

## SUBCHAPTER H—SMALL OPERATOR ASSISTANCE

### PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATOR ASSISTANCE PROGRAM

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 2272, Jan. 18, 1983, unless otherwise noted.

#### § 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.

#### § 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 that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at § 795.9 under the Small Op-

erator Assistance Program and that meets the standards of § 795.10.

[48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28167, May 31, 1994]

#### § 795.4 Information collection.

The collections of information contained in part 795 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0061. The information will be used to determine if the applicants meet the requirements of the Small Operator Assistance Program. Response is required to obtain a benefit in accordance with Public Law 95-87. Public reporting burden for this information is estimated to average 24.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029-0061), Washington, DC 20503.

[59 FR 28167, May 31, 1994]

#### § 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.

#### § 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 attributed annual production

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from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 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 10 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 10 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.

[48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28168, May 31, 1994]

### § 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

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the applicant under § 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 § 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.

### § 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

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that the application is denied and shall state the reasons for denial.

### § 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 and provide other services 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 operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §§ 780.21(f), 784.14(e), and any other applicable provisions of this chapter;

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

(3) The development of cross-section maps and plans required by §§ 779.25 and 783.25;

(4) The collection of archaeological and historic information and related plans required by §§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17 and any other archaeological and historic information required by the regulatory authority;

(5) Pre-blast surveys required by § 780.13; and

(6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by §§ 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under the act.

(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 § 773.6(d) of this chapter. The program administrator shall develop procedures for interstate coordination and exchange of data.

[48 FR 2272, Jan. 18, 1983, as amended at 48 FR 44780, Sept. 30, 1983; 59 FR 28168, May 31, 1994, as amended at 65 FR 79670, Dec. 19, 2000]

### § 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 §§ 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 § 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.

### § 795.11 Assistance funding.

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

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(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.

locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

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(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

(a) A coal operator who has received assistance pursuant to § 795.9 shall reimburse the regulatory authority for the cost of the services rendered if:

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

(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 operator's actual and attributed annual production of coal for all

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