This document has been
Rescinded and is located
in our Archive files.

For Active files, visit
http://www.osmre.gov/directiv.htm

TYPE: Directive

SUBJECT-NO: GMT-6

TRANSMITTAL-NO: 93

SUBJECT: Operator Eligibility for Soap Assistance

ISSUED-DATE: 05/18/81

APPROVAL: Andrew V. Bailey, Acting Director

PURPOSE: 1. PURPOSE. This directive provides policy and procedures for determining eligibility of operators for assistance under a Federal Small Operator Assistance Program (SOAP).

DEFINITIONS: 2. DEFINITIONS.

a. Actual Production. The probable total amount of coal produced from all mining operations beneficially owned entirely or directly controlled by the applicant during each year of the permit.

b. Applicant. A coal mining operator or prospective operator who has submitted an application for SOAP assistance.

c. Attributed Production. The probable total amount of coal produced for each year of the permit by individuals or business entities owning more than five percent of the applicant or directly or indirectly controlling the applicant and/or by individuals or business entities in which the applicant owns more than a five percent interest, as prorated under 30 CFR 795.13.

d. Direct Control. An applicant can exercise direct control over individuals or business entities producing coal by having the controlling interest, the authority to make policy decisions or controlling the management. Furthermore, an individual or business entity producing coal can exercise direct control over the applicant through the same means. Direct control can also result from ownership of lands including mineral interests, stocks, bonds, and equipment or through employment, pensions, credit holding or holdings in improved property.

e. Indirect Control. Where control of a coal mining operation is maintained through and by reason of interests held by any one of the following:

(1) The applicant's spouse; and

(2) The applicant's minor child or children.

f. Program. Small Operator Assistance Program (SOAP) as authorized by Section 507(c) of SMCRA.

g. Small Operator. Any operator whose probable total production is between 250 tons and 100,000 tons of coal annually.

h. Total Production. The sum of actual and attributed production from all operations for each year of the permit.

POLICY-PROCEDURE: 3. POLICY/PROCEDURES.

a. Policy. To receive SOAP assistance, an operator must offer proof of meeting the requirements outlined in 30 CFR 795.13 by submitting a complete application for assistance that can be evaluated and verified following the procedures in this directive.

b. Responsibilities.

(1) The Director is responsible for developing policies and regulations for the Program as authorized under the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

(2) The Assistant Director, State and Federal Programs is responsible for developing and implementing national program policies, guidance, procedures and plans, and evaluating Program implementation at the Regional level.

(3) The Regional Director provides applications for assistance and other necessary information to potential applicants, reviews and approves or disapproves each operator's application for assistance, maintains records, and submits reports in accordance with the requirements of this directive.

c. Procedures.

(1) General. The Regional Director shall send all necessary information and the General Accounting Office (GAO) approved application form to operators seeking assistance. To become eligible for assistance, operators must submit the completed application form with the required descriptive material and signed affidavits to the Regional Office for review and evaluation.

(2) Application Review.

(a) Recordkeeping. All applications shall be date stamped and recorded at the time of receipt and a record kept on the status of each application.

(b) Complete Applications. Within five working days after receipt of an application, the Regional Office shall review the application for completeness in accordance with 30 CFR 795.14. If the application is complete, the Regional Director shall send notification to the applicant in writing within 6 working days after the completeness review indicating that the application is complete and is under review for determination of eligibility.

(c) Incomplete Applications. Within 6 working days after the completeness review, the Regional Director shall send a notice to the applicant by certified mail specifying deficiencies in the application. Regional Office staff may help the applicant correct the deficiencies. For example, if a right of entry to adjacent lands for the Office and laboratory personnel is not provided in the application, a site inventory shall be made to determine if alternate sites can be used in the development of the determination and statement (Sec. 507(b)(11) and (15) of the Act).

(d) Assessment of Eligibility. The Regional Director shall evaluate at least the following for each applicant:

1 Expected Total Production Rates. The applicant is required to provide a schedule of the estimated total coal production for each year of the proposed permit.

a Sources of Production. Actual and attributed production from the following sources will be counted:

-All coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or any other manner whatsoever, by the applicant.

