continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

(f) This amendment becomes effective on July 10, 2000.

Issued in Burlington, Massachusetts, on May 26, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–13873 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA52

Annual Reporting and Disclosure Requirements; Correction

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to the regulations governing annual reporting and disclosure requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document contains a technical correction to those amendments.

DATES: This correction is effective on May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps at (202) 219–8515 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to Department of Labor regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. In publishing these regulations, the Department amended the summary annual report forms at 29 CFR 2520.104b–10(d)(3) and (4), but inadvertently omitted a change to reflect the fact that under the ERISA Filing Acceptance System (EFAST) annual returns/reports are filed with the Pension and Welfare Benefits Administration rather than the Internal Revenue Service. A technical correction amendment to the final rule is, therefore, necessary.

Correction of Publication

Accordingly, the publication of the final rule on April 19, 2000 (65 FR 21068) which was the subject of FR Doc. 00–9611 is corrected, with respect to the amendments to 29 CFR 2520.104b–10, as follows:

§ 2520.104b–10 [Corrected]

On page 21085, column 3, remove paragraph d. and add in its place a revised paragraph d. to read as follows:

d. Paragraphs (d)(3) and (d)(4) are amended as follows:

1. The second sentence of the introductory text under the heading ''SUMMARY ANNUAL REPORT FOR (NAME OF PLAN)'' the term ''Internal Revenue Service'' is removed and the term ''Pension and Welfare Benefits Administration'' is added in its place;

2. The last sentence under the heading ''Your Rights to Additional Information'' is removed and the following sentence is added in its place: ''Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.''

* * * * *

Dated: May 31, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–14000 Filed 6–2–00; 8:45 am]

BILLING CODE 4510–29–P

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: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana revised and recodified its procedural rules for adjudicatory proceedings. Indiana intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

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, 914.16, and 914.17.

II. Submission of the Amendment

On February 4, 2000, the Indiana Department of Natural Resources, Division of Reclamation (DoR), sent us a copy of revised and recodified procedural rules for adjudicatory proceedings under the Indiana program (Administrative Record No. IND–1685). These procedural rules are codified in the Indiana Administrative Code (IAC) at 312 IAC 3–1 and provide procedures for administrative review proceedings held before the Division of Hearings, Natural Resources Commission. 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).

We announced receipt of the amendment in the March 7, 2000, **Federal Register** (65 FR 11950). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on April 6, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

The Indiana rules at 312 IAC 3–1 contain procedures for adjudicatory proceedings held before the Indiana Natural Resources Commission (commission) and its administrative law judges. The rules provide procedures for filing and pursuing an administrative review of a determination by the Indiana Department of Natural Resources (department) under the Indiana program. These rules are also applicable to administrative review of decisions by the department under other State programs and of licensing and disciplinary actions by the Board of Certification of Professional Geologists. We are making findings only on those portions of the recodified rules that pertain to administrative review under the Indiana program. The term ''director'' in Indiana's rules refers to the ''director of the Indiana Department of Natural Resources.''

1. Repeal and Recodification

a. 312 IAC 3 Adjudicatory Proceedings

We previously approved procedural rules at 310 IAC 0.6–1 for adjudicatory proceedings under the Indiana program. In 1996, the commission repealed the procedural rules at 310 IAC 0.6–1 and revised and recodified their substantive requirements at 312 IAC 3–1. The department is responsible for implementing the rules under Title 310 of the IAC. The commission is responsible for implementing the rules under Title 312 of the IAC. We find that the commission's recodification of its procedures for conducting adjudicatory proceedings for the Indiana program under its rules at Title 312 is appropriate and does not make Indiana's rules for administrative review proceedings less effective than the Federal regulations at 43 CFR Part 4.

b. 310 IAC 0.7–3–5 Delegations for Programs Administered by the Division of Reclamation

We previously approved Indiana's rule at 310 IAC 0.7–3–5 concerning delegations for programs administered by the DoR. This rule was referenced in the procedural rules at 310 IAC 0.6–1–3 and was specific to the Indiana program. In 1996, the commission repealed this rule. There is no Federal counterpart to Indiana's rule at 310 IAC 0.7–3–5, and we find that the commission's repeal of it does not make Indiana's rules less effective than the Federal regulations.

