either with a new actuator having P/N 40574–4, or with an actuator having P/N 40574–2 and an appropriate nameplate. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, although the service bulletin specifies replacement of actuators having P/N 40574–5 (Kearfott Model 3715–9) and P/N 40574–2 (Kearfott Model 3715–7 and 3715–8), this proposed AD would require replacement of only P/N 40574–5. Actuators having P/N 40574–2 currently are required to be replaced in accordance with AD 95–15–06.

[Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the ''old'' AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 95–15–06 to expand its applicability to include the J.C. Carter Company fuel valve actuator having P/N 40574–5 as an additional affected actuator. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the additional actuator. This AD does not supersede AD 95–15–06; airplanes listed in the applicability of AD 95–15–06 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable only to airplanes equipped with J.C. Carter Company fuel valve actuator having P/N 40574–5.]

There are approximately 4,137 Boeing Model 727 and Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,190 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by J.C. Carter Company at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $394,200, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96–NM–31–AD.

Applicability: All Model 727 and Model 737 series airplanes; equipped with J.C. Carter Company fuel valve actuator having part number (P/N) 40574–5; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper functioning of a certain actuator, which could result in a fuel imbalance due to the inability of the flightcrew to crossfeed fuel, or which could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire, accomplish the following:

(a) Within 36 months after the effective date of this AD, replace the actuator having P/N 40574–5 (Kearfott Model 3715–9) on the fuel system crossfeed valve and the engine shutoff valves with either a new actuator having P/N 40574–4, or an actuator having P/N 40574–2 with a nameplate identified in paragraph III, Material of J.C. Carter Company Service Bulletin 61163–28–09, dated September 28, 1995. The replacement shall be done in accordance with J.C. Carter Company Service Bulletin 61163–28–09, dated September 28, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7663 Filed 3–28–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 500

RIN 1215–AA93

Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: This document proposes regulations to amend the definition of

''employ'' under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Consistent with Executive Order 12866, which concerns regulatory planning and review (see 58 Fed. Reg. 51735 (Oct. 4, 1993)), this document proposes to amend MSPA regulations to clarify and make easier to understand the definition of ''independent contractor'' and ''joint employment'' under MSPA, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty and to better guide the Department's enforcement activities.

DATES: Comments on the proposed rule are due on or before June 12, 1996.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122. This is not a toll-free number. If transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: Michael Hancock, Office of Enforcement Policy, Farm Labor Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–7605. This is not a toll-free number. Copies of this NPRM in alternative formats may be obtained by calling (202) 219–7605, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act of 1995

This proposed rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

II. Background

The MSPA definition of ''joint employment,'' 29 CFR 500.20(h)(4), is proposed to be amended to clarify and provide more accurate and complete information to the regulated community, thereby making the MSPA regulations more ''user-friendly.'' The proposed regulation comports more fully with (1) the Fair Labor Standards Act (FLSA) regulations at 29 CFR 791; (2) seminal court decisions regarding the employment relationship; and (3) the MSPA legislative history.

The MSPA statutory definition of ''employ'', 29 U.S.C. 1803(3)(5), from which the concept of ''joint employment'' is drawn, is the FLSA statutory definition of ''employ'', 29 U.S.C. 203(g), incorporated by reference. In keeping with the President's executive order directive to Federal agencies to identify rules that could be clarified to provide more complete and understandable guidance to the regulated community, the Department proposes to amend the MSPA ''joint employment'' regulation. The Department has notified the public and the regulated community of its intention, through the regulatory agenda and regulatory planning process, to amend this regulation. See 60 Fed. Reg. 23546 (May 8, 1995) and 60 Fed. Reg. 59614 (Nov. 28, 1995).

III. Summary and Discussion

Joint Employment Standard Under MSPA

The Department proposes to amend the MSPA regulation defining the employment and joint-employment relationship in agriculture. Having reviewed this regulation in the normal course of DOL operations, the Department recognizes the need for a clearer and more complete regulation setting forth the applicable criteria, thereby making the regulation more ''user-friendly.'' The purpose of the amendment is to clarify the regulation and, thus, to avoid confusion and misapplication of the standards to be considered in determining the existence of the employment and joint-employment relationship. A further purpose is to update the regulation to reflect more completely the Congressional intent in the enactment of MSPA, the state of the law, and the Department's understanding of the employment and joint employment standard.

