

services offered under SOAP at 30 CFR 795.9 are yet identified at W.Va. Code 22-3-9(b). As requested through our 732 letter dated July 22, 1997, the State still needs to amend its SOAP rules at section 17 to include all services provided under 30 CFR 795.9.

In addition, the State definition of "qualified laboratory" lacks a counterpart to the Federal requirement that a "qualified laboratory" must meet the standards of 30 CFR 795.10 concerning qualified laboratories. However, subdivision 17.6.b, concerning basic qualifications for laboratories or contractors, provides that to qualify for designation as a qualified laboratory, the laboratory or contractor must demonstrate compliance with the requirements specified at CSR 38-2-17.6.b and 17.6.c. These provisions are the State counterparts to the Federal requirements at 30 CFR 795.10. Therefore, we find that the lack of a specific counterpart at subdivision 17.6.a to the Federal requirement that a "qualified laboratory" meet the standards of 30 CFR 795.10 does not render the State definition of "qualified laboratory" less effective than the counterpart Federal definition.

For all the reasons stated above, we find that the State's definition of qualified laboratory at subsection 17.6.a is no less effective than the Federal definition at 30 CFR 795.3 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 qualified laboratory. As West Virginia complies with the requirement to amend section 17 to identify all the program services as provided under 30 CFR 795.9, those additional services will automatically fall within the requirement that they be performed by a qualified laboratory since the definition approved here includes all services provided under SOAP.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our request for comments from the public on the proposed amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on June 14, 2002, and August 7, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV-1314 and WV-1321,

respectively). By letters dated July 11, 2002, and September 20, 2002, the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) responded (Administrative Record Numbers WV-1320 and WV-1331). MSHA stated that it finds no changes or issues that impact upon coal miners' health and safety and that there is no conflict with MSHA regulations.

In addition, the U.S. Department of the Interior's Fish and Wildlife Service (USFWS) responded to our request for comments on September 10, 2002 (Administrative Record Number WV-1329). USFWS provided comments pursuant to the Fish and Wildlife Coordination Act and the Endangered Species Act. These comments, however, are targeted at sections of the amendment that are not being considered for approval in this rulemaking, but that have been addressed in our decision on WV-096 or will be considered at a later date for WV-089. State program amendment WV-096 and the discussion of any comments received on it were the subject of a notice published in the **Federal Register** on December 3, 2002 (67 FR 71832-71840). We have not rendered a final decision on State program amendment WV-089, which was submitted in response to several outstanding 732 letters. Any comments pertaining to those outstanding requirements will be addressed when the final rule is published in the **Federal Register** at a later date.

USFWS also identified typographical errors in two subsections that are not being revised in this amendment. At CSR 38-2-7.4.b.1.C.6, the citation "7.4.d.1.C.4" should be "7.4.b.1.C.4." At CSR 38-2-7.4.b.1.D.12, the citation "7.4.d.1.D" should be "7.4.b.1.D." We will inform WVDEP about these typographical errors.

Environmental Protection Agency (EPA) Concurrence/Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On June 14, 2002, we requested concurrence and comments from EPA on House Bill 4163 (Administrative Record Numbers WV-1313). On August 7, 2002, we requested comments from EPA on Senate Bill 2002 (Administrative Record Number WV-1321).

EPA responded to both requests by letter dated October 28, 2002

(Administrative Record Number WV-1340). EPA concurred on the proposed amendments and provided comments on sections of the amendment that are not being considered for approval in this rulemaking. As discussed above, their comments have been addressed in our decision on WV-096 or will be considered at a later date in our decision on WV-089.

V. OSM's Decision

Based on the above findings, we are approving the amendments to the West Virginia program as submitted to us on April 9, 2002, and June 19, 2002. In addition, the following required program amendments are satisfied and can be removed: 30 CFR 948.16 (rrrr), (ssss), (tttt), (uuuu), (vvvv), (xxxx), (yyyy), (zzzz), (bbbb), (cccc), (dddd), (eeee), (gggg), (hhhh), (mmmm), (nnnn), and (qqqq).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10),