2. 312 IAC 3–1–1 Administration

Indiana's previously approved provisions at 310 IAC 0.6–1–1 (Definitions), 0.6–1–2 (Applicability of rule), and 0.6–1–3 (Review of actions taken by delegates of natural resources commission) were revised and recodified at 312 IAC 3–1–1. 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; a delegate of the director; a board, other than the commission when acting as the ultimate authority; a delegate of the board, other than an administrative law judge; or a person delegated authority under 312 IAC 2–2. Indiana's rule at 312 IAC 2–2 governs delegations by the Natural Resources Commission. Subsection (c) defines ''division director'' as the director of the division of hearings of the commission.

While there is no direct Federal counterpart to 312 IAC 3–1–1, we find that it is not inconsistent with the Federal regulations at 43 CFR Part 4. The Federal regulations at 43 CFR Part 4 provide procedures and practices for administrative review of most decisions made under SMCRA and the Federal Regulations at 30 CFR Parts 700 through 865.

The definitions at 310 IAC 0.6–1–1 for the terms ''advisory council''; ''Commission''; ''Delegate''; ''Department''; ''Director''; ''Hearing commissioner''; and ''Objections hearing'' were not recodified at 312 IAC 3–1. Because the Federal regulations do not contain similar definitions, we find that the removal of these definitions will not make Indiana's rules less effective than the Federal regulations.

3. 312 IAC 3–1–2 Ultimate Authority for the Department

Indiana's previously approved provisions at 310 IAC 0.6–1–2.5 were revised and recodified at 312 IAC 3–1–2. Subsection (a) designates the commission as the ultimate authority for the department and any department board 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.

While there is no Federal counterpart to 312 IAC 3–1–2, we find that it is not inconsistent with the Federal regulations concerning administrative review at 43 CFR Part 4, and we are approving it.

4. 312 IAC 3–1–3 Initiation of a Proceeding for Administrative Review

Indiana's previously approved provisions at 310 IAC 0.6–1–4 (Petition for administrative review; notice of appointment of administrative law judge) were revised and recodified at 312 IAC 3–1–3. 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: a petition for review under IC 4–21.5–3–7; a complaint under IC 4–21.5–3–8; a request for temporary relief under IC 14–34; a request to issue an emergency or other temporary order under IC 4–21.5–4 or for review of an order issued under IC 4–21.5–4; an answer to an order to show cause under 312 IAC 3–1–5; or 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).

Although there is no direct counterpart to 312 IAC 3–1–3 in SMCRA or the Federal regulations, we find that its provisions are consistent with the general requirements of the Federal regulations at 43 CFR Part 4.

5. 312 IAC 3–1–4 Answers and Affirmative Defenses

Indiana's previously approved provisions at 310 IAC 0.6–1–5(a) were revised and recodified at 312 IAC 3–1–4. 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.

Although there is no direct counterpart to 312 IAC 3–1–4 in SMCRA or the Federal regulations, we find that its provisions are consistent

with the general requirements of the Federal regulations at 43 CFR Part 4.

6. 312 IAC 3–1–5 Pleadings for and Disposing of a Show Cause Order Issued Under the Indiana Surface Mining Control and Reclamation Act

Indiana's previously approved provisions at 310 IAC 0.6–1–5(b) through (j) were revised and recodified at 312 IAC 3–1–5. 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 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 an order of permit suspension or revocation by certified mail or personal delivery. 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 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 three 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.

The commission did not recodify the provision at 310 IAC 0.6–1–5(g) that: ''Under IC 13–4.1–11–6(c), the administrative law judge shall issue the findings and a nonfinal order within sixty (60) days after conclusion of the hearing.'' We disapproved this provision in a previous final rule on October 20, 1994 (59 FR 52906), and required Indiana to delete the provision from its program (30 CFR 914.16(ff)). As noted in subsection (h), the administrative law judge must now submit a nonfinal order to the commission within ten days after the hearing closes. This will allow the commission sufficient time to issue the final order within the 60-day time period required by IC 14–34–15–7(h).

