DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–149–FOR]

Indiana Regulatory Program

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

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

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana submitted revised procedural rules for adjudicatory proceedings. Indiana intends to revise its program to be consistent with the corresponding Federal regulations. This document gives the times and locations that the Indiana program and 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 until 4 p.m., e.s.t., April 6, 2000. If requested, we will hold a public hearing on the amendment on April 3, 2000. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on March 22, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, 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. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

On February 4, 2000, the Indiana Department of Natural Resources (department), Division of Reclamation (DoR), sent us a copy of revised procedural rules for adjudicatory proceedings (Administrative Record No. IND–1685). These rules are codified in the Indiana Administrative Code (IAC) at 312 IAC 3–1 and provide procedures for administrative review proceedings held before the Natural Resources Commission (commission) and its administrative law judges. We previously approved Indiana's procedural rules at 310 IAC 0.6–1 for adjudicatory proceedings under its program. In 1996, Indiana repealed the procedural rules at 310 IAC 0.6–1 and revised and recodified their substantive requirements at 312 IAC 3–1. The DoR submitted the revised procedural rules in response to a required program amendment that we codified at 30 CFR 914.16(ff) on October 20, 1994 (59 FR 52906). Below is a discussion of that portion of the revised rules that pertain to administrative review under the Indiana program.

1. 312 IAC 3–1–1 Administration

Subsection (a) specifies that 312 IAC 3–1 controls proceedings governed by Indiana Code (IC) 4–21.5, Administrative Orders and Procedures, for which the commission, or an administrative law judge for the commission, is the ultimate authority.

Subsection (b) allows an affected person to apply for administrative review under IC 4–21.5 and 312 IAC 3–1 if he or she is aggrieved by a determination of the director or a delegate of the director.

Subsection (c) defines ''division director'' as the director of the division of hearings of the commission.

2. 312 IAC 3–1–2 Ultimate Authority

Subsection (a) designates the commission as the ultimate authority for the department except as provided in subsection (b).

Subsection (b) designates an administrative law judge as the ultimate authority for an administrative review under: (1) An order under Indiana's Surface Coal Mining and Reclamation Act at IC 14–34, except for a proceeding concerning the approval or disapproval of a permit application or permit renewal under IC 14–34–4–13 or for suspension or revocation of a permit under IC 14–34–15–7; (2) An order granting or denying temporary relief under IC 14–34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4–21.5–4; and (3) An order designated as a final order in 312 IAC 3–1–9.

3. 312 IAC 3–1–3 Initiation of a Proceeding for Administrative Review

Subsection (a) provides that a proceeding before the commission under IC 4–21.5 is initiated when one of the following is filed with the Division of Hearings: (1) a petition for review under IC 4–21.5–3–7; (2) a complaint under IC 4–21.5–3–8; (3) a request for temporary relief under IC 14–34; (4) a request to issue or for review of an issued emergency or other temporary order under IC 4–21.5–4; (5) an answer to an order to show cause under 312 IAC 3–1–5; or (6) a referral by the director of a petition for and challenge to litigation expenses under 312 IAC 3–1–13(g).

Subsection (b) requires the division director to appoint an administrative law judge to conduct the proceeding as soon as practicable after the initiation of administrative review under subsection (a).

4. 312 IAC 3–1–4 Answers and Affirmative Defenses

Subsection (a) specifies that except as provided in subsection (b) and in 312 IAC 3–1–5 and 13, the matters contained in a pleading described in 312 IAC 3–1–3(a) are considered automatically denied by any other party.

Subsection (b) provides that a party wishing to assert an affirmative defense,

counterclaim, or cross-claim must do so, in writing, and have the document filed and served no later than the initial prehearing conference, unless otherwise ordered by the administrative law judge.

5. 312 IAC 3–1–5 Pleadings for and Disposing of a Show Cause Order Issued Under the Indiana Surface Mining Control and Reclamation Act

Subsection (a) provides that 312 IAC 3–1–5 governs the suspension or revocation of a permit under IC 14–34–15–7.

Subsection (b) requires the director (or a delegate of the director) to issue, to the permittee, an order of permit suspension or revocation under IC 14–34–15–7 if the director determines that a permit issued under to IC 13–4.1, IC 14–34, or 310 IAC 12 should be suspended or revoked. The order of permit suspension or revocation must state that: (1) a pattern of violations of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12 exists; and (2) the violations are either willfully caused by the permittee, or caused by the permittee's unwarranted failure to comply with IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. Subsection (b) further provides that, for the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13–4.1, IC 14–34, or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation.

