EXCERPT FROM

1983 Department of the Treasury
Internal Revenue Service

Instructions for Form 1096

Unless otherwise noted, references are to the Internal Revenue Code.

Paperwork Reduction Act Notice.—We ask for the information to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

Highlights

For 1983, we have made some important changes. First, certain Forms 1099 have been consolidated:

1982 forms	1983 forms
1099–ASC	1099–ASC
1099–PATR	1099–PATR
1099R	1099R
1099–DIV	1099–DIV
1099L	" "
1099–INT	1099–INT
1099–BCD	" "
1099–OID	1099–OID
1099–MISC	1099–MISC
1099–NEC	" "
1099–F	" "
1099–MED	" "
1099–UC	1099–G
Form 4347	" "

Second, Forms 1087 have been eliminated. Form 1099 will be used for both regular 1099 reporting and also for nominee payments (formerly reported on Form 1087). When submitting forms to the Service Centers, you must use separate Forms 1096 to submit nominee forms. There will be no Forms 1087 for 1983.

Third, the Tax Equity and Fiscal Responsibility Act of 1982 added additional reporting requirements:

a. Withholding on dividends and interest.—A box has been added to Forms 1099–DIV, INT, and PATR to report amounts withheld.

b. Withholding on pensions and annuities.—A box has been added to Form 1099–R.

c. State and local income tax refunds.—A new Form 1099–G, Statement for Certain Government Payments, will be used.

d. Loans from retirement plans treated as distributions.—This required no change in the reporting form, but payers should be aware of the provision. See the 1099–R instructions.

e. Original issue discount.—The computation rules have been changed from monthly rates of inclusion to a daily rate. See Pub. 550, Investment Income and Expenses, for more information.

f. The definition of reportable interest has been changed.

g. Obligations issued after December 31, 1982 must be in a registered form or the interest paid on them is not tax-exempt.

h. "Backup withholding" will go into effect on 1/1/84. A box has been added to Form 1099–MISC and Form 1099–G to report the withholding. This box should not be used in 1983. It was added early to facilitate the writing of programs.

[FR Doc. 83-1131 Filed 1-17-83; 8:45 am]
BILLING CODE 4830-01-C

Office of the Secretary

[Department Circular Public Debt Series—No. 1–83]

Treasury Notes of January 31, 1985; Series Q–1985

Washington, January 13, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of January 31, 1985, Series Q–1985, Series Q–1985 (CUSIP No. 912827 PB 2). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated January 31, 1983, and will bear interest from that date, payable on a semiannual basis on July 31, 1983, and each subsequent 6 months on January 31 and July 31 until the principal becomes payable. They will mature January 31, 1985, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2 The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest therof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4 Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, January 19, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 18, 1983, and received no later than Monday, January 31, 1983.

3.2 Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3 Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in

part, to allot more or less than the amount of securities specifiied in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, January 31, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, January 27, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 83-1457 Filed 1-14-83; 2:47 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 12
Tuesday, January 18, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Thursday, January 20, 1983

January 13, 1983.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, January 20, 1983, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Petition for Reconsideration in the Gilbert Broadcasting Corporation, Newark, New Jersey comparative AM radio proceeding (Docket Nos. 20407-10).

Hearing—2—Application for Review of a final Review Board Decision and related pleadings in the Fort Myers Beach, Florida FM proceeding (Docket Nos. 80-205 and 80-207).

Hearing—3—Application for Review of Designation Order in the Vine & Branch, Inc., Roanoke, Virginia UHF television comparative proceeding (BC Docket Nos. 82-604 to 82-607).

These items are closed to the public because they concern adjudicatory Matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission: Hearing Items 1, 2 and 3, January 13, 1983. Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp, voting to consider these items in Closed Session.