We find that the provisions at 312 IAC 3–1–5 contain adjudicatory proceedings for the suspension and revocation of permits that are the same as or similar to those contained in the Federal regulations at 30 CFR Part 843 and 43 CFR 4.1190 through 4.1196. We also find that the changes made to the requirements recodified at 312 IAC 3–1–5(h) and (j) satisfy the required amendment at 30 CFR 914.16(ff), and we are removing it.

7. 312 IAC 3–1–6 Amendment of Pleadings

Indiana's previously approved provisions at 310 IAC 0.6–1–6 were revised and recodified at 312 IAC 3–1–6. 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.

While there is no direct Federal counterpart, we find that 312 IAC 3–1–6 is not inconsistent with the Federal regulations at 43 CFR part 4, and we are approving it.

8. 312 IAC 3–1–7 Filing and Service of Documents

Indiana's previously approved provisions at 310 IAC 0.6–1–7 were revised and recodified at 312 IAC 3–1–7. 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 with the administrative law judge 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.

We find that 312 IAC 3–1–7 contains procedures for filing and service of documents that are no less effective than the Federal regulations at 43 CFR 4.1107 and 4.1109, and we are approving it.

9. 312 IAC 3–1–8 Administrative Law Judge; Automatic Change

Indiana's previously approved provisions at 310 IAC 0.6–1–8 were revised and recodified at 312 IAC 3–1–8. Subsection (a) provides that an automatic change of an 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 grounds 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.

There is no direct counterpart Federal regulation. However, we find that 312 IAC 3–1–8 is not inconsistent with the general rules relating to procedures and practice at 43 CFR part 4, and we are approving it.

10. 312 IAC 3–1–9 Defaults, Dismissals, and Agreed Orders

Indiana's previously approved provisions at 310 IAC 0.6–1–9 (Dismissals) were revised and recodified at 312 IAC 3–1–9. 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. During the time within which a party may file a written motion, the administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued. 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.

While there is no direct counterpart Federal regulation, we find that 312 IAC 3–1–9 is not inconsistent with the general rules relating to procedures and practice at 43 CFR Part 4. Therefore, we are approving it.

11. 312 IAC 3–1–10 Applicability of Rules of Trial Procedure and Rules of Evidence

Indiana's previously approved provisions at 310 IAC 0.6–1–10 (Applicability of rules of trial procedure) were revised and recodified at 312 IAC 3–1–10. This rule 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.

We find that there is no Federal counterpart to Indiana's proposed rule. However, we are approving 312 IAC 3–1–10 to the extent that the rule allows an administrative law judge to apply provisions of the Indiana Rules of Trial Procedures and Indiana Rules of Evidence that are not inconsistent with SMCRA and the Federal regulations.

12. 312 IAC 3–1–11 Conduct of Hearing; Separation of Witnesses

Indiana's previously approved provisions at 310 IAC 0.6–1–11 (Conduct of hearing) were revised and recodified at 312 IAC 3–1–11. 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.

We find that 312 IAC 3–1–11 is not inconsistent with the Federal regulations at 43 CFR 4.1121 concerning powers of administrative law judges. Therefore, we are approving the recodification and revision of this section.

13. 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

At 312 IAC 3–1–12, the commission revised and recodified Indiana's previously approved provisions from 310 IAC 0.6–1–12 (Recommendations of an administrative law judge; objections). 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. Upon the written request of a party, subsection (e) requires the commission to provide the services of a stenographer or court reporter to record the argument. 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 the commission's designee under IC 4–21.5–3–28(b), to affirm the findings and nonfinal order if objections are not filed. 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.

While there are no direct Federal counterparts to most of the provisions in 312 IAC 3–1–12, the Director finds that none of the proposed rules are inconsistent with the Federal regulations at 43 CFR Part 4. Therefore, we are approving them.