Subsection (c) requires the director to serve by certified mail or personal delivery an order of permit suspension or revocation. Subsection (c) also clarifies that an order of permit suspension or revocation is governed by IC 4–21.5–3–6.

Subsection (d) requires a permittee, who wants to contest an order of permit suspension or revocation, to file a petition for review under IC 4–21.5–3–7 within thirty (30) days of his or her receipt of the order of permit suspension or revocation. Subsection (d) also specifies the kind of information that must be included in a petition for review, including whether the permittee wants a hearing on the order of permit suspension or revocation.

Subsection (e) provides that if a petition for review is not filed by the permittee under subsection (d), the order of permit suspension or revocation will become an effective and final order of the commission without a proceeding under IC 14–34–15–7(c).

Subsection (f) provides that if a petition for review is filed by the permittee under subsection (d) and a hearing on the order is sought by the permittee, the matter will be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. Subsection (f) also sets out the burden of proof standards for the hearing. The director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The director satisfies the burden by establishing a prima facie case that a pattern of violations exists or has existed and the violations were willfully caused by the permittee or caused by the unwarranted failure of the permittee to comply with any requirements of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit conditions required under IC 13–4.1, IC 14–34, or 310 IAC 12. If the director demonstrates that the permit should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

Subsection (g) provides that the administrative law judge will issue a nonfinal order if he or she determines that a pattern of violations exists or has existed. In this nonfinal order, the administrative law judge must consider the factors contained in 310 IAC 12–6–6.5. The administrative law judge must find that sufficient violations occurred to establish a pattern. The nonfinal order must comply with the requirements of IC 4–21.5–3–27(a) through IC 4–21.5–3–27(d) and IC 4–21.5–3–27(g). The administrative law judge may, at any time before the conclusion of the hearing, allow the parties to submit briefs and proposed findings.

Subsection (h) requires the administrative law judge to submit the nonfinal order to the commission within ten days following the date that the hearing is closed or within ten days of the receipt of the permittee's petition for review submitted under subsection (d) if no hearing is requested by any party and it is determined that no hearing is necessary.

Subsection (i) provides that a party must object to the findings and nonfinal order in writing in order to preserve for judicial review an objection to the nonfinal order of an administrative law judge. In its written objection, a party must identify the bases of the objection. The objection must be filed with the commission within 15 days after the findings and nonfinal order are served on the party.

Subsection (j) requires the commission to enter a final order affirming, modifying, or vacating the administrative law judge's order of permit suspension or revocation. The final order of the commission must be entered within 45 days following the issuance of the nonfinal order. The final order of the commission must be issued 60 days following the date that the hearing record is closed by the administrative law judge or 60 days following the administrative law judge's receipt of the permittee's petition for review filed under subsection (d) if no hearing was requested by any party and the administrative law judge determined that no hearing was necessary.

Subsection (k) provides that the minimum suspension period is 3 working days unless the commission finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. The commission may impose preconditions that the permittee must satisfy before the suspension is lifted.

Subsection (l) requires the commission to serve the parties with a copy of the final order. A party may then apply for judicial review under IC 4–21.5.

6. 312 IAC 3–1–6 Amendment of Pleadings

Subsection (a) provides for the amendment of petitions for administrative review filed under IC 4–21.5–3–7. The various types of petitions that may to be amended are described in 312 IAC 3–1–3(a). A pleading may be amended once as a matter of course before a response is filed, but not later than the initial prehearing conference or 15 days before a hearing, unless otherwise allowed by the administrative law judge.

Subsection (b) specifies the circumstances under which amendments in a pleading relate back to the date of the original pleading.

7. 312 IAC 3–1–7 Filing and Service of Documents

Subsection (a) requires documents to be filed with the administrative law judge and served on all other parties.

Subsection (b) allows the filing of a document to be performed by personal delivery, first class mail, certified mail, interoffice mail, fax, or electronic mail.

Subsection (c) requires service of a document to be made upon the attorney or other authorized representative when a party is represented by an attorney or another authorized representative. If a

party is not represented by others, service must be made upon the individual.

Subsection (d) provides that filing or service by properly addressed, prepaid first class or certified mail is complete upon deposit in the United States mail. Filing or service by another method is complete upon receipt.

