the Act requires only that technical services to small operators be provided by qualified laboratories. Several options are available to determine which laboratories are qualified. The method that OSM has chosen in this final rule is to consider the qualification requirements contained in Section 797.10(a) as part of the selection process under Section 795.9(a) and not necessarily a separate procedure to be undertaken in advance of specific applications for assistance. In this manner the entire process will be streamlined and simplified. States will have the option of considering the qualifications of firms on a case-by-case basis or, if they choose, determining generally which firms meet the qualification criteria and establishing a list of qualified laboratories. In either case, the regulatory authority must assume full responsibility for selecting qualified laboratories in its State. OSM will not qualify laboratories or publish a list of qualified laboratories in the Federal Register. The final rule reflects this philosophy and there will be no provision prescribing the method by which firms will be determined to be qualified laboratories.

Section 795.17(b), as proposed, specified the criteria governing the qualification of laboratories. Under proposed Section 795.17(b)(1), a laboratory could meet the basic qualification standard by demonstrating compliance with the requirements specified in Section 795.17(b)(1) (i) through (v) of the proposed rule. In addition, Section 795.17(b)(2) of the proposed rule required that a qualified laboratory shall be capable of performing services for the determination of probable hydrologic consequences or statement of results of test borings or core samplings under the rules referenced in proposed Section 795.16(a). In the final rule, the above-mentioned requirements of proposed Section 795.17(b) (1) and (2) have been combined without substantive change into new Section 795.10(a) (1) through (6). In response to a comment, the cross-references to the hydrology and geology permitting regulations have been updated (with the understanding that existing hydrology and geology provisions remain in effect until replaced). The cross-references in new Section 795.10(a)(6) to the determination and statement to be provided under the SOAP have been made more precise. Finally, proposed Section 795.17(b)(2) is adopted as new Section 795.10(b) and permits subcontractors to perform the basic services, provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

SECTION 795.11

Under new Section 795.11, which includes the requirements of proposed Section 795.18(a), funds specifically authorized for the SOAP shall be used only to provide the services specified in Section 795.9, but not for administrative expenses. These include technical services provided by qualified laboratories and the planning activities upon which these services are dependent. Planning activities must be directly related to individual assistance sites. Furthermore, they are limited to compiling and evaluating available hydrologic and geologic information and developing specifications, work statements, or monitoring plans for the work to be performed at each site. These planning activities are allowable costs

for either the program administrator or laboratory under contract to the program administrator, depending on how these activities are accomplished.

One commenter assumed that the cost of drilling necessary test borings would be covered by funds authorized under proposed Section 795.18(a) since the rule, as proposed, made no mention as to whether drilling costs for data collection purposes were excluded from costs covered by the SOAP. Another commenter requested revision of the proposed rule to allow funding for certain regional planning activities which would produce future benefits to any other specific assistance site in the same geographic region. The commenter stated that planning activities related to the calibration of a regional hydrologic model to predict hydrological consequences should be reimbursable even though they would not relate to an individual assistance site.

OSM believes well drilling costs can be authorized for the SOAP. However, observation well drilling is not to be considered a standard item routinely provided for all operators receiving SOAP assistance. The need for observation well drilling should be determined on a case-by-case basis. In general, wells should be drilled only where existing information available through reports and studies or from nearby existing wells and springs is inadequate to meet the permit application requirements. Alternatives to wells should be used to the extent such alternatives have been successfully used in the past to provide information for ground water evaluations or where there are indications that other alternatives may be successful. Furthermore, the need for wells at small operator sites should be consistent with the requirements placed on large operators.

Costs for coring or test borings related to the overburden analysis are not affected by this rule revision. Such costs remain the responsibility of the operators. State program administrators for SOAP should consider completing the sample collection plan for the overburden before identifying additional sites for observation wells. Such a procedure will ensure that the well drilling authorization is being administered in a responsible manner and is not being used to provide samples for the overburden analysis or to provide information for exploration purposes, both of which are the responsibility of the operator.

The rule authorizing payment for observation well drilling will not be retroactive. It will become effective on the date the SOAP rule becomes effective or, as necessary, upon modification of approved State programs.

OSM has not accepted the recommendation that regional planning activity costs and calibration costs for hydrologic models be reimbursable through the SOAP. However, OSM recognizes that regional approaches have the potential for being as effective as site specific approaches and for reducing costs in the SOAP. OSM would be amenable to the use of regional analyses in providing SOAP assistance if it can be demonstrated through specific requests that such technical approaches provide tangible cost saving benefits directly applicable to site-specific studies in individual States.

