AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: 2:00 p.m., Tuesday, December 18, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commisisoners of approximately four cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated December 14, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–32996 Filed 12–14–84; 2:06 pm]

BILLING CODE 4410–01–M

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POSTAL SERVICE

Notice of Vote To Close Meeting.

At its meeting on December 11, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for January 7, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General designate Carlin; Deputy Postmaster General Finch; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], becuase it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(6) of Title 5 United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84–32996 Filed 12–14–84; 1:46 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
December 18, 1984

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Loading, Hauling, and Dumping at Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Loading, Hauling, and Dumping at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration has developed a proposed rule which would revise the existing loading, hauling, and dumping standards for metal and nonmetal mines. In addition, a new standard addressing restricted clearances would be added to MSHA's travelway standards. These changes are intended to improve the quality and effectiveness of MSHA's standards by eliminating duplication, reducing recordkeeping requirements, upgrading standards to make them consistent with current mining technology, eliminating unnecessary standards, and clarifying the requirements of each standard. The proposal would also combine Part 55 which applies to open pit mines with Part 56 which applies to sand, gravel, and stone operations. The proposed Part 56 would apply to all surface metal and nonmetal mines. Part 57 would continue to apply only to underground metal and nonmetal mines.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before February 19, 1985.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1980, MSHA published and Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 19267) announcing its comprehensive review of metal and nonmetal mine safety and health standards in 30 CFR Parts 55, 56, and 57. On November 20, 1981, MSHA published a subsequent ANPRM in the **Federal Register** (46 FR 57253) listing eight sections the Agency had selected for priority review. Standards in 30 CFR 55/56/57.9 (Loading, Hauling, and Dumping), were included in the priority group.[1]

On March 9, 1982, MSHA published a notice in the **Federal Register** (47 FR 10190) announcing that public conferences would be held in April 1982 to discuss issues related to the loading, hauling, and dumping standards under review. Subsequent to those conferences, MSHA developed a preproposal draft, which it released for public comment on April 22, 1983, by announcing its availability in the **Federal Register** (48 FR 17513). The Agency received and reviewed suggestions and recommendations from over 40 commenters including mine operators, labor groups, and equipment manufacturers.

II. Discussion of Proposed Rule

A. General Discussion

MSHA's review of the existing standards and the comments received has resulted in many substantive changes. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act in that the proposed standards would provide new compliance alternatives to accommodate advances in mining technology while offering the most effective protection for persons working at mines. These alternatives address concerns expressed by small mine operators. In drafting this proposed rule, MSHA has also attempted to eliminate duplicate standards and to clearly convey the requirements of each standard.

The proposed rule would make several organizational changes. MSHA proposes to reorganize Part 55 into Part 56 which would apply to surface metal and nonmetal mines. Part 57 would continue to apply to underground metal and nonmetal mines. The Section .9 standards would be codified in Subpart H—Loading, Hauling, and Dumping for Part 56 and Subpart H—Loading, Hauling, and Dumping for Part 57. This reorganization would reduce the repetition of identical standards which presently exists in the Code of Federal Regulations (CFR).

The standards in each Subpart H would be preceded by their own set of definitions and arranged into seven related groups: (1) Mobile Equipment; (2) Self-propelled Equipment; (3) Rail Equipment; (4) Dumping Locations and Facilities; (5) Chutes; (6) Slushers; and (7) Safety Devices and Procedures.

To facilitate this recodification, a new numbering system would be used. For example, in proposed standard 56/57.9101, (56/57) indicates that the standard applies to both Parts 56 and 57. After the decimal point, the first digit (9) represents the general subpart category, loading, hauling, and dumping; the second digit (1) represents the related group, in this case mobile equipment; and the final two digits (01) indicate that the standard has general application. In Subpart H of Part 57, if the final two digits are 00 to 29, the standard applies to all areas of underground mines; if the digits are 30 to 59, the standard would only apply to surface areas of these underground mines. If the final two digits are 60 to 99, the standard would only apply to underground areas of underground mines. Two tables are included in this document to aid in the comparison of the existing standards with the proposed standards. A derivation table cross-references the proposed standard numbers in Parts 56 and 57 with the existing numbers and the preproposal draft numbers. A redesignation table cross-references existing standard numbers with the numbers of the proposed standards and denotes standards proposed for revocation.

Presently there are 69 standards in Part 55, Section .9. These are duplicated in Part 56. The same standards appear a third time in Part 57 with an additional 17 standards that have application only to underground mining. As a result of the elimination of duplicative standards, the consolidation of closely related standards, and the deletion and transfer of others, the proposed rule would reduce these 224 standards to a total of 113. Each of these proposed changes is discussed below. MSHA believes that the proposal provides an essential level of safety and protection for workers at metal and nonmetal mines.

Several commenters suggested that MSHA index its standards to cross-reference related subject areas. The Agency agrees with this concept and intends to establish a comprehensive index to its metal and nonmetal standards when revisions to Parts 56 and 57 are complete.

B. Transfers

The provisions of existing standards 55/56/57.9-6 (conveyor start-up warnings), 55/56/57.9-7 (unguarded conveyors with adjacent travelways), 55/56/57.9-13 (backstops and brakes for inclined conveyors), and 55/56/57.9-14 (transporting persons on conveyors)

[1] Standards that uniformly appear in 30 CFR Parts 55, 56, and 57 are referred to in this document as "55/56/57." Standards that would uniformly appear in 30 CFR Parts 56 and 57 are referred to as "56/57."

were proposed to be transferred to Section .14, Machinery and Equipment (49 FR 8375, March 6, 1984). Commenters supported the relocation of these standards.

Existing standards 55/56/57.14–13 (falling object protective structures) and 55/56/57.14–30 (blocking equipment in a raised position) are included as part of this proposed rule because the hazards they address are closely related to the hazards addressed by Section .9. Commenters agreed with this proposed relocation.

C. Deletions

The proposed rule would delete four existing Section .9 standards. Two of the proposed deletions are covered by other standards, one contains an outdated requirement, and one has no practical means of compliance.

Existing standard 55/56/57.9–19 which requires blocking of track guardrails, lead rails, and frogs to prevent a person's foot from becoming wedged in those devices, would be deleted because the potential for an injury occurring is very low and there is no practical means of compliance.

Existing standard 55/56/57.9–53, which requires the removal of water, debris, or spilled material creating a hazard to moving equipment, would be deleted. MSHA proposes to delete this standard because the Agency believes existing standards 55/56/57.4–50,[2] which prohibits the accumulation of hazardous flammable waste materials, grease, or flammable liquids and 55/56/57.20–3, which requires workplaces to be kept clean and dry, provide adequate protection from these hazards.

The proposed rule would also delete existing standard 57.9–114, which requires the designation of discharge and boarding points where mantrips are used because proposed standard 56/57.9103 (getting on or off moving equipment) fully addresses this hazard.

Existing standard 55/56/57.9–42 which requires rocker-bottom or bottom-dump railcars to be equipped with locking devices would be deleted. In MSHA's view, the locking device requirement is unnecessary because bottom-dump or rocker-bottom railcars would not function without the devices.

MSHA solicits additional comment on each of these proposed deletions.

D. Other Changes

The proposal also includes a proposed standard for Section .11, Travelways and Escapeways. Several commenters believed that the existing provision in 55/56/57.9–60 that requires warning devices for restricted clearances should be limited to persons traveling on mobile equipment. These commenters believed that all other exposures to restricted clearance hazards should be addressed by other sections, such as Section .11. MSHA agrees. However, since no standard in Section .11 specifically addresses this hazard, a new standard is being proposed. The proposed standard, 55/56/57.11–8, provides: "Where restricted clearance creates a hazard to persons the restricted area shall be conspicuously marked." Injuries can occur when persons walking along travelways strike or bump into restricted clearances. The Agency believes a conspicuous marking would help alert persons to these restrictions. MSHA solicits additional comment on this proposed standard.

E. Definitions

The proposed rule contains two new defined terms in Parts 56 and 57 which were introduced in the preproposal draft: "mobile equipment" which is defined as equipment capable of moving or being moved readily; and "self-propelled equipment" which is defined as equipment capable of moving itself. Commenters generally favored the introduction of these defined terms, which were intended to clarify varying and undefined references to mobile equipment in the existing standards.

The proposed rule also modifies the existing definition of "mantrip" (55/56/57.2) to clarify that a mantrip is "a trip having the primary purpose of transporting persons to and from a work area."

The proposed rule revises the term "berm" to clarify that a berm is "a pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway."

The Agency is proposing to delete the defined term "trip light" in 55/56/57.2 because the term appears only in Section .9 and MSHA believes it is self-explanatory. The proposed rule does not include any of the other existing definitions found in 30 CFR 55/56/57.2.

F. Incorporation by Reference

The proposed rule contains two standards that incorporate national consensus standards by reference; standard 56/57.9209 which addresses falling object protective structures (FOPS), and standard 56.9230 which addresses roll-over protective structures (ROPS).