Issued: January 13, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[65 Filed 1-14-83; 3:06 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, January 20, 1983

January 13, 1983.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 20, 1983, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Amendment of Part 83 of the Commission's rules to conform with the International Maritime Satellite Organization (INMARSAT) requirements. *Summary:* The Commission will decide whether to adopt a *Report and Order* which amends the Commission's rules and policies to conform with the INMARSAT requirements for maritime mobile-satellite ship stations.

General—2—*Title:* Further Notice of Proposed Rulemaking to amend Part 2 of the Commission's Rules to provide for an allocation of 6 MHz to the Government and non-Government for fixed service usage. (General Docket No. 82-243) *Summary:* The FCC is proposing to allocate the frequency bands 932-935 MHz, paired with 943-946 MHz, for fixed services to be shared on a co-equal, co-primary basis between Government and non-Government users. The FCC had previously planned to use the 899-902 MHz and 938-941 MHz bands for this purpose, but proposed use of the 898-902 MHz and 937-941 MHz bands by a new personal radio service would preclude fixed service use of these bands. Accordingly, a change in frequency bands for fixed services is being proposed.

General—3—*Title:* Requirements for Licensed Operators in Various Radio Services. *Summary:* The Commission will consider whether or not to adopt a Notice of Proposed Rule Making to eliminate licensed operator requirements in various radio services.

General—4—*Title:* Notice of Proposed Rulemaking to allocate spectrum for the establishment of a nationwide public air-ground telephone system. *Summary:* The Commission will consider the merits of RM-3524, filed by Airfone, Inc. and RM-3885, filed by Aeronautical Radio, Inc. Each petitioner has requested the allocation of spectrum in the 900 MHz region to establish a nationwide public air-ground telephone system.

Private Radio—1—*Title:* Amendment of Part 90 of the Commission's Rules and Regulations to Eliminate Certain restrictions on Non-voice Operations in the Private Land Mobile Radio Services. *Summary:* The Commission will consider whether to adopt a Report and Order which would relax two limitations on Private Land Mobile operations: (1) A two second limitation on non-voice communications; and (2) the secondary status of non-voice to voice communications.

Private Radio—2—*Title:* Temporary Permit for additional users of multiply-licensed mobile relay stations (repeaters) in the General Mobil Radio Service (GMRS). *Sunimary:* The Commission will consider whether or not to adopt final rules to provide for a Temporary Permit for certain users in the GMRS.

Private Radio—3—*Title:* Use of volunteers to prepare and administer operator examinations in the Amateur Radio Service. *Summary:* The Commission will consider whether or not to adopt a Notice of Proposed Rule Making to allow the use of volunteers for preparing and administering amateur radio examinations.

Private Radio—4—*Title:* Establishment of a class of amateur operator license not requiring proficiecy in the Morse code. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rule Making proposing to amend part 97 of the Rules to establish a class of amateur radio operator license that would not require applicants to demonstrate proficiency in the international Morse code.

Private Radio—5—*Title:* Inquiry in the matter of creation of an additional personal radio service. *Summary:* The Commission will consider whether to propose rules to create a new Citizens Band Land Mobile Private Radio Communications Service (PRCS) in the 898-902 MHz and 937-941 MHz bands.

Private Radio—6—*Title:* Notice of Proposed Rule Making to provide for the use of facsimile by the maritime mobile service. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rule Making to include in its rules provisions permitting use of the facsimile mode of communications between high seas vessels and the shore using frequencies between 2 and 27.5 MHz.

Private Radio—7—*Title:* Amendment of Part 87 of the rules to provide a transition period for the removal of the A3 class of emission (voice) from aeronautical radiobeacon stations. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rule Making which proposes to change the class of emission and emission designator authorized for the use at aeronautical radiobeacon stations. The action is necessary to make additional spectrum available for reassignment and to permit frequency assignments consistent with recommendations of the Federal Aviation Administration. The intended effect is to alleviate a frequency congestion problem associated with radiobeacon stations.

Common Carrier—1—*Title:* Amendment to the Uniform System of Accounts to revise Sections 31.2–21(e) and 31.100:4 (c)(3) of part 31 of the Commission's Rules and Regulations. *Summary:* The Commission will consider whether to adopt a Report and Order which raises the dollar amounts contained in the referenced sections thereby reducing the number of instances when carriers must obtain Commission approval of journal entries.

Common Carrier—2—*Title:* Amendment of Annual Report Form M for telephone companies to reflect changes in the depreciation techniques approved in Docket No. 20188. *Summary:* The Commission will consider whether to adopt a Report and Order amending the Annual Report Form M for telephone companies. The amendments are required to reflect changes in the carriers depreciation practices provided for the Docket No. 20188.

Common Carrier—3—*Title:* Application of Puerto Rico Telephone Company to be certified as an interstate and foreign carrier. *Summary:* The Commission will consider whether to certify the Puerto Rico Telephone Company (PRTC) under Section 214 of the Communications Act as an interstate and foreign carrier. PRTC wants to provide telephone service between Puerto Rico and points in and reached via the U.S. maintland and between Puerto Rico and the Virgin Islands.

Common Carrier—4—*Title:* Application of Puerto Rico Communications Authority for authority to provide off-island Telex and mailgram services. *Summary:* The Commission will consider whether to authorize the Puerto Rico Communications Authority to provide record communication services between Puerto Rico and the U.S. mainland.

Common Carrier—5—*Title:* Application of Puerto Rico Puerto Telephone Company to provide telephone service between Puerto Rico and Canada. *Summary:* The Commission will consider whether to authorize the Puerto Rico Telephone Company (PRTC) to acquire and operate up to 12 leased circuits for telephone service between Puerto Rico and Canada via the U.S. mainland.

Common Carrier—6—*Title:* AT&T and the BSOCs (Resale and Sharing of Interastate WATS Used for Completion of Interstate Communications). *Summary:* Satellite Business Systems (SBS) has filed a petition for a declaratory ruling by the Commission that the Bell System Operating Companies (BSOCs) should not refuse WATS connections within a state to carriers which intend to resell the service to endusers as a link in through interstate communications—despite any resale restrictions in the BSOCs' intrastate WATS tariffs. Other non-Bell interstate carriers, including Western Union, MCI, ARINC, and several certificated interstate resale carriers, have filed comments in support of SBS's petition; ARINC and the resellers advocate that the ruling be framed so as to encompass restrictions on shared use—as well as resale—of WATS for interstate distribution of interstate communications, whether by other common carriers or by private entities. AT&T (on behalf of the BSOCs), NARUC, and several state utilities commissions have filed in opposition. AT&T and NARUC urge the Commission to permit the BSOCs to continue to enforce resale and sharing restrictions on intrastate WATS used in interstate communications, until such time as the BSOCs shall have revised their ifiterastate WATS rates to be more usage-sensitive.

Video—1—*Title:* Request by the New York State Teachers' Retirement System for a waiver of the 1% ownership benchmark of the Commission's multiple ownership rules (Sections 73.35, 73.240, and 73.636) and the cable television cross-ownership rule (Section 76.501). *Summary:* The Commission will consider whether the petitioner is a sufficiently passive investor to be afforded the 5% ownership benchmark that presently applies to insurance companies, banks, and investment companies.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: January 13, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-66 Filed 1-14-83; 3:07 pm]

BILLING CODE 6712-01-M

federal register

Tuesday
January 18, 1983

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

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

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

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.

FOR FURTHER INFORMATION CONTACT: Douglas Growitz, Division of State Program Assistance and Evaluation, Office of Surface Mining, U.S. Department of Interior, Phone (202) 343-9104.

SUPPLEMENTARY INFORMATION:

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 § 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 § 731.14, § 732.15(b)(13) is amended to require small operator assistance provisions in State programs. Unlike the previous § 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, §§ 795.10 and 795.11, as proposed, are renumbered as final §§ 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 §§ 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 795.10 provided that the information collection requirements contained in proposed § 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 § 795.4 for the final rule and is discussed in more deatail in the Procedural Matters portion of this preamble.

