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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

request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 20, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. 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 exempted from review by the Office of Management and Budget (OMB) 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), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule applies only to the Kentucky program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in

costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 092403I]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery Management Plan; Red Grouper Fishery of the Gulf of Mexico; Environmental Assessment for Secretarial Amendment 1

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice announcing preparation of an environmental assessment (EA).

SUMMARY: NOAA Fisheries is preparing an EA, in accordance with the National Environmental Policy Act (NEPA), for

Secretarial Amendment 1 to the Reef Fish FMP.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: *Phil.Steele@noaa.gov*

SUPPLEMENTARY INFORMATION: Red grouper in the Gulf of Mexico were declared to be overfished and undergoing overfishing by NOAA Fisheries in October 2000. Secretarial Amendment 1 was developed to establish a rebuilding plan. As the actions being considered were likely to have significant social and economic impacts under NEPA, a Draft Supplemental Environmental Impact Statement (DSEIS) was planned instead of initially preparing a less comprehensive EA. A Notice of Intent to prepare this DSEIS was published in the **Federal Register** on February 15, 2002 (32 FR 7123).

In September 2002, the Council's Reef Fish Stock Assessment Panel reviewed a new red grouper stock assessment prepared by the Southeast Fishery Science Center. The 2002 assessment confirmed the previous conclusion that red grouper were overfished in 1997, but found that the stock was in an improved condition by 2001. However, it had not yet reached the level needed to produce maximum sustainable yield on a continuing basis (B_{MSY}). Therefore, a rebuilding plan is still needed. Because the current (2001) stock biomass is closer to B_{MSY} than the biomass in 1997, a less restrictive rebuilding plan is needed to attain B_{MSY} within 10 years or less. The original version of this Secretarial Amendment proposed a rebuilding plan divided into 3-year intervals. For the first 3-year interval, the original plan called for a 45-percent reduction from the 1990-2001 average harvest, with harvest levels in subsequent years to be determined by future stock assessments. In the current version, a 9.5-percent reduction from the 1999-2001 average harvest is the first 3-year target.

The proposed actions in Secretarial Amendment 1 are not presently expected to have a significant impact on the human environment. Consequently, NOAA Fisheries is initially preparing an EA, rather than proceeding directly to a DSEIS, in support of Secretarial Amendment 1 to the Reef Fish FMP. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents required by NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NOAA

Fisheries will prepare a DSEIS to further evaluate those impacts.

This announcement is intended to inform the public of the change from preparation of a DSEIS to preparation of an EA for Secretarial Amendment 1 to the Reef Fish FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 092403H]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Proposed Amendment 13 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico; Notice of Preparation of Environmental Assessment

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice announcing preparation of an environmental assessment (EA).

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) intends to prepare an EA, in accordance with the National Environmental Policy Act (NEPA), for Amendment 13 to the Shrimp FMP.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The proposed actions in Amendment 13 would establish a bycatch reporting methodology, as well as status criteria and benchmarks such as maximum sustainable yield, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold, for penaeid and Royal Red shrimp stocks in the Gulf of Mexico. These actions were originally combined with other actions the Council was evaluating in Amendment 13 to the Shrimp FMP. However, this earlier Amendment 13 had become very complicated with the addition of measures to reduce effort and alternatives for a bycatch quota. The highest priorities were the establishment of status criteria and