Subsection (e) specifies that 312 IAC 3–1–7 does not modify the time in which a party may file objections under IC 4–21.5–3–29 or a petition for judicial review under IC 4–21.5–5.

8. 312 IAC 3–1–8 Administrative Law Judge; Automatic Change

Subsection (a) provides that an automatic change of administrative law judge may be obtained under 312 IAC 3–1–8.

Subsection (b) provides that a party may file a written motion for change of the administrative law judge without specifically stating the ground for the request. A party must file the motion within ten days after the appointment of an administrative law judge.

Subsection (c) requires the administrative law judge to grant the motion filed under subsection (b) and to notify the division director. The division director must inform the parties of the names of two other individuals from whom a substitute administrative law judge may be selected. A party who is opposed to the party who filed the motion under subsection (b) may, within five days, select one of the individuals named by the division director to serve as the substitute administrative law judge. The division director must select a new administrative law judge if the opposing party does not make a timely selection.

Subsection (d) specifies under what circumstances an automatic change of administrative law judges under this section does not apply. This section does not apply where a previous change of administrative law judge has been requested under this section. It does not apply to a proceeding under IC 4–21.5–4 or to temporary relief under IC 13–4.1. It does not apply if an administrative law judge has issued a stay or entered an order for disposition of all or a portion of the proceeding. Finally it does not apply if the commission orders a suspension of the section because of inadequate staffing.

9. 312 IAC 3–1–9 Defaults, Dismissals, and Agreed Orders

Subsection (a) allows an administrative law judge to enter a final order of dismissal if the party who initiated administrative review requests the proceeding be dismissed.

Subsection (b) allows an administrative law judge, on the motion of the administrative law judge or the motion of a party, to enter a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24, if at least one of the following applies: (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding; (2) The party responsible for taking action does not take action on a matter for a period of at least 60 days; (3) The person seeking administrative review does not qualify for review under IC 4–21.5–3–7; or (4) A default or dismissal could be entered in a civil action.

Subsection (c) allows a party to file a written motion requesting the order not be imposed. The party must file the motion within seven days after service of a proposed order of default or dismissal, or within a longer period allowed by the proposed order. The administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued within the same time period. The administrative law judge must consider the interest of justice and the orderly and prompt conduct of the proceeding before taking either action.

Subsection (d) requires the administrative law judge to issue an order of default or dismissal if the party fails to file a written motion under subsection (c). If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal.

Subsection (e) requires the administrative law judge, after issuing an order of default, but before issuing a final order or disposition, to conduct any action necessary to complete the proceeding without the participation of the party in default and determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings under IC 4–21.5–3–23 to resolve any issue of fact.

Subsection (f) requires an administrative law judge to approve an agreed order entered into by the parties if it is clear and concise and lawful.

Subsection (g) allows the secretary of the commission to affirm the entry of an agreed order approved by the administrative law judge under subsection (f).

Subsection (h) provides that a final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order under IC 4–21.5–5.

10. 312 IAC 3–1–10 Applicability of Rules of Trial Procedure and Rules of Evidence

Section 10 allows the administrative law judge to apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence as long as they are not inconsistent with IC 4–21.5 or 312 IAC 3–1.

11. 312 IAC 3–1–11 Conduct of Hearing; Separation of Witnesses

Subsection (a) requires an administrative law judge to govern the conduct of a hearing and the order of proof.

Subsection (b) requires the administrative law judge to provide for a separation of witnesses on a motion by a party before the commencement of testimony.

12. 312 IAC 3–1–12 Nonfinal Order of the Administrative Law Judge; Oral Argument Before the Commission; Participation by Nonparties (Amicus Curiae); Disposition by the Secretary of State If No Objection Filed

Subsection (a) provides that 312 IAC 3–1–12 governs the disposition of objections under IC 4–21.5–3–29.

Subsection (b) requires a party who wishes to contest whether objections provide reasonable particularity, to move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection, and any other motion filed subsequent to the entry of the nonfinal order, and enter an appropriate order (including removal of an item from the commission agenda).

Subsection (c) requires that parties schedule objections for argument before the commission simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission, argument must not exceed 10 minutes for each party and 20 minutes for each side.

Subsection (d) allows a nonparty to file a brief with the commission ten days before oral argument is scheduled on objections filed under subsection (c). A copy of the brief must be served upon each party. The brief must not be more than five pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission, a nonparty may also present oral argument for not more than five minutes in support of the brief. If more than one nonparty files a brief, the administrative law judge must order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at

least ten days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties.