Proposed paragraph Section 795.18(b) directed the program administrator to establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to Part 795. No comments were received on this paragraph which is adopted as proposed in new Section 795.11(b). The allocation formula is intended to provide for an equitable distribution of Federal funds if such funds are insufficient to provide services for all eligible operators.

SECTION 795.12

Section 795.19(a), as proposed, prescribed the circumstances under which an applicant shall be held liable to the State or OSM for the cost of the laboratory services provided under Part 795. Proposed Section 795.19(a)(1) provided the State or OSM the right to be reimbursed for such services by an applicant who submits false information, fails to submit a permit application within one year from the date of the approved laboratory report, or fails to mine after obtaining a permit.

Proposed Section 795.19 is being renumbered as Section 795.12 for the final rule.

One commenter requested that proposed Section 795.19(a) be revised to allow the States to adopt their own liability standards. OSM has not accepted this suggestion because of its responsibility to set minimum standards. Thus, proposed Section 795.19(a)(1) is adopted as new Section 795.11(a)(1).

Proposed Section 795.19(a)(2) is adopted as Section 795.11(a)(2) and provides that an applicant shall be liable to reimburse the regulatory authority for costs of laboratory services provided under the SOAP upon a finding by the program administrator that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive twelve month period either during the term of the permit for which assistance is required or during the first 5 years after issuance of the permit whichever is shorter.

Section 795.19(a)(3), as proposed, provided that the applicant shall reimburse the State or OSM for the cost of SOAP laboratory services if the permit is sold, transferred, or assigned by the applicant to another mining company or to a family member whose production was included in the attributed production of the applicant and the cumulative production under the permit during the remaining period of the applicant's liability exceeds 100,000 tons annually.

One commenter requested that this provision be deleted. OSM has not accepted this suggestion because of the potential for companies to enter into informal arrangements so as to appear eligible and be provided SOAP assistance. Liability requirements are needed to reduce opportunities for abuse. Final Section 795.12(a)(3) has been edited for clarity and will require reimbursement if the permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds 100,000 tons annually during any consecutive 12-month period of the remaining term of the permit. In such situations, both the applicant and its successor in interest to the permit will be obligated to reimburse the regulatory authority.

As proposed, Section 795.19(b) permitted the program administrator to waive the reimbursement obligation upon finding that the applicant acted in good faith at all times. No comments were received on this paragraph which is adopted as proposed in Section 795.12(b).

III. PROCEDURAL MATTERS

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers.

Regulatory Flexibility Act

The DOI has also determined pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601 et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed rules will allow States increased flexibility in effective and efficient administration of SOAP and should especially ease the regulatory burden on small coal operators in Appalachia.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule and has made a finding that it would not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of the preamble.

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Part 795 were approved by the Office of Management and Budget (OMB) under *44 U.S.C. 3507* and assigned a new clearance number 1029-0014 on April 1, 1981. This approval was identified in a "Note" at the introduction to 30 CFR Part 795 under the old number R0501 under No. B-190462. OSM has deleted this "Note" and has codified the OMB approval under Section 795.10 which has been redesignated as Section 795.4. The approvals are as follows: For Sections 795.14, 795.16, and 795.17, redesignated Sections 795.7, 795.9 and 795.10, OMB clearance numbers 1029-0014, 1029-0060, 1029-0061, and 1029-0062 have been assigned.

The information required by 30 CFR Part 795 will be used by the regulatory authority in implementing the Small Operator Assistance Program. This information required by 30 CFR Part 795 is mandatory.

LIST OF SUBJECTS

30 CFR Parts 731 and 732

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 795

Coal mining, Grants programs -- Natural resources, Small businesses, Surface mining, Technical assistance, Underground mining.

Accordingly, 30 CFR Parts 731, 732, and 795 are amended as set forth herein.

Dated: January 15, 1982.

Daniel N. Miller, Jr., Assistant Secretary for Energy and Minerals.

PART 731 -- SUBMISSION OF STATE PROGRAMS

1. In Section 731.14, paragraph (g)(16) is revised to read as follows:

SECTION 731.14 - CONTENT REQUIREMENTS FOR PROGRAM SUBMISSIONS.

* * * * *

(g) * * *

(16) Providing the determination of probable hydrologic consequences and the statement of the results of test borings or core samples required by Section 507(c) of the Act.

* * * * *

PART 732 -- PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

2. In Section 732.15, paragraph (b)(13) is revised to read as follows:

SECTION 732.15 - CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAMS.

* * * * *

(b) * * *

(13) Provide for small operator assistance.