The Department has intended for some time to up-date and clarify this MSPA regulation. The matter has been included in the DOL regulatory agendas published in the Federal Register (60 FR 23546 (May 8, 1995); 60 FR 59614 (November 28, 1995)). The present proposed rulemaking undertakes the previously announced revision of the employment and joint employment definition.

The current MSPA ''joint employment'' regulation identifies particular factors which should be considered in determining the existence of such relationships in the agricultural context. This Departmental guidance appears to be subject to some misunderstanding in the regulated community and the courts with regard to the applicability of the legal standards under MSPA and the Fair Labor Standards Act, which contain the identical statutory standard.[1] It is the Department's view that the MSPA ''joint employment'' regulation should be modified to focus more closely on the ultimate test for employment and joint employment as established by the federal courts, i.e., ''economic dependence,'' and to further clarify the multi-factor analysis to be used to determine the existence of ''economic dependence'' in the agricultural context. Such a clarified regulation will ensure more consistent application of the FLSA principles of employment and ''joint employment'' under MSPA, and will also ensure the full implementation of the Congressional intent in adopting those principles in MSPA.

Legislative and Judicial Basis for ''Joint Employment''

The FLSA defines the term *employ* as meaning ''to suffer or permit to work'' (29 U.S.C. 203(g)), and the courts have given an expansive interpretation to the statutory definition of *employ* under the FLSA in order to accomplish the remedial purposes of the Act.[2] In accordance with the FLSA's broad definitions and remedial purposes, the traditional common law ''right to control'' test has been rejected in interpreting the FLSA definition of *employ*. Instead, the test of an employment relationship under the FLSA is ''economic dependence,'' which requires an examination of the relationships among the employee and the putative employer(s) to determine upon whom the employee is economically dependent.[3] The determination of economic dependence is based upon the ''economic reality'' of all the circumstances and not upon isolated factors or contractual labels.[4] Since the ''economic reality'' test first delineated by the Supreme Court in *Rutherford Food*, the courts have uniformly considered a number of factors, no one of which is

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[1] *Compare*: *Hodgson v. Griffin & Brand of McAllen, Inc.*, 471 F.2d 235 (5th Cir.), *cert. denied*, 414 U.S. 819 (1973), *with Aimable v. Long and Scott Farms*, 20 F.3d 434 (11th Cir.), *cert. denied*, 115 S.Ct. 351 (1994).

[2] *See Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947).

[3] *See Real v. Driscoll Strawberry Assoc., Inc.*, 603 F.2d 748 (9th Cir. 1979); *Griffin & Brand, supra.*

[4] *Rutherford Food; Griffin & Brand, supra.*

determinative. Instead, the multi-factor analysis is a means of gauging whether the worker is economically dependent on the business(es) for which the worker is ''suffered or permitted to work'' and whether the nature and degree of that dependence constitutes an employment relationship within the intended protections of the FLSA.

The joint employment doctrine, which has long been recognized under the FLSA case law,[5] is defined by the FLSA regulation to mean a condition in which ''[a] single individual stands in the relation of an employee to two or more persons at the same time'' (29 CFR 791.2(a)). A joint employment relation is found when ''employment by one employer is not completely disassociated from employment by the other employer,'' such a determination depending upon ''all the facts in the particular case.'' *Id.*

Under MSPA, the term *employ* has the same meaning as that term under the FLSA. 29 U.S.C. 1802(5). Congress enacted this express incorporation of the FLSA definition of *employ* with the deliberate intention of adopting the FLSA case law defining employment and joint employment. Congress specifically stated that the ''joint employer doctrine'' articulated under the FLSA was to serve as the ''central foundation'' of the MSPA and ''the best means by which to ensure that the purposes of this Act would be fulfilled.'' [6] Congress intended the joint employer doctrine to serve as a vehicle for protecting agricultural employees ''by fixing the responsibility on those who ultimately benefit from their labors—the agricultural employer.'' [7] In declaring this purpose, Congress cited with approval the joint employment analysis utilized by the Court of Appeals in *Griffin & Brand;* thus, that decision should be the benchmark for the analysis in the agricultural setting.[8] The multi-factor test, as stated in *Griffin & Brand,* is largely the same as the Supreme Court's seminal decision in *Rutherford Food,* although the Court of Appeals restated some factors to comport more fully and realistically with the unique characteristics of an agricultural operation.

The current MSPA regulation, promulgated in 1983, sets out a non-exclusive list of factors which could appropriately be considered in the joint employment analysis. 29 CFR 500.20(h)(4)(ii). The regulation states that the ''. . . determination of whether the employment is to be considered joint employment depends upon all the facts in the particular case.'' 29 CFR 500.20(h)(4)(i). The factors identified in the regulation were not intended by the Department to be a checklist for determining a joint employment relationship; nor were the factors intended to be given greater weight than other relevant factors presented in a particular case or developed in the case law. To the extent that courts and the regulated community may have strayed from the ''economic reality''/''economic dependence'' analysis by applying the regulation as a rigid checklist, or treating the regulation as an exclusive list which precludes consideration of additional factors (*e.g.*, whether workers' activities are an integral part of the putative employer's operation), or distorting or placing undue emphasis on particular factors (*e.g.*, ''control'' misconstrued as being direct supervision of workers' activities), the regulation is not only misinterpreted but is also being applied so as to frustrate the express intention of Congress in enacting MSPA.

Proposed ''Joint Employer'' Rule

In order to resolve any confusion or misunderstanding of the current MSPA regulation and to provide clearer and more complete guidance to the regulated community, the regulation is proposed to be amended to better delineate the appropriate analysis of the employment and joint employment relationships using ''economic dependence'' as the touchstone, as contemplated by Congress when MSPA was enacted. The proposed regulation also addresses the crucial, initial issue of whether a farm labor contractor (FLC) is a bona fide independent contractor or an employee of the agricultural association or agricultural employer; where an FLC is actually an employee of the agricultural employer or association, any worker employed by the FLC is necessarily also an employee of the FLC's employer. The proposed regulation more clearly enunciates the proper test for joint employment, as prescribed in the legislative history and set forth in the case law that has properly focused on economic reality and economic dependence. Further, the regulation will provide needed guidance on ''control,'' clarifying that the inquiry is as to the putative employer's power or right to exercise authority in the workplace, either directly or indirectly; the actual exercise of such power or authority is not necessary. The regulation would be further clarified, in that the illustrative list of factors eliminates redundancy (*e.g.*, items in the current regulation dealing with aspects of control are consolidated) and provides more complete guidance as to appropriate consideration of factors. Comments are requested concerning the factors listed, in particular whether or not additional factors should be included in the illustrative list of factors.

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995

This proposed rule is not ''economically significant'' within the meaning of Executive Order 12866, nor does it require a § 202 statement under the Unfunded Mandates Reform Act of 1995. However, because the rule may raise novel legal or policy issues arising out of legal mandates, it has been determined by OMB to be a ''significant regulatory action'' within the meaning of § 3(f)(4) of Executive Order 12866. The proposed rule proposes to amend the MSPA regulations to clarify the concepts of *employ, employer, employee,* and *joint employment.* No economic analysis is required because the rule will not have a significant economic impact.

Regulatory Flexibility Analysis

This proposed rule will not have a significant economic impact on a substantial number of small entities. The Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. The proposed rule contains language which is intended to clarify what is meant by the terms *employ, employer, employment,* and *joint employment* under MSPA.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Agricultural employers, Agricultural associations, Agricultural worker, Employ, Employee, Employer, Farm labor contractor, Independent Contractor, Joint Employment, Migrant agricultural workers, Migrant labor, Seasonal agricultural workers.

[5] *Griffin & Brand, supra.*

[6] H. Rep. No. 97–885, 97th Cong. 2d sess. pp. 6–7 [''Rept.''].

[7] 128 Cong. Rec. H26008 (Sept. 1982).

[8] Rept. 7.

Signed at Washington, D.C., on this 26th day of March, 1996.

John R. Fraser,

Deputy Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 500 is proposed to be amended as set forth below:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for Part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 6–84, 49 FR 32473.

2. In § 500.20, paragraph (h)(4) is revised and paragraph (h)(5) is added to read as follows:

§ 500.20 Definitions.

* * * * *

(h) * * *

(4) The definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether or not the farm labor contractor engaged by the agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether or not the worker is a bona fide independent contractor or an employee of the farm labor contractor and/or the agricultural employer/association. These questions should be resolved in accordance with the factors set out below and the principles articulated by the federal courts in *Rutherford Food Corp.v. McComb*, 331 U.S. 722 (1947), *Real v. Driscoll Strawberry Assoc., Inc.*, 603 F.2d 748 (9th Cir. 1979), and *Sec'y of Labor, U.S. Dept. of Labor v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1987). If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the worker or farm labor contractor is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the farm labor contractor or agricultural employer/association, as appropriate. This determination is based upon an evaluation of all of the circumstances, including the following:

(i) The nature and degree of the putative employer's control as to the manner in which the work is performed;

(ii) The putative employee's opportunity for profit or loss depending upon his managerial skill;

(iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers;

(iv) Whether the services rendered by the putative employee requires special skill;

(v) The degree of permanency and duration of the working relationship;

(vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.

(5) The definition of the term *employ* includes the *joint employment* principles applicable under the Fair Labor Standards Act. The term *joint employment* means a condition in which a single individual stands in the relation of an employee to two or more persons at the same time. A determination of whether the employment is to be considered joint employment depends upon all the facts in the particular case. If the facts establish that two or more persons are completely disassociated with respect to the employment of a particular employee, a joint employment situation does not exist.

(i) If it is determined that the farm labor contractor is an independent contractor, it still must be determined whether or not the employees of the farm labor contractor are also jointly employed by the agricultural employer/association. *Joint employment* under the Fair Labor Standards Act is joint employment under the MSPA. Such joint employment relationships, which are common in agriculture, have been addressed both in the legislative history and by the courts.

(ii) The legislative history of the Act (H. Rep. No. 97–885, 97th Cong., 2d Sess., 1982) states that the legislative purpose in enacting MSPA was ''to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers . . .,'' which would only be accomplished by ''advanc[ing] . . . a completely new approach'' (Rept. at 3). Congress's incorporation of the FLSA term *employ* was undertaken with the deliberate intent of adopting the FLSA *joint employer* doctrine as the ''central foundation'' of MSPA and ''the best means by which to insure that the purposes of this MSPA would be fulfilled'' (Rept. at 6). Further, Congress intended that the *joint employer* test under MSPA be the formulation as set forth in *Hodgson v. Griffin & Brand of McAllen, Inc.* 471 F.2d 235 (5th Cir.), *cert. denied*, 414 U.S. 819 (1973) (Rept. at 7). In endorsing *Griffin & Brand*, Congress stated that this formulation should be controlling in situations ''where an agricultural employer . . . asserts that the agricultural workers in question are the *sole* employees of an independent contractor/crewleader,'' and that the ''decision makes clear that even if a farm labor contractor is found to be a bona fide independent contractor, . . . this status does not as a matter of law negate the possibility that an agricultural employer may be a joint employer . . . of the harvest workers'' together with the farm labor contractor. Further, regarding the joint employer doctrine and the *Griffin & Brand* formulation, Congress stated that ''the absence of evidence on any of the criteria listed does not preclude a finding that an agricultural association or agricultural employer was a joint employer along with the crewleader'', and that ''it is expected that the special aspects of agricultural employment be kept in mind'' when applying the tests and criteria set forth in the case law and legislative history (Rept. at 8).