Subsection (e) requires the commission to provide the services of a stenographer or court reporter to record the argument upon the written request of a party. This request must be filed at least 48 hours before an oral argument to consider objections.

Subsection (f) allows the secretary of the commission, as its designee under IC 4–21.5–3–28(b), to affirm the findings and nonfinal order. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary.

Subsection (g) allows a party to move to strike all or any part of objections, a brief by a nonparty, or another pleading under 312 IAC 3–1–12. The administrative law judge must act upon a motion filed under this subsection by providing relief which is consistent with IC 4–21.5 and 312 IAC 3–1.

13. 312 IAC 3–1–13 Awards of Litigation Expenses for Specified Proceedings

Subsection (a) provides that 312 IAC 3–1–13 governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14–34–15–10.

Subsections (b) and (c) do not pertain to the Indiana program.

Subsection (d) provides that appropriate costs and expenses, including attorney fees, may be awarded under IC 14–34–15–10 in five instances. First, litigation expenses may be awarded to any person from the permittee. However, the person must initiate or participate in an administrative proceeding reviewing enforcement and a finding must be made by the administrative law judge or commission that a violation of IC 14–34, a rule adopted under IC 14–34, or a permit issued under IC 14–34 has occurred or that an imminent hazard existed and the person made a substantial contribution to the full and fair determination of the issues. However, a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Second, litigation expenses may be awarded to a person from the department, other than to a permittee or the permittee's authorized representative, who initiates or participates in a proceeding. The person must prevail in whole or in part, achieving at least some degree of success on the merits. A finding must also be made indicating that the person made a substantial contribution to a full and fair determination of the issues. Third, litigation expenses may be awarded to a permittee from the department if the permittee demonstrates that the department issued a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked in bad faith and for the purpose of harassing or embarrassing the permittee. Fourth, litigation expenses may be awarded to a permittee from a person, where the permittee demonstrates that the person initiated a proceeding under IC 14–34–15 or participated in the proceeding in bad faith for the purpose of harassing or embarrassing the permittee. Finally, litigation expenses may be awarded to the department from a person, where the department demonstrates that the person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department.

Subsection (e) allows the commission to order a person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing.

Subsection (f) specifies the factors that the commission must consider in determining what is a reasonable amount of attorney fees. The factors include: (1) The nature and difficulty of the proceeding; (2) The time, skill, and effort involved; (3) The fee customarily charged for similar legal services; (4) The amount involved in the proceeding; and (5) The time limitations imposed by the circumstances. For a party whose attorney is a full-time, salaried employee of the party, consideration also must be given to the prorated cost of the salary of the attorney and of the clerical or paralegal employees of the party who assisted the attorney. The employees' benefits attributable to the time devoted to representation must also be considered.

Subsection (g) requires a party who wishes to seek litigation expenses to petition the director within 30 days after the party receives notice of the final agency action. A party wishing to challenge the petition for an award must deliver a written response to the director within 15 days of service of the petition for an award. If a petition for seeking litigation expenses and challenge of the petition for award are delivered to the director under this subsection, the director must refer the matter to the division of hearings of the commission for the conduct of a proceeding under IC 4–21.5.

14. 312 IAC 3–1–14 Court reporter; Transcripts

Subsection (a) requires the commission to employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing.

Subsection (b) allows a party to obtain a transcript of the evidence by submitting a written request to the administrative law judge.

Subsection (c) requires the party who requests a transcript under subsection (b) to pay the cost of the transcript.

Subsection (d) provides that, upon a written request by a party filed at least 48 hours before a hearing, a court reporter who is not an employee of the commission will be engaged to record a hearing.

15. 312 IAC 3–1–15 Quasi-Declaratory Judgments

Subsection (a) allows a person to request the department to interpret a statute or rule administered by the department as applicable to a specific factual circumstance. The request must be in writing and must describe with reasonable particularity all relevant facts. The request must cite with specificity the statutory or rule sections in issue. The request must identify any other person who may be affected by a determination of the request. Finally the request must describe the relief sought.

Subsection (b) allows the director or the director's delegate to provide a written response to the request. The written response must be provided within 45 days of the request. The response may include an interpretation based upon the information provided in the request or may specify additional information needed to respond to the request. If the department needs additional information, it has an additional 45 days in which to respond.

Subsection (c) provides that if the department does not respond within the periods described in subsection (b), a general denial of the request is deemed to have resulted.

Subsection (d) allows the person who is seeking the request under subsection (a) to file a petition for administrative review under IC 4–21.5–3 if he or she is aggrieved by the response of the department under subsection (b) or a general denial under subsection (c). The department's response constitutes a determination of status under IC 4–21.5–3–5(a)(5).

Subsection (e) provides that 312 IAC 3–1–15 does not excuse a person from

a requirement to exhaust another administrative remedy provided by statute or rule. A person may not void or modify a final order entered by the department in another proceeding. A request does not extend any time limitation imposed on the availability of another administrative remedy. A final order of the department under this section, which follows a contested proceeding under IC 4–21.5–3, provides the same precedent as a final order following any other contested proceeding under IC 4–21.5–3.

16. 312 IAC 3–1–16 Continuances

Subsection (a) provides that upon the motion of a party, a hearing may be continued by the administrative law judge and shall be continued upon a showing of good cause.

Subsection (b) requires a motion to continue a hearing because of the absence of evidence to be made by affidavit. The affidavit must show the materiality of the evidence expected to be obtained; that due diligence has been used to obtain the evidence; and where the evidence may be. If the motion is based on the absence of a witness, the party's affidavit must show: the name and residence of the witness, if known; the probability of procuring the testimony in a reasonable time; that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party; what facts the party believes to be true; and that the party is unable to prove the facts by another witness whose testimony can be readily procured.

Subsection (c) provides that if, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts which the party seeking the continuance indicated could not be presented, the hearing shall not be continued.

17. 312 IAC 3–1–17 Record of Proceedings; Adjudicative Hearings Generally; Record of the Director for Surface Coal Mining Permits

Subsection (a) provides that the record required to be kept by an administrative law judge under IC 4–21.5–3–14 commences when a proceeding is initiated under 312 IAC 3–1–3(a) and includes the items described in IC 4–21.5–3–33.

Subsection (b) provides that in addition to subsection (a), this subsection applies to a proceeding concerning the approval or disapproval of a permit application, permit revision application, or permit renewal under IC 14–34–4–13. However, nothing in this subsection precludes the admission of testimony or exhibits that are limited to the explanation or analysis of materials included in the record before the director. Neither does it preclude the manner in which the materials were applied, used, or relied upon in evaluating the application. Upon a timely objection made before or during a hearing, the administrative law judge shall exclude testimony or exhibits that are offered but that identify or otherwise address matters that are not part of the record before the director under IC 14–34–4–13. The record before the director includes: the permit; the permit application as defined at 310 IAC 12–0.5–10; documentation tendered or referenced, in writing, by the applicant or an interested person for the purposes of evaluating, or documentation used by the department to evaluate, the application; the analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application; documentation received under IC 14–34–4, including the conduct and results of any informal conference or public hearing under IC 14–34–4–6; and correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

18. 312 IAC 3–1–18 Petitions for Judicial Review

Subsection (a) requires a person, who wishes to take judicial review of a final agency action entered under 312 IAC 3–1, to serve copies of a petition for judicial review upon the persons described in IC 4–21.5–5–8.

Subsections (b), (c), and (d) list the names and addresses that a copy of the petition required under IC 4–21.5–5–8 must be served.

Subsection (e) provides that the commission and its administrative law judge provide the forum for administrative review under this rule. Neither the commission nor the administrative law judge is a party.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under ''DATES'' or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. IN–149–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 Indianapolis Field Office at (317) 226–6700.

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 March 22, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been 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 all persons scheduled to speak and

persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, 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 also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since 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 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments 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.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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 has determined 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 corresponding 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. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. 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 corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 29, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–5494 Filed 3–6–00; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–394; MM Docket No. 00–35; RM–9818]

Radio Broadcasting Services; Lake Isabella, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dana J. Puopolo requesting the allotment of Channel 239A to Lake Isabella, California, as that community's second local aural transmission service. Coordinates used for this proposal are the city reference at 35–35–11 NL; 118–26–34 WL.

DATES: Comments must be filed on or before April 17, 2000, and reply comments on or before May 2, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak St., Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–35, adopted February 16, 2000, and released February 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–5412 Filed 3–6–00; 8:45 am]

BILLING CODE 6712–01–P