Section 795.5

Under § 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 § 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 § 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 § 795.6(a)(1).

The second set of criteria are contained in § 795.6(a)(2) which was proposed as § 795.13(a)(2). Under § 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 §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 §§ 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 §§ 795.6(a)(2)(i) through 795.6(a)(2)(iv).

Referring to the standards for attribution of production in proposed § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 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 § 795.6 (a) (3).

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

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

Under § 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 § 795.13. This paragraph has been adopted as § 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 § 795.7 for the final rule.

Proposed § 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 § 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 § 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 § 795.13. Proposed § 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 § 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 § 795.14(c) which is adopted as proposed as new § 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 § 795.7(d) (1) and (2).

As proposed, § 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 § 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 § 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 § 795.7(d) (3) and (4). The information requirement of new § 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 § 795.7(d)(5) on mining equipment has not been adopted.

Proposed § 795.14(e) provided that an application for assistance shall include a topographic map which meets the requirements set forth in § 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 § 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 § 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 § 795.17(f)(2).

As proposed, § 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 § 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 § 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 § 795.7(f)(1).

As proposed, § 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 § 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 § 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 § 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 § 795.13(a)(3) of the proposed rule. OSM accepts this recommendation. Final rule§ 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 § 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 § 795.8(b).

As proposed, § 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 § 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 § 795.9, OSM is combining the provisions of former § 795.12(a) and proposed § 795.16. OSM proposed to delete previous § 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 § 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 § 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 § 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 § 795.12 of the previous SOAP rules. Section 795.9(b) explains the determination and statement needed and new § 795.10 sets forth the standards for qualified laboratories.

New § 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 § 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 §§ 780.21(g) and 784.14(g) for hydrology and §§ 780.22(b) and 784.22(b) for geology become finalized, existing §§ 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 § 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 § 795.9(c).

As proposed, § 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 § 795.9(d). Proposed § 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 § 795.17, which is being renumbered as § 795.10 for the final rule, has been revised. As proposed, § 795.17(a) would have continued the requirement of the previous § 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 § 797.10(a) as part of the selection process under § 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 § 795.17(b)(1), a laboratory could meet the basic qualification standard by demonstrating compliance with the requirements specified in § 795.17(b)(1) (i) through (v) of the proposed rule. In addition, § 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 § 795.16(a). In the final rule, the above-mentioned requirements of proposed § 795.17(b) (1) and (2) have been combined without substantive change into new § 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 § 795.10(a)(6) to the determination and statement to be provided under the SOAP have been made more precise. Finally, proposed § 795.17(b)(2) is adopted as new § 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 § 795.11, which includes the requirements of proposed § 795.18(a), funds specifically authorized for the SOAP shall be used only to provide the services specified in § 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 § 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 § 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 § 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 § 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 § 795.19 is being renumbered as § 795.12 for the final rule.

One commenter requested that proposed § 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 § 795.19(a)(1) is adopted as new § 795.11(a)(1).

Proposed § 795.19(a)(2) is adopted as § 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 § 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, § 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 § 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. OMS has deleted this "Note" and has codified the OMB approval under § 795.10 which has been redesignated as § 795.4. The approvals are as follows: For §§ 795.14, 795.16, and 795.17, redesignated §§ 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 § 731.14, paragraph (g)(16) is revised to read as follows:

§ 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 § 732.15, paragraph (b)(13) is revised to read as follows:

§ 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

Sec.

Sec.

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

§ 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 of 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 § 795.10.

§ 795.4 Information collection.

The information collection requirements contained in §§ 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.

§ 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 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.

§ 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 § 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 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 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 §§ 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 §§ 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 § 786.15 of this chapter. The program administrator shall develop procedures for interstate coordination and exchange of data.

§ 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.

(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.

§ 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.

[FR Doc. 83-1233 Filed 1-17-83; 8:45 am]
BILLING CODE 4310-05-M