14. 312 IAC 3–1–13 Awards of Litigation Expenses for Specified Proceedings

Indiana's previously approved provisions at 310 IAC 0.6–1–13 (Awards of litigation expenses for proceedings under surface coal mine reclamation law, oil and gas code, and entomology and plant pathology code) were revised and recodified at 312 IAC 3–1–13. Subsection (a) provides that 312 IAC 3–1–13 governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14–22–26–5, IC 14–24–11–5, IC 14–34–15–10, or IC 14–37–13–7. We are considering in this final rule those provisions for award of costs and expenses that pertain to Indiana's surface coal mining program under IC 14–34–15–10. The provisions at subsections (b) and (c) do not pertain to the Indiana program. The provisions at paragraphs (d), (e), (f), and (g) are applicable to administrative review proceedings under IC 14–34–15–10.

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 costs and expenses may be awarded to any person from the permittee; but, the person must initiate or participate in an administrative proceeding reviewing enforcement. Also, 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 costs and expenses may be awarded by the department to a person, other than 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 costs and expenses may be awarded by the department to a permittee if the permittee demonstrates that the department issued the following orders in bad faith and for the purpose of harassing or embarrassing the permittee: a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked. Fourth, litigation costs and 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 and for the purpose of harassing or embarrassing the permittee. Finally, litigation costs and 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. We find that the provisions of 312 IAC 3–1–12(d) are

substantively identical to 43 CFR 4.1294(a)(1) and (b) through (e).

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. Although there is no Federal counterpart to 312 IAC 3–1–13(e), we find that the provision is reasonable and is not inconsistent with SMCRA and the Federal regulations. Therefore, we are approving it.

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 costs 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 employee benefits attributable to the time devoted to representation must also be considered. Although there are no direct Federal counterparts to all the factors listed in 312 IAC 3–1–13(f), we find that the provisions are reasonable and consistent with the Federal regulations at 43 CFR 4.1292(a)(3), and we are approving them.

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. If a petition for seeking litigation expenses and a 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 so that a proceeding may be conducted under IC 4–21.5. The Federal regulation at 43 CFR 4.1291 allows a petition for fees to be filed within 45 days of receipt of the final agency action. While the time limit for filing is shorter under the Indiana rule, we find that the proposed time period is still reasonable and that 312 IAC 3–1–13(g) is no less effective than the Federal regulation. We are, therefore, approving the provisions.

15. 312 IAC 3–1–14 Court Reporter; Transcripts

Indiana's previously approved provisions at 310 IAC 0.6–1–14 were revised and recodified at 312 IAC 3–1–14. 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.

We find that 312 IAC 3–1–14 is no less effective than the Federal regulation at 43 CFR 4.23 that contains provisions for hearing transcripts.

16. 312 IAC 3–1–15 Quasi-declaratory Judgments

Indiana's previously approved provisions at 310 IAC 0.6–1–15 (Special status determinations) were revised and recodified at 312 IAC 3–1–15. 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 use this section to void or modify a final order entered by the department in another proceeding. A request under this section 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.

While there are no Federal counterparts to the provisions in 312 IAC 3–1–15, we find that the proposed rule is not inconsistent with SMCRA or the Federal regulations, and we are approving it.

17. 312 IAC 3–1–16 Continuances

Indiana's previously approved provisions at 310 IAC 0.6–1–16 were revised and recodified at 312 IAC 3–1–16. 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 that a motion to continue a hearing because of the absence of evidence must 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 the hearing shall not be continued 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 said could not be presented.

There is no direct Federal counterpart to Indiana's proposed rule. However, we find that the provisions of 312 IAC 3–1–16 are not inconsistent with the Federal regulations at 43 CFR 4.1112, concerning motions, or the Federal regulations at 43 CFR 4.1121, concerning powers of administrative law judges. Therefore, we are approving them.

18. 312 IAC 3–1–17 Record of Proceedings; Adjudicative Hearings Generally; Record of the Director for Surface Coal Mining Permits

Indiana's previously approved provisions at 310 IAC 0.6–1–17 were revised and recodified at 312 IAC 3–1–17. 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 application 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 this subsection 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: (1) The permit; (2) the permit application as defined at 310 IAC 12–0.5–10; (3) documentation given 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; (4) the analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application; (5) 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 (6) 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.

Section 514(c) of SMCRA and the Federal regulations at 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana's proposed rule meets these standards. Therefore, we find that 312 IAC 3–1–17 is no less stringent than SMCRA and no less effective than the Federal regulations.