* * * * *

3. Subchapter H entitled "Small Operator Assistance" is added consisting of Part 795, which is transferred from Subchapter G and revised to read as follows:

SUBCHAPTER H -- SMALL OPERATOR ASSISTANCE

PART 795 -- PERMANENT REGULATORY PROGRAM

Section

795.1	Scope and purpose.
795.3	Definitions.
795.4	Information collection.
795.5	Grant application procedures.
795.6	Eligibility for assistance.
795.7	Filing for assistance.
795.8	Application approval and notice.
795.9	Program services and data requirements.
795.10	Qualified laboratories.
795.11	Assistance funding.
795.12	Applicant liability.

Authority: Sections 201, 501, 502, and 507, Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*).

SECTION 795.1 - SCOPE AND PURPOSE.

This part comprises the small operator assistance program (SOAP) and establishes the procedures for providing assistance to eligible operators by the program administrator. It is an elective means for a regulatory authority to satisfy the requirements of Section 507(c) of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under Subchapter G of this chapter.

SECTION 795.3 - DEFINITIONS.

As used in this part --

PROGRAM ADMINISTRATOR means the State or Federal official within the regulatory authority who has the authority and responsibility for overall management of the Small Operator Assistance Program; and

QUALIFIED LABORATORY means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings under the Small Operator Assistance Program and which meets the standards of Section 795.10.

SECTION 795.4 - INFORMATION COLLECTION.

The information collection requirements contained in Sections 795.7, 795.9, and 795.10 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and have been assigned clearance numbers 1029-0014, 1029-0060, 1029-0061, and 1029-0062. The information is necessary to implement the Small Operator Assistance Program and its submission is mandatory.

SECTION 795.5 - GRANT APPLICATION PROCEDURES.

A State intending to administer a Small Operator Assistance Program under a grant from the Office of Surface Mining may submit a grant application to OSM for funding of the program under the procedures of Part 735 of this chapter.

SECTION 795.6 - ELIGIBILITY FOR ASSISTANCE.

(a) An applicant is eligible for assistance if he or she --

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first 5 years after issuance of his or her permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations shall be attributed to the applicant --

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 5 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 5 percent of the applicant's operation;

(iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(iv) All coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the SOAP.

(b) A State may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of paragraph (a) of this section.

SECTION 795.7 - FILING FOR ASSISTANCE.

Each application for assistance shall include the following information:

(a) A statement of the operator's intent to file a permit application.

(b) The names and addresses of --

(1) The permit applicant; and

(2) The operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 795.6 The schedule shall include for each location --

(1) The operator or company name under which coal is or will be mined;

(2) The permit number and Mine Safety and Health Administration (MSHA) number;

(3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under Section 795.6; and

(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of --

(1) The proposed method of coal mining;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining operation; and

(4) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows --

(1) The area of land to be affected;

(2) The location of any existing or proposed test borings; and

(3) The location and extent of known workings of any underground mines.

(f) Copies of documents which show that --

- (1) The applicant has a legal right to enter and commence mining within the permit area; and
- (2) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

SECTION 795.8 - APPLICATION APPROVAL AND NOTICE.

(a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved.

(b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

SECTION 795.9 - PROGRAM SERVICES AND DATA REQUIREMENTS.

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement referenced in paragraph (b) of this section for eligible operators who request assistance.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas in accordance with Sections 780.21(g) and 784.14(g) and any other applicable provisions of this chapter; and

(2) The statement of the results of test borings or core samplings for the proposed permit area in accordance with Sections 780.22(b) and 784.22(b) and any other applicable provisions of this chapter.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under this program shall be made publicly available in accordance with Section 786.15 of this chapter. The program administrator shall develop procedures for interstate coordination and exchange of data.

SECTION 795.10 - QUALIFIED LABORATORIES.

(a) Basic qualifications. To be designated a qualified laboratory, a firm shall demonstrate that it --

(1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) Meets applicable Federal or State safety and health requirements;

(4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards; and

(5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of Sections 780.21, 780.22, 784.14 and 784.22 and any other applicable provisions of this chapter. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator.

(6) Has the capability of performing services for either the determination or statement referenced in Section 795.9(b).

(b) Subcontractors Subcontractors, may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

SECTION 795.11 - ASSISTANCE FUNDING.

(a) Use of funds. Funds specifically authorized for this program shall be used to provide the services specified in Section 795.9 and shall not be used to cover administrative expenses.

(b) Allocation of funds. The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this part.

SECTION 795.12 - APPLICANT LIABILITY.

(a) The applicant shall reimburse the regulatory authority for the cost of the laboratory services performed pursuant to this part if --

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter; or

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000-ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

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Tuesday, January 18, 1983

Part V

The President

Executive Order 12401 -- Presidential Commission on Indian Reservation Economies

Executive Order 12402 -- National Commission on Social Security Reform