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Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-245-FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the proposed removal of a required amendment to the Kentucky regulatory program (The "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). We are seeking comments on whether a policy letter received from the State meets the requirements of the required amendment, thereby eliminating the need for a change in the Kentucky program.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. November 3, 2003. If requested, we will hold a public hearing on the amendment on October 28, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 20, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-8400. E-mail: bkovacic@osmre.gov.

Carl E. Campbell, Commissioner, Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Telephone: (859) 260-8400. Internet: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *," and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

The required amendment at 30 CFR 917.16(k) reads as follows:

By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7:091 section 5, and to specify that the time allowed under 405

KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

On April 3, 2003 (Administrative Record No. KY 1576), we received a letter from the Office of Administrative Hearings, Kentucky Natural Resources and Environmental Protection Cabinet, requesting that its policy of requiring all conference officers' reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment. Included in its letter was a copy of a memorandum, dated April 2, 2002 (Administrative Record No. KY-1576), sent to the Hearing Officer and Assessment Conference Officer which reminded it of this requirement and its relationship to the Federal provisions for service of penalty assessment reports (Administrative Record No. KY-1576).

We are thus seeking public comment on whether Kentucky's policy as described meets the terms of the required amendment.

III. Public Comment Procedures

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. KY-245-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260-8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their