19. 312 IAC 3–1–18 Petitions for Judicial Review

Indiana added a new section to its procedural rules at 312 IAC 3–1–18. We are considering in this final rule only those provisions in 312 IAC 3–1–18 that pertain to the Indiana program under IC 14–34. Subsection (a) requires a person, who wishes 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. Subsection (b) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(1) requires to be served upon the ultimate authority for an administrative review. The address applies whether the commission or an administrative law judge is the ultimate authority. Where the department is a party to a proceeding under this rule, subsection (c) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(4) requires to be served upon a party to a proceeding. The provisions at subsection (d) do not pertain to the Indiana program. Subsection (e) clarifies that the commission and its administrative law judge provide the forum for administrative review under this rule and that neither is a party.

Section 526(e) of SMCRA and the Federal regulations at 30 CFR 775.13(b) require that the actions of the State regulatory authority under an approved State program be subject to judicial review by a court of competent jurisdiction in accordance with State law. We find that 312 IAC 3–1–18 is not inconsistent with the requirements of section 526(e) of SMCRA or the Federal regulations at 30 CFR 775.13(b), concerning judicial review of a final agency action.

IV. Summary and Disposition of Comments

Federal Agency Comments

On February 29, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1687. We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On February 29, 2000, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1687). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP for amendments that may have an effect on historic properties. On February 29, 2000, we requested comments on Indiana's amendment (Administrative Record No. IND–1687), but neither responded to our request.

Public Comments

OSM requested public comments on the proposed amendment. By letter dated April 5, 2000, the Indiana Coal Council, Inc. (ICC) submitted comments in support of the amendment. The ICC commented that the Natural Resources Commission's Division of Hearings has earned a good reputation for impartiality and professionalism in its handling of administrative proceedings. The ICC believes that recodification and transfer of the Division of Hearings' procedural rules for administrative review proceedings from under the Indiana Department of Natural Resources' (IDNR) rules at Title 310 to under the Indiana Natural Resources Commission's rules at Title 312, ''has further strengthened and guaranteed the independence of the administrative law judges from the IDNR program staff.'' The ICC further commented that the recodification does not represent any significant substantive changes in the procedural rules applicable to legal proceedings under the Indiana program and the amendment should be approved.

As discussed above under III. Director's Finding, we are approving Indiana's proposed amendment.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on February 4, 2000. To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are

making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12630—Takings

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

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, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

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, 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 such 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 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.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 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. Accordingly, this rule will ensure that existing requirements previously promulgated 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 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 government agencies, or geographic regions.

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 a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 4, 2000	June 5, 2000	310 IAC 0.6–1–1 through 17 [repealed]; 310 IAC 0.7–3–5 [repealed]; 312 IAC 3–1–1 through 18.

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraph (ff).

[FR Doc. 00–13972 Filed 6–2–00; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG79

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This interim rule requires inclusion of a clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants or cooperative agreements for prototype projects that provide for total payments in excess of $5,000,000. This rule is published in the **Federal Register** for public comment because it directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.

DATES: The interim rule will be effective July 5, 2000. Comments on the interim rule should be submitted in writing to the address specified below on or before August 4, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(DSPS), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 693–9616.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–4258.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as amended by section 804 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201 and section 241 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an ''other transaction'' agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records.

To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects. The requirement for Comptroller General access on ''other transactions'' for prototype projects that provide for payments that exceed $5,000,000 is the first statutory requirement mandating conditions that must be included in an ''other transactions'' agreement. The content of this rule may also be included in a future DoD issuance.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule requires only that the Comptroller General be provided access to records of certain projects. It does not require additional record keeping or other significant expense by project participants.

Pub. L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 3

Grant programs.

Accordingly, Title 32, Chapter 1 is amended to add part 3 to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Sec.
3.1 Purpose.
3.2 Applicability.
3.3 Definitions.
3.4 Policy.

Authority: Section 801, Pub. L. 106–65.

§ 3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of $5,000,000.

§ 3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as ''other transaction'' agreements and are hereafter referred to as agreements.

§ 3.3 Definitions.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency that has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

§ 3.4 Policy.

(a) Except as provided in paragraph (b) of this section, a clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity,