

operations, and is amended by deleting the words "commercial forestry." This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(eeee). The Federal requirement at 30 CFR 948.16(eeee) provides that the State must delete the words "commercial forestry" at CSR 38-2-14.12.a.1. This revision was necessary because agricultural uses, which may include commercial forestry, are not authorized postmining land uses for steep slope mining operations seeking a variance from the AOC restoration requirements at section 515(e)(2) of SMCRA. The deletion of the words "commercial forestry" at subsection 14.12.a.1 is no less effective than the Federal requirements at 30 CFR 785.16(a)(1). Therefore, we find that this amendment satisfies the required program amendment codified at 30 CFR 948.16(eeee) and can be approved. In addition, the required program amendment at 30 CFR 948.16(eeee) can be removed.

26. 38-2-17.3.b.2. Eligibility for Small Operator Assistance Program (SOAP)

This provision is amended by deleting the term 5 percent, and adding in its place the term 10 percent. As amended, this provision provides that production from the following operations shall be attributed to the applicant:

17.3.b.2. The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than ten percent (10%) of the applicant's operation;

We find that this revision renders the provision substantively identical to and no less effective than the counterpart Federal SOAP eligibility provision at 30 CFR 795.6(a)(2)(ii), and can be approved. In addition, we find that the proposed State revision satisfies that portion of our 732 letter dated July 22, 1997, regarding SOAP eligibility requirements.

27. 38-2-17.4. Request for SOAP Assistance

This provision is amended by adding new subdivisions 17.4.a through 17.4.f.2 to provide as follows:

17.4. Request for Assistance. Each applicant requesting assistance shall provide information on forms provided by the Secretary in an application that shall be clear and concise and shall be provided in a format prescribed by the Secretary and/or a format required by the Federal Office of Surface Mining Reclamation and Enforcement. Each application for assistance shall include the following information:

17.4.a. A statement of the operator's intent to file a permit application;

17.4.b. The names and addresses of:
17.4.b.1. The permit applicant; and
17.4.b.2. The operator, if different from the applicant.

17.4.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. The schedule shall include for each location:

17.4.c.1. The operator or company name under which coal is or will be mined;

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

17.4.c.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; and

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

17.4.d. A description of:

17.4.d.1. The proposed method of coal mining;

17.4.d.2. The anticipated starting and termination dates of mining operations;

17.4.d.3. The number of acres of land to be affected by the proposed mining operation; and

17.4.d.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.

17.4.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:

17.4.e.1. The area of land to be affected;

17.4.e.2. The location of any existing or proposed test borings; and

17.4.e.3. The location and extent of known workings of any underground mines.

17.4.f. Copies of documents which show that:

17.4.f.1. The applicant has a legal right to enter and commence mining within the permit area; and

17.4.f.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.

We find these new provisions, which list information required to be submitted by applicants filing for SOAP assistance, are substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 795.7 and can be approved. In addition, we find that the proposed State revision satisfies that portion of

our 732 letter dated July 22, 1997, regarding inadequate SOAP application requirements.

17.6.a. Qualified Laboratories.

The State proposes to amend its definition of qualified laboratory. These laboratories provide services under SOAP. This provision is amended by adding the word "institution" between the words "private consulting firm" and "or analytical laboratory." In addition, the following words are being added immediately following the words "or analytical laboratory:"

That can provide the required determination of a probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified under the Small Operator Assistance Program and that is * * *

As amended, subdivision 17.6.a. provides as follows:

17.6.a. General. A qualified laboratory means a designated public agency, private consulting firm, institution, or analytical laboratory that can provide the required determination of a probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified under the Small Operator Assistance Program and that is approved by the Department of Environmental Protection as a SOAP contractor.

The Federal requirements at 30 CFR 795.9 provide the requirements concerning SOAP program services and data requirements. We find that as amended, the definition of qualified laboratory at subdivision 17.6.a. is substantively identical to and no less effective than the counterpart Federal definition of "qualified laboratory" at 30 CFR 795.3.

The Federal definition of qualified laboratory at 30 CFR 795.3 provides that a qualified laboratory must be capable of providing the services identified at 30 CFR 795.3, "or other services as specified at 30 CFR 795.9 under the Small Operator Assistance Program and that meets the standards of section 795.10." The amended definition of qualified laboratory at subdivision 17.6.a does not contain the specific citation as to the location in the West Virginia program of the "other services" that a qualified laboratory must be capable of providing. However, some of the other services offered under SOAP are specified in the West Virginia program at W. Va. Code 22-3-9(b). Therefore, we find that the lack of a specific citation at subdivision 17.6.a as to the location of the "other services as specified under the Small Operator Assistance Program," does not render the definition of "qualified laboratory" less effective than the counterpart Federal definition. However, not all