-The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a 5 percent interest.

-All coal produced by persons who own more than five percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or any other manner whatsoever.

-The pro-rata share of coal produced by operations owned or controlled by the person who owns or controls the applica

b Stockpiled and Brokered Coal and Coal Mined for Other Owners. The amount of coal stockpiled for sale at a future date is not added to the amount of coal expected to be mined. The total annual production is based only on the amount of coal attributed to the applicant and the expected amount to be mined in a 12-month period of the permit. Thus, for example, if

100,000 tons of coal are mined in year one and the operator sells 25,000 tons and stockpiles 75,000 tons, and in year two 100,000 tons are again mined, but the operator sells 170,000 tons, the operator is still eligible for assistance. Generally, if there is no ownership, partial ownership, or apparent management control over the applicant by a contract buyer, broker, or other coal company having a business relationship with the applicant, then production from these sources is not attributed to the applicant. Otherwise, attributed production under the conditions stated above is added to the actual production of the applicant. Agreements or contracts between the operator and a buyer, broker or other coal companies having a business relationship with the applic should be closely reviewed on a case-by-case basis to ensure compliance with 30 CFR 795.13 and the definitions of direct and indirect control. Some common business relationships that should be evaluated with respect to control and any resulting attributed production to the applicant include:

-Applicants brokering coal for other producers;

-Applicants having agreements to mine coal for a broker, processor, or large company which owns the coal and also has its own production;

-Applicants under contract to mine another owner's coal, and who purchase or lease equipment from or receive engineering assistance from that owner; and

-Applicants who apply for and are responsible for the permit provisions but allow the buyer to post bond.

2 Past Total Production Rates. An operator's eligibility for assistance under the SOAP program is not based on past production rates. However, these rates serve as historical indicators of an operator's production capability. Coal production for the year preceding the application is required in the application by 30 CFR 795.14. This production shall be verified as explained below.

3 Verification of Past Total Production Rates and Ownership Patterns. The Regional Director shall verify past production rates and ownership through one or more of the following sources.

a State Reports on Production. Several states produce annual reports on coal production by mine and company. Current and past annual reports should be reviewed to determine production trends.

b State Severance Tax Records. Many sstates require payment of severance taxes based on annual production. State tax records may have tonnage records and the name of the individual or company paying the tax.

c State Permits.

d Office of Surface Mining (OSM) Records. Applications for the small operator exemption (30 CFR Part 710.12), which required an estimate of coal production for 1978 and copies of coal severance tax returns (8/76-7/77) may be useful.

e County Clerk Records. Firms generally file a "business certificate" with the county clerk which denotes the company and principal officer(s).

f Incorporation Records. States generally maintain some form of corporate records on companies. These records usually indicate the name of the company or corporation, affiliates, and company officers.

g Mine Safety and Health Administration Permits. These documents will disclose tonnage and operators' names.

h Abandoned Mine Lands (AML) Fee Compliance Reports. These records will disclose tonnage and operators' names. These reports are based on coal production transactions.

i Dun and Bradstreet Reports. These reports which contain information about subsidiaries, affiliates and parent firms of a company can be obtained through the Technical Information Service Center, OSM Headquarters.

j Other Sources. Local banks, bonding companies, the Keystone Coal Industry Manual and similar publications, and the local or regional Small Business Administration loan offices can be helpful. The Bureau of Alcohol, Tobacco and Firearms may also have some information on company ownership in its records of explosive/blasting sales.

4 Performance History. An operator's past performance should be examined as a part of the SOAP assistance eligibility evaluation. If an operator's performance history suggests that a mining permit may not be granted, the Regional Director must consult with the permitting review and/or approval staff before a decision is made on providing SOAP assistance. SOAP assistance will be denied if the permitting review and/or approval staff indicates in writing that a permit will not be issued.

5 Areas Unsuitable for Mining. Assistance will be denied if the proposed permit area is designated as unsuitable for mining, or is being considered for designation as unsuitable for mining. However, once a decision is rendered that the area shall not be designated unsuitable, then assistance can be provided.

(3) Eligibility Decision. An applicant shall be found eligible if 1) he/she demonstrates through the application the intent to apply for a permit pursuant to the Act, 2) he/she establishes through the application that the probable total actual and attributed production for each year of the permit will not exceed 100,000 tons, and 3) the Regional Director does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed. The Regional Director shall render a decision on eligibility within 10 working days of the date of the notification letter of completeness and notify the applicant in writing within 5 days after the decision on eligibility. The Regional Director shall also resolve any discrepancies between estimated production and past production. For example, assistance will be denied unless the applicant can demonstrate in writing that total production will be 100,000 tons per year or less, when total production during the preceding year was substantially greater than 100,000 tons.

(4) Appeals. The applicant can exercise the right of appeal if he/she is found ineligible to receive assistance.

(a) Formal Appeal. The applicant should be notified in the written decision denying assistance that an appeal is granted to the Board of Surface Mining and Reclamation Appeals of the Office of Hearings and Appeals pursuant to 43 CFR 4.1280 et seq. by filing a written notice of appeal with the Board within 20 days of receipt of the decision. Should an applicant elect to pursue a formal appeal, notification of which would come to the Regional Director by way of a copy of the notice of appeal, then a copy of all the documents relative to the application shall be made available to the applicant for inspection and a copy shall be transmitted to the Board.

(b) Informal Appeal. In lieu of a formal appeal, the applicant may informally present an appeal to the Regional Director. A decision on an informal appeal will be based on the information contained in the application, supporting documents and additional information or arguments that the applicant may submit either at a conference or in writing. A decision on informal appeal should be rendered promptly and the applicant should again be advised in writing of the decision. If the decision or informal appeal is again to deny assistance, the applicant is to be advised in the decision of the opportunity granted to take a formal appeal to the Board of Surface Mining and Reclamation Appeals under 43 CFR 4.1280 et seq.

(5) Submission of False Information. Information in the application for assistance is assumed to be submitted in good faith. If the Regional Director learns that any of the information submitted in the application is false, the applicant will be notified in writing of the allegation. The applicant shall be given the opportunity to either explain or refute the allegation of false information. If the applicant fails to explain or the attempted refutation is inadequate then the assistance shall be denied or terminated if currently being provided. The Regional Director shall seek reimbursement to recover the costs of any services provided to an applicant submitting false information. Through the procedures discussed in 3.c.(4) (a), the applicant can appeal a decision to seek reimbursement.

(6) Information to be Maintained by Region. The following data as a minimum shall be filed by the Regional Director for each small operator assisted.

(a) The MSHA number or OSM number to allow comparison to the AML Fee Collection System;

(b) The name and address of the qualified laboratory prime contractor responsible for the determination and statement report(s).

(c) The name and address of the overburden and water analysis subcontractor(s); and

(d) The watershed name, longitude-latitude of the approximate center of the permit area and the longitude-latitude of all sampling sites.

REPORTING-REQUIR: 4. REPORTING REQUIREMENTS. The Regional Director shall maintain a list of all small operators that have applied for, or are receiving assistance, showing as a minimum:

a. Name and ownership relationships.

b. Address and phone number.

c. Date when application was received.

d. Date when application was approved or rejected.

e. Permit numbers for the preceding year.

f. Probable total annual production.

g. Geographic location of proposed permit area (state, county, longitude, and latitude).

h. Assistance provided.

i. Qualified laboratory(s) which provided assistance.

This information shall be provided to the Washington Office by January 1, April 1, July 1, and October 1 of each year.

REFERENCES: 5. REFERENCES. Section 507(c) of the Act, and 30 CFR Part 795.

EFFECT-OTHER-DOC: 6. EFFECT ON OTHER DOCUMENTS. None.

EFFECTIVE-DATE: 7. EFFECTIVE DATE. Upon issuance.

CONTACT: 8. CONTACT. Chief, Division of Small Operator Assistance, Washington Office.