

### *Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

### **The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2002–CE–57–AD; Supersedes AD 2000–23–01, Amendment 39–11971.

(a) *What airplanes are affected by this AD?* This AD affects Models 402C and 414A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar in accordance with Cessna Service Bulletin MEB02–5, dated June 24, 2002, and Cessna Service Kit SK402–47, dated June 24, 2002, as follows:

Compliance times	Affected airplanes
(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 8,500 hours time-in-service (TIS) on a wing spar; or (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 402C and 414A airplanes, serial number 414A0001 through 414A0047 and 414A0049 through 414A0200.
(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 14,500 hours TIS on a wing spar; (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first	Cessna Models 402C and 414A airplanes, serial numbers 414A0201 or through 414A1212.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 2000–23–01 and AD 99–11–13 are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these

documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–23–01, Amendment 39–11971.

Issued in Kansas City, Missouri, on September 26, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–25088 Filed 10–2–03; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. 2002–CE–05–AD]**

**RIN 2120–AA64**

### **Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes**

**AGENCY:** Federal Aviation Administration, Transportation.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD) that would supersede Airworthiness Directive (AD) 79–10–15

R2, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79-10-15 R2 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification is necessary as well as periodic inspections. The earlier NPRM would have required you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. We received a request to reopen the comment period for this action in order to allow more time to evaluate the impact of the actions of the proposed AD. Therefore, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 8, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-05-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: [9-ACE-7-Docket@faa.gov](mailto:9-ACE-7-Docket@faa.gov). Comments sent electronically must contain "Docket No. 2002-CE-05-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-05-AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed AD?*

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79-10-15 R2, Amendment 39-3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Accomplishment of the inspections required by AD 79-10-15 R2 is required in accordance with Cessna Service Bulletin ME79-16, Revision 3, dated February 8, 1980.

AD 79-10-15 R2 allowed for the incorporation of Cessna Service Kit SK402-36 or SK411-56 on the front wing spar lower cap as terminating

action for the repetitive inspections on the applicable wing.

Since issuance of AD 79-10-15, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79-10-15 R2 in accordance with Cessna Service Bulletin ME79-16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

*What Are the Consequences if the Condition Is Not Corrected?*

This condition, if not corrected could result in wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

### *Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 15, 2003 (68 FR 26239). The NPRM proposed to require you to either (depending on the aircraft configuration):

- *For airplanes that do not incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or
- *For airplanes that incorporate one of certain Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary.

You would have to accomplish the proposed actions in accordance with Cessna Service Bulletin MEB01-06 and Cessna Service Kit SK402-46, both dated September 24, 2001; and Cessna

Service Bulletin MEB01-07 and Cessna Service Kit SK411-59, both dated September 24, 2001.

### *Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. During the comment period, we received requests to extend the comment period. Consequently, we extended the comment period from August 8, 2003, to September 8, 2003.

We have received an additional comment to extend the comment period an additional 6 months action in order to allow more time to evaluate the impact of the actions of the proposed AD. We have evaluated this request and determined the following:

- An additional 60 days is a more appropriate time than 6 months; and
- Instead of extending the comment period, we will need to reopen the comment period because the comment ending date has passed.

### **The Supplemental NPRM**

#### *The FAA's Determination?*

We have determined that an additional 60 days (total of 150 days) is a reasonable time period to allow the public to comment on the proposed AD.

Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

### *How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### **Cost Impact**

#### *How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 400 airplanes in the U.S. registry.

#### *What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
485 workhours × \$60 per hour = \$29,100 per airplane.	\$1,763 per airplane .....	\$29,100 + \$1,763 = \$30,863 per airplane.	\$30,863 × 400 = \$12,345,200.

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

### **Regulatory Impact**

#### *Would This Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

#### *Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

### **The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 79-10-15 R2, Amendment 39-3711, and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2002-CE-05-AD; Supersedes AD 79-10-15 R2, Amendment 39-3711.

(a) *What airplanes are affected by this AD?* This AD affects Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary

and incorporate a spar strap modification (as specified) on each wing spar in accordance with Cessna Service Bulletin MEB01-6 and Cessna Service Kit SK402-46, both dated September 24, 2001; or Cessna Service

Bulletin MEB01-7 and Cessna Service Kit SK411-59, both dated September 24, 2001, as follows:

Initial and repetitive compliance times	Affected airplanes
<p>(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) of this AD:</p> <p>(i) Upon accumulating 5,500 hours time-in-service (TIS) on a wing spar; or</p> <p>(ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first</p>	<p>Cessna Models 411 and 411A airplanes that do not incorporate Cessna Service Kit SK411-56, SK411-56A, or SK411-56B.</p>
<p>(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD:</p> <p>(i) Upon accumulating 6,500 hours TIS on a wing spar; or</p> <p>(ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first</p>	<p>Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that do not incorporate Cessna Service Kit SK402-36, SK402-36B, or SK402-36C.</p>
<p>(3) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas are defined in the Cessna Model 411 Supplemental Inspection Document (SID):</p> <p>(i) <i>Area "A" (Inspection ID 57-10-11):</i> Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS</p> <p>(ii) <i>Area "B" (Inspection ID 57-10-12):</i> Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS</p> <p>(iii) <i>Area "C" (Inspection ID 57-10-08):</i> Upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,000 hours TIS</p>	<p>Cessna Models 411 and 411A airplanes that incorporate Cessna Service Kit SK411-56, SK411-56A, SK411-56B, or SK411-59. This includes airplanes that had Cessna Service Kit SK411-59 incorporated as required by paragraph (d)(1) of this AD.</p>
<p>(4) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection. Inspection areas are defined in the Cessna Model 401/402 Supplemental Inspection Document (SID):</p> <p>(i) <i>Area "A" (Inspection ID 57-10-11) and Area "B" (Inspection ID 57-10-12):</i> Initially upon accumulating 7,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 5,000 hours TIS</p> <p>(ii) <i>Area "C" (Inspection ID 57-10-08):</i> Initially upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS</p>	<p>Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that incorporate Cessna Service Kit SK402-36, SK402-36A, SK402-36B, SK402-36C, or SK402-46. This includes airplanes that had Cessna Service Kit SK402-46 incorporated as required by paragraph (d)(2) of this AD.</p>

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport,

Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

(2) Alternative methods of compliance approved in accordance with AD 79-10-15 R2, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas

67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 79-10-15 R2, Amendment 39-3711.

Issued in Kansas City, Missouri, on September 26, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-25089 Filed 10-2-03; 8:45 am]

BILLING CODE 4910-13-P

## 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](mailto: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](mailto: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