(iii) In determining whether or not an employment relationship exists between the agricultural employer/association and the agricultural worker, the ultimate question to be determined is the economic reality—whether the worker is so economically dependent upon the agricultural employer/association as to be considered its employee, subject to MSPA protections.

(iv) The factors set forth below are analytical tools to be used in determining the ultimate question of economic dependency. The factors are not to be applied as a checklist. They are illustrative only and are not intended to be exhaustive; other factors may be considered, depending upon the specific circumstances of the relationship among the parties. No one factor is critical to the analysis; nor must a majority of the factors be found for an employment relationship to exist. Rather, how the factors are weighed depends upon all of the facts and circumstances. Among the factors to be considered in determining whether or not an employment relationship exists are:

(A) Whether the agricultural employer/association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker(s) or the work performed (such control may be either direct or indirect, and may be either exercised or unexercised, taking into

account the nature of the work performed);

(B) Whether the agricultural employer/association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker(s);

(C) Whether the agricultural employer/association supplies housing, transportation, tools and equipment or materials required for the job;

(D) The degree of permanency and duration of the relationship of the parties, in the context of the agricultural activity at issue;

(E) The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training;

(F) Whether the activities performed by the worker are an integral part of the overall business operation of the agricultural employer/association;

(G) Whether the work is performed on the agricultural employer/association's premises or on the premises owned or controlled by another business entity;

(H) Whether the agricultural employer/association undertakes responsibilities in relation to the worker which are normally performed by employers, such as maintaining payroll records, preparing and/or issuing pay checks, paying FICA taxes, providing workers' compensation insurance, or providing field sanitation facilities; and

(I) Other facts bearing on economic dependency.

* * * * *

[FR Doc. 96–7818 Filed 3–28–96; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–092–FOR]

Illinois Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the revision of four sections and the addition of one section to Title 62 of the Illinois Administrative Code (IAC) regulations pertaining to self-bonding. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4 p.m., e.s.t., April 29, 1996. If requested, a public hearing on the proposed amendment will be held on April 25, 1996. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on April 15, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, 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.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, IL 62701–1787, Telephone (217) 782–4970.

FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated March 4, 1996 (Administrative Record No. IL–1800), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at its own initiative. Illinois proposed to revise 62 IAC 1800.4, Department responsibilities; 62 IAC 1800.5, Definitions; 62 IAC 1800.11, Requirement to file a bond; and 62 IAC 1800.12, Form of the performance bond. Illinois also proposed to add 62 IAC 1800.23, Self-bonding.

1. 62 IAC 1800.4 Department Responsibilities

Illinois proposes to revise § 1800.4 by adding new subsection (c) that authorizes the acceptance of a self-bond if the permittee meets the requirements of 62 IAC 1800.23. Existing subsections (c) through (e) are proposed to be redesignated (d) through (f).

2. 62 IAC 1800.5 Definitions

Illinois proposes to revise § 1800.5 by adding a definition for the term ''self-bonding'' at new subsection (c) that reads as follows:

Self-bonding means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the Department, with or without separate surety.

3. 62 IAC 1800.11 Requirement to File a Bond

Illinois proposes to revise § 1800.11 by adding new subsection (e) that requires self-bonding for eligible permittees be administered consistent with all applicable provisions of 62 IAC 1800.1 through 1800.50.

4. 62 1800.12 Form of the Performance Bond

Illinois proposes to revise § 1800.12 by adding new subsection (c) that identifies a self-bond as form of performance bond allowed by the Illinois program. Existing subsection (c) is proposed to be redesignated subsection (d).

5. 62 IAC 1800.23 Self-Bonding

Illinois proposes to add new § 1800.23 concerning its conditions for acceptance of a self-bond. At subsection (a), Illinois defines the terms to be used in the section: ''current assets''; ''current liabilities''; ''fixed assets''; ''liabilities''; ''net worth''; ''parent corporation''; and ''tangible net worth.'' At subsection (b), Illinois specifies the conditions that must be met before a self-bond would be accepted from the applicant. At