In the preproposal draft, MSHA attempted to delete the existing incorporation by reference for ROPS and substitute performance criteria for these devices. However, commenters urged MSHA to retain and update the present incorporation by reference. Existing standard 55/56/57.9–88 requires ROPS for certain classes of self-propelled equipment. Under this standard, the ROPS must be built and installed according to several Federal, State, and Society of Automotive Engineers (SAE) technical publications which are incorporated by reference. The proposed rule would update the publications incorporated by reference in the existing standard.

The proposed rule also contains a new incorporation by reference. Existing standard 55/56/57.14–13 requires substantial canopies to be provided on fork-lift trucks, front-end loaders, and bulldozers when necessary to protect the equipment operator. These canopies are referred to as FOPS. Commenters requested that this standard should incorporate the appropriate technical publications for FOPS published by SAE and and the American Society of Mechanical Engineers. MSHA agrees and the proposed rule contains this incorporation.

G. Sections

Th following section-by-section analysis discusses the proposed rule and its effect of existing standards.

Mobile Equipment

Section 56/57.9100 Safety defects.

This proposal would consolidate existing standards 55/56/57.9–2 and .9–73 which require the removal, tagging, and repair of equipment with defects affecting safety. The proposal requires that defects affecting safety be corrected in a timely manner and, in instances when a defect makes continued operation of the equipment hazardous to persons, removal and tagging are also required. Equipment must be repaired before it is returned to service.

Defects affecting safety are those which do have an impact upon the safe operation of the equipment. Although all defects affecting safety must be corrected, in response to commenters, the proposal takes into consideration that not all defects create a hazard which requires immediate removal of equipment from service. Therefore, in the proposal, the Agency distinguishes between defects that affect safety and defects which make continued operation of the equipment unsafe. Defects which affect safety must be corrected in a

[2] Existing standard 55/56/57.4–50 was proposed to be revised as § 58.4162 in the proposed rule for the Section .4 standards, Fire Prevention and Control (48 FR 45348, October 4, 1983).

timely manner. However, because defects which make continued operation of the equipment unsafe present a greater and more immediate hazard, equipment with such defects must be removed from service and repaired before it is returned to service. The time allowed to correct a safety defect that does not make continued operation of the equipment unsafe will vary, depending upon the specific circumstances involved. For example, an inoperative headlight on a piece of surface equipment would be a defect affecting safety which must be corrected. However, immediate correction would not be required if the defect was noted during a day shift, as long as other visibility factors did not require daytime use of the headlights. In contrast, a defect that makes continued operation of the equipment unsafe, such as broken windshield wipers when it is raining, would require immediate removal of the equipment from service.

Although commenters generally favored the consolidation of these standards, they suggested additional changes. Some commenters believe that the standard should permit alternatives to tagging, as spray painting the defective equipment to indicate disrepair, or removing the equipment to a designated repair location. Other commenters believed the scope of the standard should be clarified as to its application to either mobile or self-propelled equipment, or both.

Commenters also suggested that the standard should permit defective equipment to be safely removed to the repair site. It was also suggested that MSHA establish a time frame for correction of safety defects that do not make continued operation of the equipment unsafe. These commenters suggested that MSHA require such defects to be corrected in a "timely" manner. Other commenters considered the provision for correction of "defects affecting safety" to be excessively broad. Commenters generally agreed on the need to remove defective equipment from service and to identify it as out of service until appropriate repairs are made. However, commenters differed on how the standard should be applied in a given situation.

In considering the difficulty of establishing a specific time frame for correcting defects that affect safety but do not make operation unsafe, MSHA believes that the standard should require all defects affecting safety to be corrected in a timely manner, and removal of the equipment when the defect makes continued operation hazardous to persons.

The proposed rule also clarifies that standard 56/57.9100 applies to all mobile equipment. Mobile equipment includes self-propelled equipment. However, safety defects affecting self-propelled equipment must also be reported to and recorded by the mine operator. Standard 56/57.9200 address this recordkeeping requirement for self-propelled equipment. Standard 56/57.9100 adopts the suggestion that provisions be made to permit removal of defective equipment to a repair location as long as removal is safely performed. The proposal would allow alternatives to tagging defective equipment, as long as the alternative provides an effective method of marking the defective equipment.

Section 56/57.9101 Traffic control.

This proposal clarifies several provisions of existing standard 55/56/57.9–71 which requires the establishment and posting of traffic safety rules, signs, and signals. The proposed rule reflects additional clarification to the preproposal draft. In response to comments that MSHA make the standard more specific, the proposed rule emphasizes that the purpose of this standard is to assure the safe movement of mobile equipment., The proposed standard clarifies that the required traffic rules involve three major classes of traffic control: equipment speed, right-of-way, and direction of movement. The proposed standard also clarifies that signs or signals must be placed at appropriate locations on roadways, be visible, and be uniform in size and shape for each purpose, as well as provide warning information.

Commenters also suggested that the standard require that self-propelled equipment be operated at speeds below the posted limits when weather or other factors create hazards. MSHA agrees with this perspective but notes that proposed standard 56/57.9205 (operating speeds and control of self-propelled equipment) addresses the principle that speeds be consistent with operating conditions.

Section 56/57.9102 Transporting persons.

Existing standards 55/56/57.9–40, .9–41, .9–67, and .9–85 involve safety practices to be followed in transporting persons on mobile equipment. The proposed rule consolidates these related safety standards, and makes several changes to the preproposal draft. The proposed rule prohibits certain means or practices of transporting persons. It also uses the defined term "mobile equipment," and allows transportation of persons in the beds of railcars as long as they are seated and provisions are made for their safety. The proposal also specifies additional dangerous riding locations on trains. Riding outside the operators' stations of mobile equipment is permitted when necessary for maintenance, testing, or training purposes, as long as provisions are made for secure travel. The means used would depend upon the mobile equipment involved, and may include use of such safety devices as platforms, grab rails, seat belts, or harnesses. These changes are responsive to many of the comments received.

Some commenters also urged an exception to the preproposal's prohibition of persons riding in dippers, forks, clamshells, or buckets, if special safety provisions were made. However, MSHA believes that because this equipment has not been designed to transport persons, no exceptions should be made. Commenters also suggested that persons be permitted between cars of trains when tending brakes, as long as the persons are secured. In MSHA's view, this braking practice is too hazardous, has resulted in many accidents, and may be avoided by braking from the non-leading end of the train, or single car, as long as too many cars are not being dropped.

Other commenters raised the issue of MSHA's jurisdiction and party liability when a violation of an MSHA standard involves railroads. Several factors are involved in determining MSHA's jurisdiction in these instances. The particular railroad activity and its relationship to mining must be examined. Therefore, MSHA believes that the proper party to be cited in this situation should generally be resolved on the basis of the individual facts surrounding the violation. MSHA has also independently reviewed the Department of Transportation's regulations governing railroads and has found no overlapping or inconsistent requirements.

Section 56/57.9103 Getting on or off moving equipment.

The proposed rule makes editorial changes to existing standard 55/56/57.9–39 which prohibits persons from getting on or off moving mobile equipment, except in certain instances for slowly moving trains.

Some commenters stated the standard should be deleted on the basis that the phrase "slowly moving trains" was vague and unenforceable. The exception for trains is stated in general performance language and is based upon the necessity for trainmen to get on or off slowly moving trains in order

to perform their duties. In MSHA's view, the performance-oriented language of the exception is preferable to establishing a specific train speed for getting on or off trains.

Section 56/57.9104 Loading, hauling, and unloading of equipment or supplies.

Existing standard 55/56/57.9–45 pertains to the hauling of equipment and requires that it be loaded and "protected" to prevent "sliding or spillage." The preproposal draft clarified the standard to more accurately describe that the hazard involved is falling or shifting of equipment.

The proposed rule further clarifies that the standard would apply to supplies as well as equipment, since each may fall or shift, causing injury. The proposal also states that these hazards may exist during each of three distinct phases of haulage: loading, transporting, and unloading.

One commenter suggested that the standard should also require that the load be checked and rebound if necessary. MSHA believes that the proposal includes a responsibility to recheck loads that have been secured if there are indications of shifting.

Section 56/57.9105 Loading and hauling large rocks.

The proposal clarifies the requirements of existing standard 55/56/57.9–62 which prohibits loading rocks in haulage vehicles when the rocks are too large to be handled safely. This practice may endanger persons or adversely affect the stability of mobile equipment. For example, persons have been injured while dumping material from haulage vehicles when large rocks have become lodged in the tail section of the equipment, and caused the equipment to become unstable and overturn. To reduce this hazard, the proposed rule requires that such rocks be broken before loading.

Section 56/57.9106 Minimizing spillage.

Existing standard 55/56/57.9–34 requires that haulage equipment be loaded in a manner to minimize spilling during hauling. The proposed rule clarifies that this requirement applies where a hazard to persons would be created.

In response to commenters, MSHA has used the defined term "mobile equipment" instead of haulage equipment because the hazard of spillage could be present at times other than during hauling. Other editorial changes have been made to clarify the intended application of the standard.

Section 56/57/9107 Safety procedures for towing.

Existing standard 55/56/57.9–70 establishes two requirements to assure safe towing of heavy equipment: use of a "substantially constructed" tow bar or other suitable means of control in conjunction with a "substantially constructed" safety chain or wire rope. To clarify the existing standard, the preproposal draft substituted the existing reference to other "suitable" means of control with a requirement that alternatives to a tow bar provide "equivalent" means of control.

Commenters pointed out that this standard was not intended to apply to rail-mounted equipment. MSHA agrees and the proposed rule would exempt rail equipment. Towing of rail equipment is addressed in proposed standard 56/57.9304 (movement of equipment on adjacent tracks). Commenters also noted that "equivalent" means of control could be interpreted to require rigid control devices, such as tow bars, which may be impractical or unnecessary in certain instances. MSHA agrees and the proposed standard would permit alternatives to tow bars that provide effective means of control.

It was also suggested that use of a safety chain or wire rope as an emergency control device was not necessary when an equipment operator is riding in the piece of equipment being towed if that operator has independent control of the steering and braking on the towed equipment. MSHA agrees, and the proposed rule reflects this change. The proposed rule also replaces the existing standard's reference to substantially constructed tow bars, safety chains, and wire ropes with performance criteria.

Section 56/57.9108 Securing movable parts.

The proposal would consolidate existing standards 55/56/57.9–31 and 55/56/57.9–32. Standard 55/56/57.9–31 requires that equipment be secured in its travel position during travel between work areas. The preproposal draft clarified the existing standard by indicating typical parts of equipment which need to be secured. Standard 55/56/57.9–32 requires dippers, buckets, scraper blades, and similar movable parts to be secured or lowered to the ground when these parts or the equipment are not in use. The preproposal draft clarified that the standard applies when the equipment is not in use.

The proposal also specifies that the standard would apply to "mobile equipment," and it includes examples of the types of movable parts on mobile equipment that are covered by the standard.

Some commenters questioned whether existing standard 55/56/57.9–31 would cover graders and dozer blades as well as such implements as stabilizers and outriggers. Other commenters asked whether the standard's reference to "secured" implied that some type of mechanical fastener was required. These commenters did not believe that mechanical fastening would be needed in all instances and suggested, as an alternative, that the standard require equipment to be in a "suitable or non-hazardous" travel mode.

MSHA believes that the term "secured" provides flexibility while still conveying that the intent of this standard is to prevent accidents that may occur when movable part on mobile equipment are not secured in a safe position during movement between working places. The extent to which a movable parts needs to be secured would depend upon the type of equipment involved. For example, in the case of a bulldozer, securing would involve lowering the blade or bucket to just above the ground, and no mechanical fastener would be needed.

Commenters on existing standard 55/56/57.9–32 pointed out that equipment may be in use, but unattended, and that the standard should extend its requirements to that situation because the equipment operator would not have control of the equipment. Fatalities have occurred when movable parts on unattended equipment have not been secured. One fatality involved an equipment operator who was preparing to add a 2-foot section of boom to a Link-Belt crane in order to use it as a dragline. The two-sectioned crane boom was placed in a horizontal position with the bottom of the boom raised 4 feet off the ground. The equipment operator did not block or secure the boom against movement and proceeded to knock out the pins which joined the two sections of the boom. As the last pin was removed, the boom collapsed and pinned him. The proposed rule would address the hazard of blocking or securing movable parts on equipment when the equipment is in use but the equipment operator has left the equipment.

Commenters also suggested that MSHA limit application of the standard to "functional" movable parts so that malfunctions that prevent securing or lowering of these parts until repairs are made would not constitute a violation. Standard 56/57.9108 covers equipment that is functioning properly. If an

operator has a malfunctioning part on a piece of equipment, it would be covered by standard 56/57.9100, safety defects. MSHA considers malfunctioning parts to be defective; therefore, the suggestion was not incorporated into the proposed standard.

Some commenters suggested that the standard should elaborate on the types of hazards for which securing is intended to provide protection. At this point in the rulemaking, however, MSHA believes that the performance language requiring securing or lowering provides adequate guidance without attempting to list each type of hazardous movement.

Section 56/57.9109 Parking procedure for unattended equipment.

Existing standards 55/56/57.9–36 and .9–37 address procedures to be followed to secure mobile equipment when it is left unattended or parked on a grade. The proposal consolidates these two standards, and includes changes to simplify and clarify the requirements of the existing standards. Under the proposal, when mobile equipment is left unattended, the controls are to be placed in the park position. If the equipment has a parking brake, it must also be set. Additional precautions are required when mobile equipment with wheels or tracks is parked on a grade. In that situation the equipment must be either chocked or turned into a bank or rib.

Commenters supported the concept of consolidating these standards. However, several commenters believed it unnecessary to require that all brakes be set, and that alternative use of "other effective devices" should be permitted in place of setting the parking brake. Other commenters suggested that the standard should not prescribe a specific procedure, but rather require only that unattended equipment be left "in such a manner as to prevent inadvertent movement." After considering the comments, MSHA believes that the more effective safety practice is to place controls in the park position and to set the parking brake when one is on the equipment. While MSHA is not aware of any "other effective devices" that could be used to secure mobile equipment that would be equivalent to using the park position and setting the parking brake, the Agency solicits comment on any specific techniques which might provide equivalent protection.

Commenters also believed that the term "master switch" was vague and that "chocking" should be required instead of "blocking" since the latter may not fully secure against movement. Questions were also raised as to whether this standard would prohibit the practice of idling equipment in wet weather or idling prior to the start of a shift. In response to these comments, MSHA has deleted the reference to "master switch" and replaced the term "blocked" with "chocked" to clarify the standard. As proposed, the standard would not prohibit the idling of equipment.

Section 56/57.9110 Blocking equipment in a raised position.

The proposal makes several changes to existing standard 55/56/57.14–30. Presently this standard prohibits persons from working on or from a piece of mobile equipment in a raised position unless it has been blocked in place securely. Equipment that is specifically designed for use as an elevated mobile work platform is excepted from the existing standard.

In response to commenters, the proposed rule would prohibit persons from working under, as well as on or from, a piece of mobile equipment in a raised position until it has been blocked or mechanically secured. The proposed rule also specifies that the standard addresses accidental lowering of raised equipment or a raised component, and also addresses rolling of the mobile equipment itself. The exception for specifically designed elevated mobile work platforms now expressly states that this type of equipment must be equipped with load-locking devices. If maintenance to or repair work of elevated mobile work platforms is being performed, they must be blocked or mechanically secured.

Commenters suggested that load-locking devices be permitted as an alternative to blocking. The proposed rule does not permit such use unless the equipment is specifically designed as a mobile work platform. Numerous fatalities have occurred when equipment in a raised position has not been blocked or mechanically secured. Fatalities have also occurred when pieces of equipment which have the primary purpose of transferring material, such as front-end loaders, have been used as make-shift elevated work platforms. Therefore, persons would not be permitted to work on, under, or from a front-end loader or bucket in a raised position even if that equipment has a load-locking device. The primary function of such equipment is to move material. The hydraulic controls on such equipment are designed for rapid movement of material. In contrast, equipment designed to function as an elevated mobile work platform is equipped with fine movement controls. These controls reduce the probability of persons being accidentally thrown off the elevated mobile work platform. This protection would not exist where an operator used a front-end loader as a makeshift elevated work platform because loader linkage designs emphasize rapid dumping action. In addition, equipment which is specifically designed as a mobile work platform would have a railing or enclosure and skid-resistant surfaces to protect persons working in it. This type of platform would not be subject to inadvertant tipping which could exist if a front-end loader were used as a make-shift elevated platform.

As long as maintenance of elevated mobile work platforms is not required, load-locking devices are practical for use for persons working from mobile work platforms, and they are also reflect current state-of-the-art technology for such applications. However, during maintenance of elevated work platforms, load-locking devices are not an effective substitute for blocking or otherwise mechanically securing hydraulically elevated components due to the possibility of these devices being inadvertently disconnected or removed. Also, seals and O-rings on hydraulic cylinders commonly lead to some degree. If a leak occurred while a person was working under an elevated component, the component could fall slowly and crush the person, despite the presence of a load-locking device.

Section 56/57.9111 Tire repair.

Existing standard 55/56/57.9–69 addresses the hazard of exploding wheel rims associated with tire repairs. The preproposal draft retained the existing requirement for deflation of tires before starting repairs and specifically listed a wheel cage as a means to prevent wheel locking rims from creating a hazard during tire inflation.

In response to commenters, the proposal includes a stand-off inflation device as a additional alternative for protecting against the hazards associated with wheel locking rims during inflation. This device allows a person to avoid the risk of injury by standing to the side of the wheel rim during tire inflation.

The proposal also adds that when a repair is necessary on either tire of a dual wheel, both tires are to be deflated before either tire is removed from the equipment. Comenters requested that MSHA include this safety practice in the standard because the locking rim of the wheel not under repair can fly off violently during removal of the tire being repaired.

Section 56/57.9112 Warning devices.

This proposal consolidates existing standards 55/56/57.9–68, .9–49, .9–60, and 57.9–104, which require warning devices for parked equipment, extended loads, and restricted clearances.

The proposal would delete the specific reference in existing standard 55/56/57.9–68 to use of lights or flares, but would retain the performance requirement that visible warning devices be used for parked mobile equipment where a hazard would be created to persons in vehicles.

The proposal would also exclude fork-lift trucks from its requirement for extended loads because those vehicles ordinarily carry loads that extend beyond the sides, but are operated in a manner which greatly reduces the hazards of extended loads. Commenters suggested that MSHA permit "other suitable warnings" for extended loads as an alternative to the existing requirements for a warning light in limited visibility and use of a warning flag under all other conditions. Extended loads pose a hazard because the loads projected significantly beyond the sides of the vehicle and may strike persons along travelways or in other vehicles. MSHA believes that the proposed warning devices alert persons to the hazards of extended loads. MSHA solicits specific examples of alternatives which would provide effective warnings in the case of extended loads.

As a result of this consolidation, the reference to "overhead" clearance in existing standards 55/56/57.9–60 has been deleted. The proposal would apply to all locations where restricted clearance creaters a hazards to persons traveling in mobile equipment regardless of the direction from which the restriciton originates. The standard would require that warning devices be installed in advance of areas of restricted clearance. These warning devices would alert persons traveling in mobile equipment that they are approaching a restricted clearance. In addition, there must also be conspicuous marking within the restricted area to alert persons traveling in mobile equipment. As proposed, the consolidated standards would apply to both underground and surface operations.

Some commenters believed that the standard should be limited to persons on mobile equipment since 30 CFR 55/56/57.11 (travelways) should address restricted clearances for situations that do not involve mobile equipment. MSHA agrees and the proposed rule reflects this change. However, since no standard in § .11 specifically addresses restricted clearances, MSHA is proposing a new standard, 55/56/57.11–8, to address restricted clearances along travelways since restricted clearances can also cause injury to persons traveling on foot. MSHA accident data reveals that employees have incurred injuries while walking in areas with restricted clearances. Several of these injuries resulted in lost work days. For example, in one instance an employee lost 13 work days after bumping his back on a low clearance kiln door. In another instance an employee struck his head after failing to notice a low overhead steel pipe. Conspicuous marking of these restrictions would help to reduce the frequency of this type of injury.

Another commenter questioned whether the Agency would be limited, by the language of the preproposal draft, to issuing citations only after an injury occurred. MSHA considers the language of the proposed standard, as well as the existing standard, to apply to all instances where clearance is restricted as long as there is an indication that persons could be exposed to hazards.

Section 57.9160 Supplies, materials, and tools on mantrips underground.

The proposal retains the requirements of existing standard 57.9–99 which prohibits transporting supplies, materials, and tools with persons in mantrip cars underground. It also requires that mantrips be operated independently of ore and supply trips.

Commenters suggested that existing standard 57.9–99 and proposed standard 56/57.9102 conflict since the latter standard would permit the transportation of persons in mobile equipment with tools, materials, and equipment when those items are secured. The distinction between the two standards is that proposed standard 57.9160 addresses the transportation of persons in mantrips whereas proposed standard 56/57.9102 addresses mobile equipment that does not have the primary function of transporting persons. To provide further clarification the proposed rule modifies the existing definition of "mantrip" (30 CFR 55/56/57.2) to emphasize that a mantrip has the primary purpose of transporting persons to and from a work area.

Self-Propelled Equipment

Section 56/57.9200 Inspection prior to use; recording of defects.

Existing standard 55/56/57.9–1 requires equipment operators to inspect self-propelled equipment that is to be used during a shift prior to placing the equipment in use. When an inspection reveals a defect that affects safety, the defect must be reported to the mine operator who must record the defect. The record of the defect must be retained for six months. In the preproposal, this retention period was reduced to 90 days.

The proposal makes several changes to the preproposal. The record retention period is proposed to be from the date the defect is recorded until the defect is corrected. Although several commenters supported the preproposal's reduction in the retention time for records, other commenters advocated a retention period that would run until the next MSHA inspection following the recording of the defect. Other commenters favored eliminating the recordkeeping requirement, keeping records only until the defect is corrected, or requiring equipment inspections on a daily basis instead of each shift. At this point in the rulemaking process, MSHA believes that a critical element in the recordkeeping requirement is the provision relating to correction of the defect. The important safety benefit to be derived from the recordkeeping provision is that mine management is aware of and attentive to the defect. For this reason, the Agency believes that the record only needs to be retained until the defect is corrected. MSHA solicits comment on the recordkeeping provision.

Commenters also suggested that the requirement to inspect self-propelled equipment should apply only to equipment that "is used during a shift" in contrast to the existing requirement to inspect "equipment to be used during a shift." MSHA has proposed to retain the existing requirement because limiting the scope of the standard to equipment "in use" during a shift would be contradictory to the concept of inspection prior to such use. Several commenters noted that these examinations are useful and constitute an important safety practice.

Commenters also suggested that the standard include a checklist of items to be inspected. MSHA believes the standard should not include a checklist of items to be examined nor be expanded to require inspection of all mobile equipment. Although MSHA recognizes the value of checklists, the Agency is concerned that this approach would not address the various components found on all types of self-propelled equipment.

Section 56/57.9201 Operators' stations.

Existing standard 55/56/57.9–10 addresses hazards created by equipping of modifying cabs in a manner that impairs operating visibility. Existing

standard 55/56/57.9–11 provides that cab windows are to be made of safety glass, or its equivalent, and that those windows are to be in good condition and clean. Existing standard 55/56/57.9–12 provides that cabs of mobile equipment are to be kept free of extraneous materials.

Since each of these standards relates to safety hazards associated with cabs of self-propelled equipment, MSHA has consolidated them into a single standard in the proposal.

Commenters pointed out that not all types of self-propelled equipment are provided with cabs. These commenters suggested that the Agency use the more inclusive term of "operators' stations." The proposed rule reflects this change.

As proposed, the standard would require that windows must not impair visibility. The proposal also provides that the windows must be replaced or removed if they are damaged to an extent that the operating visibility is impaired or the safety of the equipment operator is affected by broken or cracked glass. However, if removal of damaged window exposes the equipment operator to hazardous environmental conditions which would impair the operator's ability to safely operate the equipment, such as extreme cold or high concentrations of dust, the broken window must be replaced. Some commenters suggested that this environmental condition provision could be deleted on the basis that 30 CFR 55/56/57.5 (Air Quality standards) addresses environmental hazards. The air quality standards address air contaminants which affect health, while this proposal addresses environmental conditions that may impair the equipment operator's ability to safely operate the equipment.

With respect to the existing requirement that cabs of mobile equipment be kept free of extraneous materials, the proposal clarifies that this standard applies to materials in the operators' stations that may create a hazard to persons by impairing the safe operation of the equipment.

Section 56/57/9202 Brakes.

Existing standard 55/56/57.9–3 requires that powered mobile equipment be provided with "adequate brakes." In response to comments, MSHA attempted to clarify in the preproposal the performance requirements for adequate brakes on self-propelled equipment. The preproposal addressed all braking systems installed on self-propelled equipment, and required that each system be maintained in functional condition. In addition, performance requirements for parking brakes were established, as well as a test procedure and maximum stopping distances for service brakes. The stopping distances were derived from Society of Automotive Engineers (SAE) publication J 1152.

The proposal makes several significant changes to the preproposal. Under the proposal, field testing of brake performance and the maximum stopping distance table would be applicable to all self-propelled equipment capable of traveling at least 10 mph. The preproposal had limited field testing to vehicles manufactured after July 1976. However, MSHA has conducted field tests that indicate the proposed maximum stopping distances are an appropriate measure of brake performance regardless of the year in which the equipment was manufactured. The field tests also indicate that the tests are not difficult to conduct and involve only a brief interruption in production. Copies of the test results are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. MSHA will discuss commenters' viewpoints to these field tests in the notice scheduling public hearings for this proposal. Video tapes of the field tests have been made and will be available during the public hearings.

In response to commenters, the proposal clarifies two other aspects of the brake testing procedure. It permits the use of auxiliary retarders when they are simultaneously actuated by application of the service brake control. In addition, the proposal requires that the equipment's transmission be in the gear appropriate with the speed the equipment is traveling during the test.

Other changes in the proposal include a reduction in the range of speeds for equipment testing (Tables I and II). To be tested, vehicles must be capable of traveling at least 10 mph. In instances where equipment is not capable of traveling at least 10 mph and there is cause to believe that the service brake is not capable of stopping and holding the fully-loaded equipment on the maximum grade it travels, MSHA will rely upon other available evidence to assess the vehicle's braking capability. For example, disconnected brake lines or brake shoes with no lining remaining would be indicative of malfunctioning brakes. Testing speeds were reduced from the preproposal's range to 10–20 mph to increase the safety of the test procedure. The proposal also clarifies that in instances where equipment fails the initial stopping distance test, the mine operator has the option to have additional stopping distance tests conducted on the equipment. The proposal also specifically excludes rail equipment, since proposed standard 56/57.9300 addresses braking systems for railroad cars.

The performance requirement for the parking brake has also been simplified in the proposal. The preproposal required that the parking brake be able to hold the fully-loaded equipment on a 15 percent grade or the maximum grade it is required to travel. The proposal requires holding performance for the maximum grade the equipment may encounter. Although the proposal removes the preproposal's reference to contraction of brake parts or leakage in describing parking brake performance, the parking brake must be capable of holding the equipment despite any contraction of brake parts or leakage of any kind.

Commenters were primarily concerned with brake testing for service brakes. Questions were raised relating to the appropriateness, fairness, and safety of these tests. Many of the questions raised involving the appropriateness of the braking tests arose out of a misunderstanding concerning SAE J 1152. This publication formed the foundation for deriving the figures for the maximum stopping distances table. Several commenters believed that SAE J 1152 was intended only for testing of new equipment or that it applied only to a limited class of off-highway trucks described as large dumpers. Others interpreted SAE J 1152 to be intended only for use as design criteria and not for testing braking adequacy of in-service equipment under operating conditions. These commenters were concerned that the stopping distances were too rigorous for in-service self-propelled equipment. However, other commenters considered the distances to be too lenient since the preproposal draft's consolidation of the SAE J 1152 tables permitted longer stopping distances, in some instances, than the individual SAE tables.

Several important points need to be clarified about SAE J 1152. As stated in SAE J 1152, page 41.187, the stopping distances are intended for use in testing braking system performance for in-service equipment. The distances do not represent the optimal expected braking performance, but establish only the minimum acceptable in-service performance for this equipment. MSHA believes that the distances established in the MSHA stopping distance table will not result in vehicles with good brakes failing the braking tests but will identify those vehicles with brakes in need of repair.

Another issue relating to the appropriateness of the tests involved a concern that MSHA would routinely test all vehicles on mine property and thereby cause extended disruptions at operations. The proposal provides that testing will only be conducted when there is cause to believe that the service brake is not in functional condition. MSHA will not be conducting routine or random testing of vehicles. Examples of situations which may constitute cause for testing could include observation of a vehicle having difficulty stopping or physical evidence of a problem such as leaking grease seals at braking wheels.

As noted by some commenters, the distances in the preproposal draft's table are longer then those listed in SAE J 1152. MSHA's stopping distances were derived from the maximum acceptable distances set forth in the tables of SAE J 1152. As with the preproposal draft, the proposal includes a single stopping distance table which consolidates those in SAE J 1152. In some instances, consolidation of the tables resulted in longer permissible stopping distances than those listed in the SAE J 1152 tables because the longest stopping distance for each SAE J 1152 weight category is used as the maximum stopping distance in MSHA's consolidated table. The proposal's consolidated table also factors in a one-second operator response time in establishing the maximum acceptable stopping distances. Some commenters objected to inclusion of operator response time in the table since the test procedure involves an equipment operator who fully anticipates and is poised to apply the brakes at a specified point and because operator response time is not a measure of the braking system's adequacy. Operator response time is included in the proposed rule to assure fairness in utilizing the test procedure for this standard.

Some comments questioned whether the braking tests could be conducted safely and whether an adequate test course length could be found. Using the table in the proposal, even the heaviest vehicle, when tested at the maximum test speed of 20 mph, should stop in 148 feet or less. When this figure is added to a distance of 450 feet to allow for a vehicle to accelerate to testing speed together with the 100-foot course to establish the vehicle's test speed and an extra 148 feet as a margin of stopping safety, it can be seen that the longest course needed to safely conduct the tests would only be 846 feet, or less than ⅙ of a mile. MSHA believes that most mining operations will have an adequate course length to conduct the tests. However, if an MSHA inspector determines that an appropriate test site is not present at an operation, no tests will be conducted. In such cases, the Agency will rely upon other available evidence to establish whether the service brake is in functional condition.

Section 56/57.9203 Berms.

Existing standard 55/56/57.9–22 requires that berms or guards be provided on the outer bank of elevated roadways. The preproposal defined an elevated roadway as one where a drop-off existed of sufficient depth or grade to cause a vehicle to overturn or endanger persons. The preproposal draft would have required that the height of berms or guards be at least the height of the midaxle of the largest piece of equipment ordinarily traveling the roadway and would have permitted openings in berms to the extent necessary for drainage.

The proposed rule retains the preproposal's requirement, and excludes railbeds because the proposed defined term "self-propelled equipment" could imply that berms would be required for railbeds.

Commenters suggested that the Agency more clearly define the term "elevated roadway." Several of these commenters suggested that MSHA require berms where the slope adjacent to the roadway is 1:4 or greater. On the other hand, equipment manufacturers recommended berms if the slope is 1:10 or greater. However, MSHA believes that specific slope ratios do not take into consideration the length of the slope or the type of vehicles traveling the roadway. Where the drop-off is created by a body of water, the standard would apply. The proposed rule would permit an evaluation of these and other factors to determine if a berm is required. For example, large haulage vehicles with a high center of gravity and relatively narrow wheel track width are more susceptible to oveturning than small utility trucks.

Commenters also raised several questions regarding the determination of berm height according to the largest piece of self-propelled equipment "ordinarily traveling" the roadway. Some suggested alternative wording such as "normal or regular" use, but others pointed out that these terms could lead to difficulty in determining application of the standard. MSHA has evaluated these comments together with the recognition that elevated roadways would present a hazzard regardless of the frequency of use. However, MSHA does not believe that the height of a berm needs to be increased where a larger vehicle travels an elevated roadway infrequently or only in isolated instances, such as to make deliveries. For this reason, the proposal has been modified to require that the height of berms be set according to the mid-axle height of the largest piece of self-propelled equipment which usually travels the roadway. Consistent with this, it is the Agency's intent that the proposed berm requirement would be applicable to vehicles which usually travel the elevated roadway in the course of regular activities related to mining.

Commenters also raised issues concerning the definition for "berm." They considered the use of the term "restrain" to be unrealistic since the size of many types of self-propelled equipment would make it impossible to construct a berm that would be capable of "restraining a vehicle." MSHA agrees that some vehicles are so large that it would be extremely burdensome to construct a berm which would prevent them from passing beyond its boundaries. The Agency has amended the berm definition to clarify that it is "a pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway."

Section 56/57.9204 Dust control.

Existing standard 55/56/57.9–74 requires "suitable" control of dust at muck piles, material transfer points, crushers, and haulage roads when impaired visibility from dust may create hazards to persons. The preproposal draft changed the existing standard by requiring control measures to be taken only after a hazard creating impaired visibility was present. It also eliminated the reference to "suitable" control of dust.

Some commenters objected that the preproposal draft would require dust control only after it reached a level which impairs visibility to a hazardous degree. In their view, this would reduce the effectiveness of the standard. MSHA agrees, and the proposal would provide protection where hazards may be created as a result of impaired visibility. Under the proposal, dust control measures must be taken at known sources of dust production where hazards to persons may be created as a result of impaired visibility.

Section 56/57.9205 Operating speeds and control of equipment.

The proposal would consolidate existing standards 55/56/57.9—17, .9–23, .9–24 and 57.9–113. Each address control

and movement of self-propelled equipment.

Some commenters questioned whether this standard would conflict with the requirements for traffic rules in existing standard 55/56/57.9–71. MSHA does not agree because proposed standard 56/57.9205 pertains to the equipment operator's control of self-propelled equipment under varying road conditions, while existing standard 55/56/57.9–71 (proposed standard 56/57.9101), addresses general traffic rules.

Several commenters stated that it would be more appropriate to require that equipment operators "maintain control" of self-propelled equipment while it is in motion rather than "have full control" of such equipment. MSHA agrees and this change is reflected in the proposal.

Section 56/57.9206 Notification to the equipment operator.

The proposal clarifies existing standard 55/56/57.9–27 which requires persons to notify the operator of self-propelled equipment before getting on or off that equipment when the operator is present.

Section 56/57.9207 Movement of dippers, buckets, loading booms, or heavy suspended loads.

Existing standard 55/56/57.9–25 prohibits the swinging of dippers, buckets, loading booms, or heavy suspended loads over the cabs of haulage vehicles until the drivers are out of the vehicles and in a safe location. An exception to this requirement is provided if the equipment is specifically designed to protect the driver from falling material.

The preproposal draft made editorial clarifications to the existing standard. In response to commenters, the phrase "operators' stations of self-propelled equipment" replaces "cabs of haulage vehicles" in order to include equipment without cabs and to use the defined term "self-propelled equipment." The reference to protection from "falling material" has also been replaced by the term "falling objects" since the standard which provides protection from this hazard (56/57.9209) requires a "falling object protective structure."

Section 56/57.9208 Suspended loads.

The proposed rule retains the requirements of existing standard 55/56/57.9–30 which prohibits persons from working or passing under the buckets or booms of loaders in operation.

Section 56/57.9209 Falling object protective structures (FOPS).

Existing standard 55/56/57.14–13 requires substantial canopies to be provided on fork-lift trucks, front-end loaders, and bulldozers when it is necessary to protect the equipment operator from falling objects. These canopies are referred to as falling object protective structures (FOPS).

All of the commenters on this standard requested that MSHA more clearly define the requirements of the existing standard and suggested that the Agency delete the reference to "substantial canopies" because the term is subject to various interpretations. They suggested that the Agency incorporate by reference the consensus standards for the construction of FOPS which were developed by the Society of Automotive Engineers (SAE J 231, January 1981) and the American Society of Mechanical Engineers (ANSI B 56.1–1975).

Use of these ANSI and SAE standards for FOPS provides useful information on the construction of FOPS. The SAE and ANSI Standards are based upon actual testing of FOPS prototypes. FOPS constructed to these specifictions should provide reliable, consistent, and predictable performance.

Therefore, the proposal incorporates these ANSI and SAE publications by reference. However, under the proposal, all front-end loaders, bulldozers, and fork-lift trucks that are equipped with "substantially constructed" FOPS prior to the effective date of this standard would be considered in compliance with the requirements of this proposal. On the basis of MSHA's field experience, existing FOPS that are substantially constructed can be expected to provide the needed protection to equipment operators.

Although MSHA recognizes that the SAE and ANSI documents are revised periodically, in most cases these revisions only involve editorial or non-technical changes. However, in the event that major substantive changes are made or signficant revisions are issued, MSHA would review the revised SAE or ANSI documents and consider whether the existing standard needed to be updated. Any updating would be accomplished through the rulemaking process. Copies of the documents incorporated by reference in this standard are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Section 56/57.9230 Roll-over protective structures (ROPS) and seat belts.

Existing standard 55/56/57.9–88 requires roll-over protective structures (ROPS) and seat belts to be installed on certain classes of surface self-propelled equipment. The standard incorporates by reference several Federal, State, and the Society of Automotive Engineers (SAE) standards which contain detailed performance and technical specifications concerning the design, construction, and installation of ROPS and seat belts.

In the preproposal draft, the Agency attempted to address two major concerns expressed by commenters: the need to update the SAE references in the standard, and the need to simplify the existing requirements. The preproposal presented the requirements for ROPS and seat belts in performance-oriented language which the Agency extracted from the SAE publications presently incorporated in 55/56/57.9–88.

This standard received comment from ROPS equipment manufacturers, government agencies and private groups involved in ROPS research, and SAE subcommittee members. The majority of the commenters expressed a clear preference for updating and retaining the existing incorporation by reference. They were concerned that the Agency's performance-oriented approach was not adequate to assure proper design and construction of ROPS and that the draft standard would not have provided the necessary and specific technical performance requirements. Further, they stated that general performance criteria should not be substituted for the specific details contained within the existing standard. For example, commenters pointed out that the draft did not contain specific technical requirements for certifying the integrity of ROPS, nor did it contain explicit force and energy criteria for proper evaluation of ROPS.

After review of these comments, MSHA has determined that the incorporation by reference of the applicable SAE publications for ROPS and seat belts would best accomplish the desired objective of assuring the highest possible degree of protection in these situations. The incorporation by reference has been updated to reflect current SAE publications. In addition, the entire standard has been redrafted to more clearly state the requirements. Copies of these documents are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

To aid in understanding the development of the publications referenced in existing 55/56/57.9–88 to the updated publications referenced is this proposal, a comparison table has been provided:

COMPARISON OF SAE PUBLICATIONS FOR ROPS AND SEAT BELTS

Proposed rule incorporation	Existing rule incorporation
J 386 (Seat Belts for Construction Equipment).	J 140a 1973. J 141. J 386 MAR 1968. J 33b (which superseded J 333a).
J 1194 (ROPS for Agricultural Tractors including Seat Belts).	
J 1040c (ROPS for Construction, Earthmoving, Forestry and Mining Machines).	J 1040, J 1040a, J 1040b, J 320, J 320a, J 320b, J 394, J 394a, J 395, J 395a, J 396, J 396a, J 333a (ASAE 305), J 334a (ASAE 306), J 1011.

The proposal uses SAE terminology to describe the range of equipment covered by the standard. These changes were made so that the vehicles described in the proposal would be consistent with those in the latest SAE ROPS publications. The following table compares the terminology:

NOMENCLATURE COMPARISON

Current SAE and proposed rule terminology	Existing standard terminology
Crawler tractors and crawler loaders.	Front-end loaders, tractors, and dozers.
Graders	Motor graders.
Wheel loaders and wheel tractors	Front-end loaders, tractors.
The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear dump wagons and towed fifth wheel attachments.	Self-propelled scrapers, off-road wheeled prime movers.
Skid-steer loaders	Front-end loaders.
Agricultural tractors	Agricultural tractors.

Some commenters suggested that the Agency should list the types of equipment that are not addressed by the standard. However, the Agency believes that the proposal, which lists specific types of equipment covered, appropriately conveys the intended scope of the standard.

The proposal also clarifies that MSHA will consider equipment which meets the requirements of the existing standard to be in compliance with the installation, performance, and labeling requirements of the proposal. However, such equipment would still have to satisfy the maintenance requirements of this proposal. The proposed rule would retain the existing ROPS labeling requirement because the label shows that a ROPS is designed for the specific piece of equipment on which it is installed. The label will aid in verifying that the ROPS meets the requirements of this proposal, and could also be of assistance to the mine operator in the event of a manufacturer's recall or modification.

Two important aspects of ROPS and seat belts that are not addressed in the existing standard are included in the proposed rule. The proposal would require seat belts to be worn by equipment operators. Although the existing standard requires seat belts, it does not require that they be worn. Accident and injury reports reveal that the overall effectiveness of ROPS is greatly reduced when seat belts are not worn. Equipment operators who were not secured by seat belts have been thrown from the equipment during a roll-over and have been crushed by the equipment and ROPS structure. In one study conducted by Woodward Associates, Inc. (November 1980, Contract # J0285022), for the Bureau of Mines, 102 accidents and 16 fatalities were reviewed to see if seat belt usage may have saved lives or lessened the severity of injury in ROPS roll-overs. The study found that 14.7 percent of these accidents resulted in fatalities, and concluded that 14 of the 16 fatalities may have resulted in equipment operator's lives being saved had they been wearing seat belts at the time of the roll-over.

Although some commenters believed it would be difficult for mine operators to enforce this requirement due to resistance from equipment operators, other commenters recognized its beneficial aspects and supported the requirement for seat belts to be worn. Those commenters opposed to the requirement were concerned that fines would be imposed on the mine operator rather than on the equipment operator who failed to wear the seat belt. MSHA considers that the requirement for seat belts is analogous to other provisions relating to personal protective equipment required to be worn by employees such as hard hats, safety glasses and steel-toed shoes. In some instances, employers have had to impose disciplinary action when employees have failed to follow the company's safety rules. MSHA believes that if management requires that seat belts be worn by equipment operators and, in conjunction with an educational awareness program, encourages their use, the safety benefits will be understood and accepted by employees. MSHA believes employees share in the responsibility to wear these devices. MSHA believes that wearing seat belts is essential to the reduction of injuries from equipment roll-over, and has retained the requirement in the proposal. However, the Agency solicits further comment on the proposed requirement that seat belts be worn by equipment operators.

The other aspect of ROPS and seat belts now addressed in the proposal is the requirement that seat belts be maintained in functional condition. The standard would require that seat belts be kept free from grease, oil, and other deteriorating agents since these agents damage the seat belts and discourage equipment operators from wearing them. The proposal requires repair and, in some instances, replacement of these devices when necessary to assure proper performance.

Section 56/57.9231 Horns and back-up alarms on surface equipment

The preproposal draft made several changes to existing standard 55/56/57.9–87 which pertains to audible warning devices and back-up alarms. The preproposal used the defined term "self-propelled equipment," and clarified that this surface equipment was required to have a manually-operated warning horn. It also pemitted the use of a strobe light at night as an alternative to a back-up alarm. The proposed rule retains these changes, permits "other audible warning devices" as alternatives to horns, and excludes rail equipment.

Some commenters considered back-up alarms to be unnecessary for track-mounted equipment, such as bulldozers, due to their slow reverse speed. MSHA's experience with accidents that involve backing up indicates that it is not the speed of the reverse movement that is the critical factor, but the obstructed view to the rear. Therefore, MSHA believes that track-mounted equipment should continue to be covered by the back-up alarm requirement where an obstructed view exists.

MSHA is also considering whether the standard should specifically allow wheel-mounted bell alarms as an acceptable alarm for highway-use vehicles with wheels no greater than size "1100–20" (11-inch width; 20-inch diameter). These bell alarms are activated by reverse movement. However, the alarm sound occurs at varying intervals, depending upon the vehicle's wheel size. MSHA believes that such alarms are inappropriate for large-wheeled off-highway vehicles because up to 12 feet of reverse movement could occur without the bell sounding. MSHA seeks further comment on this issue.

Rail Equipment

Section 56/57.9300 Brakes.

The preproposal draft modified existing standard 55/56/57.9–48 to require that all braking systems on railroad cars be maintained in functional condition. The proposed rule retains this requirement.

Some commenters considered the requirement that braking systems be in "functional condition" unclear and suggested that the standard provide that braking systems be kept in a "safe functional condition." Other commenters believed that the standard should only apply in instances where the braking system on a railroad car is "in use," stating that it may suffice to rely on the braking system of the control vehicle or braker cars.

MSHA has retained the phrase "functional condition" in the proposed rule because functional means that it is capable of performing its intended purpose. Although a train may be able to stop safely even though some of its cars have non-functioning braking systems, MSHA believes that the brake system should be required to be functioning on all cars to assure necessary braking capability under all circumstances. This approach affords a margin of safety to accommodate variations in the grade encountered, the number of railcars involved, and the size of the load carried. Therefore, the proposal would require that where a railroad car has a braking system, it must be maintained in functional condition.

Commenters believed that the general requirements of existing standard 55/56/57.18–2 to inspect working places eliminates the need for this standard, and that railroad cars with defective brakes may not present a hazard if wheels are properly chocked. MSHA does not believe that the requirements of standard 55/56/57.18–2 adequately address the specific hazards associated with non-functioning brakes on railroad cars since it refers only to examination of working places.

Section 56/57/.9301 Backpoling.

The proposal retains the substantive requirements of existing standard 55/56/57.9–46 which prohibits the practice of backpoling of trolleys unless it is unavoidable. Backpoling is hazardous because the trolley pole can jam and break, endangering the equipment operator. The proposal emphasizes that backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. In instances when it is required, backpoling is to be done only at the minimum tram speed of the trolley.

Section 56/57.9302 Securing parked railcars.

The proposed rule retains the existing requirement in standard 55/56/57.9–47 that parked railcars be blocked securely unless the cars are held effectively by brakes. A commenter suggested that the standard should add that the railcar must be held effectively by "functional" brakes. MSHA agrees and notes that proposed standard 56/57.9300 requires brakes on railroad cars to be maintained in functional condition.

Section 56/57.9303 Protection against moving or runaway equipment.

This proposal consolidates existing standards 55/56/57.9–20 and .9–56 which provide for the installation of safety devices to protect persons from moving or runaway railroad equipment. The proposal deletes as unnecessary the term "positive acting" which appeared in the preproposal draft as "positive acting stopblocks." Commenters supported the consolidation of these standards.

Section 56/57.9304 Movement of equipment on adjacent tracts.

Existing standard 55/56/57.9–66 requires the use of a "suitable" chain, cable, or drawbar when a locomotive on one track is used to move equipment on a different tract. The preproposal draft used the term "substantial construction" in place of "suitable" in order to more clearly convey the performance qualities required when a chain, cable, or drawbar is used for this purpose.

Commenters suggested that the standard delete any reference to the performance qualities of the chain, cable, or drawbar. MSHA believes that since the rail equipment being moved could present varying size and weight demands, the strength of the chain, cable, or drawbar must be able to meet those demands. Therefore, the proposal clarifies the "substantial construction" performance requirement by stating that these devices must be capable of meeting the loads to which they could be subjected.

Section 56/57.9305 Movement of independently operating equipment.

The proposal deletes the reference to "suitable" from existing standard 55/56/57.9–35. "Suitable" is used to describe the type of control needed when there is movement of two or more pieces of rail equipment operating independently on the same track. The proposal requires that rail equipment be controlled for safe operation.

Section 56/57.9306 Brakeman signals.

The proposal makes editorial changes but retains the substantive requirements of existing standard 55/56/57.9–52 which addresses situations where trains are operated under the direction of a brakeman. When the brakeman's signals cannot be clearly recognized by the train operator, the train must be brought to a stop.

Section 56/57.9307 Clearance on adjacent tracks.

Existing standard 55/56/57.9–50 prohibits leaving railcars on side tracks unless "ample" clearance is provided for traffic on adjacent tracts. The proposal deletes the reference to "ample" in describing the clearance required.

Although commenters suggested that this standard could be deleted as duplicative of existing standard 55/56/57.9–83, MSHA believes these standards do not overlap. This proposal addresses the hazard of collision of railcars on adjacent tracts while standard .9–83 (proposed standard 56.9330) pertains to clearances between rail equipment and its surroundings.

Section 56/57.9308 Going over, under, or between railcars.

The proposal retains the substantive requirements of existing standard 55/56/57.9–51 which establishes safety practices to be followed when persons intend to go over, under, or between railcars.

Some commenters suggested that the standard should also require that the train be "secured" against movement, and that it also prohibit persons from coming closer than ten feet to the end of the nearest railcar or train when crossing railroad tracks.

At this point in the rulemaking process, MSHA does not believe that these additional requirements are necessary if existing practices relating to movement of persons around railcars are followed.

Section 56/57.9309 Coupling or uncoupling cars.

This proposal consolidates existing standards 55/56/57.9–65 and 57.9–97 which address safety procedures for the manual coupling or uncoupling of railroad cars. Standard 55/56/57.9–65 prohibit these procedures from being performed from the inside of curves unless the railroad and cars are designed to eliminate any hazard from manual coupling or uncoupling. Standard 55/56/57.9–97 requires that the procedure be carried out only after the train is brought to a complete stop, and

then coupled or uncoupled with the cars being moved very slowly.

The proposal clarifies that these procedures are to be carried out at the minimum tram speed, and that the standard applies to both surface and underground mining operations.

Commenters asked whether this standard prohibited the practice of having railcars coast down a grade while under the control of a brake operator. This practice is referred to as car dropping and the proposal does not prohibit it, since railcars, having no motive power of their own, do not have a minimum tram speed. Proposed standard 56/57.9102(e) (transporting persons), specifically applies to the practice of car dropping. Although it was suggested that the standard indicate that the minimum tram speed is that necessary to accomplish coupling or uncoupling, MSHA believes that this is covered in the standard since a slower speed would not couple the cars.

Section 56/57.9310 Switch throws.

The preproposal draft revised existing standard 55/56/57.9–28 (installation of switch throws) to provide a clearer statement of the hazard involved and the performance to be achieved. The proposal retains the language of the preproposal which requires switch throws to be installed to provide clearance to protect switchmen from contact with moving trains.

Although comment was received that the standard should exclude remotely operated switches, MSHA believes these switches would, by their nature, protect switchmen from contact with moving trains, and therefore meet the requirements of the standard. However, where a switch can be either operated by remote control or manually operated at the track, the standard requires that the switch throw be installed to provide clearance to protect switchmen from contact with moving trains.

Section 56/57.9311 Design, installation, and maintenance of trackage.

This proposal makes only editorial changes to existing standard 55/56/57.9–16 which addresses the design, installation, and maintenance of trackage elements.

Section 56/57.9312 Train warnings.

The preproposal draft clarified the requirements of existing standard 55/56/57.9–9 which sets forth instances when train operators are to sound a warning. The preproposal draft specified that the warning must be audible above the surrounding noise level, and that it must be given: immediately prior to moving trains; when trains approach persons, crossings, or other trains on adjacent tracks; and any place where vision is obscured. In response to commenters, the proposed rule explicitly states that the standard applies when the train operator's vision is obscured.

Commenters also suggested that the standard should allow a visible warning or signal as an alternative to the audible warning. The Agency believes a visible warning may be ineffective if a person is not facing the train operator, and therefore has not included it as an alternative means of compliance.

Section 56/57.9313 Railroad crossings.

Except for deleting the reference in existing standard 55/56/57.9–59 to "public" railroad crossings, the proposal retains the existing requirements that permanent railroad crossings be posted with warning signs or signals or be guarded when trains pass. It also requires that these crossings be planked or filled between the rails to protect against loss of steering control for vehicles crossing the rails.

Section 56/57.9330 Clearance for surface equipment.

The proposal makes editorial changes to existing standard 55/56/57.9–83 which requires, where possible, at least 30 inches of continuous clearance from the farthest projection of moving railroad equipment on at least one side of railroad tracks at surface installations. The 30–inch clearance requirement is based upon the human engineering studies conducted by Henry Dreyfuss Associates in 1974. The study, entitled *Humanscale 1/2/3,* incorporates 30 years of research complied by experts who have studied the width needed for safe clearance of persons. However, MSHA recognizes that there may be places where it is not possible to provide the 30-inch clearance. In those instances, the areas must be conspicuously marked.

Section 57.9360 Transporting tools and materials on locomotives underground.

Existing standard 57.9–96 prohibits carrying tools or materials on top of locomotives used underground except for properly located and secured rerailing devices. The standard also prohibits tools and materials in the locomotive cab if they would interfere with operation of the locomotive.

Commenters stated that existing standard 55/56/57.9–12 (proposed standard 56/57.9201), which does not permit extraneous materials in cabs of mobile equipment, duplicates the provision in 55/56/57.9–96 concerning tools and materials in locomotive cabs. MSHA agrees and has deleted this requirement in the proposed rule for standard 57.9360 since it is addressed in proposed standard 56/57.9201.

Section 57.9361 Mantrip trollely wire hazards underground.

This proposal makes no substantive changes to existing standard 57/9–115 which requires underground mantrips to be covered if there is a danger of persons contacting the trolley wire.

Section 57.9362 Train movement during shift changes underground.

Existing standard 57.9–116 restricts the movement of rock or material trains during shift changes to areas where those trains would not present a hazard to persons changing shifts. The preproposal draft made editorial changes to the existing standard. Commenters stated that the preproposal wording could be interpreted as prohibiting the presence of these trains in areas where persons change shifts. MSHA has clarified the proposal to indicate that the standard would only restrict the movement of trains carrying rock or material during underground shift changes.

Section 57.9363 Shelter holes.

Existing standards 57.9–110 and 57.9–111 provide requirements for protecting persons in restricted passages from moving equipment or vehicles. In response to commenters, the proposal would combine these standards and clarify requirements for shelter holes along underground haulageways.

Commenters noted that existing standard 57.9–110 only requires shelter holes where the haulageway does not provide at least 30 inches of clearance from moving equipment. They suggested that MSHA reduce the clearance provided by the shelter hole from 40 to 30 inches. MSHA believes that the depth of the shelter hole should not be reduced to 30 inches because circumstances may require several persons to seek safety within a single shelter hole. MSHA notes that the required clearance is measured from the farthest projection of moving equipment. Therefore, in situations where there is 10 inches of track clearance from the farthest projection of moving equipment, the shelter hole depth would need to provide an additional 30 inches of clearance. In contrast, while no shelter holes are required where clearance is at least 30 inches, this exemption only applies if the clearance is continuous and would thus allow several persons along the haulageway to get safely out of the way of moving equipment.

Commenters objected to the preproposal's complete prohibition against using shelter holes for storage, since existing standard 57.9–111 permits storage as long as 40 inches of clearance exists beyond any space taken up by the storage items. However, MSHA's field experience has revealed that these shelter holes tend to fill up with stored items which reduces the required minimum clearance. Therefore the proposal would not permit shelter holes to be used for storage.

Section 57.9364 Makeshift couplings.

Existing standard 57.9–98 prohibits the use of makeshift couplings. The preproposal draft clarified that couplings used on haulage units must be designed for those units, but permitted the use of makeshift couplings for moving disabled cars for repairs if no hazards to persons are created.

In response to commenters, MSHA has clarified that the standard applies to all underground rail equipment by deleting the reference to haulage units in the proposed rule.

Section 57.9365 Trip lights.

This proposal makes no changes to existing standard 57.9–112 which requires that trip lights be used on the rear of pulled rail haulage trips and the front of pulled rail haulage trips and the front of pushed trips. Trip lights alert persons to an approaching train. This standard applies only to underground rail haulage.

Dumping Locations and Facilities

Section 56/57.9400 Construction of ramps and dumping facilities.

Existing standard 55/56/57.9–63 establishes construction criteria for ramps and dumping facilities by requiring that they be of substantial construction and provide suitable width, clearance, and headroom for the equipment using them. The preproposal draft deleted the word "suitable." A few commenters suggested that MSHA should qualify the standard's provision by requiring "adequate" construction and "sufficient" width, clearance, and headroom.

In the proposal, MSHA has included performance criteria for the construction of ramps and dumping facilities by requiring that they be made with materials capable of supporting the load to which they will be subjected. In response to comments, MSHA has also clarified that width, clearance, and headroom must be able to "safely" accommodate the equipment using the facilities.

Section 56/57.9401 Anchoring stationary sizing devices.

This proposal makes no changes to existing standard 55/56/57.9–57 which requires grizzlies, grates, and other stationary sizing devices to be securely anchored.

Commenters suggested that MSHA should require periodic inspection of these devices to check for secure anchoring, cracks, or wear. Other commenters believed that secure anchoring is necessary only where there would be a hazard to persons should the devices move. The proposal requires that these devices remain securely anchored because there is always a hazard to persons if grizzlies, grates, and other sizing devices are not securely anchored.

Section 56/57.9402 Restraining devices.

Existing standard 55/56/57.9–54 requires berms, bumper blocks, safety hooks, or "similar means" to be provided at dumping locations to prevent overtravel and overturning. In the preproposal draft the Agency attempted to clarify that "similar means" meant "similar physical means" capable of preventing overtravel and overturning.

Commenters believed that the phrase "similar physical means" would also create uncertainty as to whether persons or warning lights could be used to comply with this standard. In the proposed rule MSHA has clarified that alternatives to berms, bumper blocks, or safety hooks must be devices that perform a restraining function similar to the devices listed. Therefore, persons or warning lights would not satisfy the requirements of this standard because they would not be capable of physically restraining equipment from overtravel or overturning.

Other commenters stated that no device can absolutely prevent overtravel or overturning. The devices referred to in the preproposal draft are intended to impose an obstacle and hinder the occurrence of overtravel and overturning. Therefore, the language of the preproposal has been retained.

Section 56/57.9403 Truck spotters

This proposal clarifies existing standard 55/56/57.9–58 which establishes safety procedures to be followed when truck spotters are used for guiding trucks during dumping.

The existing standard requires that truck spotters be in the clear while trucks are backing up and dumping and that spotters direct trucks with a light at night. The preproposal draft added that lights must be used where visibility is limited. The proposed rule includes all these provisions and adds that if the truck operator is unable to clearly recognize the spotter's signals, the truck must be stopped.

Several commenters suggested that the standard should permit the use of horns, radios, or other suitable means as alternatives to signal lights. However, MSHA believes that these devices may not always offer an equivalent means of signaling truck operators in periods of limited visibility. Although horns or radios may be as effective as lights at times, in some instances they may not be heard above the surrounding noise level and could create confusion with the sound produced by back-up alarms. Similarly, radio reception may be interfered with by surrounding noise and could be susceptible to interference or conflicting radio communications from other radio users, including nearby spotters.

Section 56/57.9404 Unstable ground.

This proposal clarifies the provisions of existing standard 55/56/57.9–55 which applies to unstable ground at dumping locations. In response to commenters, the proposal uses the defined term "mobile equipment" in place of "vehicles." It also specifies that if unstable conditions exist which present a situation where the ground may fail to support the weight of the equipment, then loads must be dumped a safe distance back from the edge of the unstable area of the bank.

One commenter suggested that MSHA should require that the equipment operator examine the dumping area prior to dumping each load, and that a competent person examine these areas each day for indications of ground instability. The commenter also suggested that MSHA set a specific minimum dumping distance from the edge of the bank where there is evidence of instability.

The proposed rule would require periodic examination of dumping locations for signs of instability. However, the Agency has not included a specific dumping distance where this hazard exists since a specific distance may not be appropriate in all circumstances.

Section 56/57.9405 Trimming of stockpile and muckpile faces.

This proposal makes editorial changes to existing standard 55/56/57.9–61 which requires the trimming of stockpile and muckpile faces to prevent hazards to persons. Trimming is important because in the process of creating and

reducing these piles, mobile equipment may create hazardous overhangs.

Commenters suggested that MSHA expressly include gravel banks since fatalities have occurred at them. It was also suggested that the standard should only apply to sliding or falling material during a load-out and that hazardous stockpile or muckpile faces should be guarded or barricaded and posted until the hazard is corrected.

The proposed rule includes gravel banks because they are "stockpiles" of gravel. MSHA has not limited the scope of the standard to the load-out phase since work on and around these piles occurs at times other than during load-out. MSHA does not believe that it is necessary to require guards or barricades for stockpiles, since routine trimming will prevent the development of dangerous overhangs.

Chutes

Section 56/57.9500 Chute design.

This proposal retains the substantive requirements of existing standard 55/56/57.9-64 which requires that chute-loading installations be designed so that a person is not placed in a hazardous location while pulling a chute.

Commenters suggested that the hazard covered by this proposal is addressed by existing standard 55/56/57.14-11 which requires guards or shields to be provided in areas where flying or falling material presents a hazard to persons. MSHA believes that the design requirements of proposed standard 56/57.9500 addresses the specific hazards of chute-loading installations. Existing standard 55/56/57.14-11 has been modified in the proposed rule for Section .14 (49 FR 8368, 3/6/84). The standard now reads: "*.14107 Flying or Falling Materials.* In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors, present a hazard, guards, shields, or other equivalent protection shall be provided to protect persons."

Section 56/57.9501 Chute hazards.

The proposal consolidates existing standards 55/56/57.9-72, 57.9-105, and 57.9-106. Each of these standards address hazards asociated with chutes. Since these hazards are common to both surface and underground mining locations, the standard has been designated "general" to apply to all areas of any mine.

Existing standard 55/56/57.9-72 requires that persons attempting to free hangups be "experienced" and understand the hazards involved. The proposal would delete the reference to "experienced" and clarify that such persons must use the proper tools in attempting to free hangups, and that they position themselves away from the hazard of falling material during this procedure.

Some commenters suggested that the standard require that a "competent person" perform this work. Other commenters believed that the standard duplicates the requirements of 30 CFR Part 48, Training and Retraining of Miners. MSHA believes that the proposal provides more specific guidance as to the tools and procedures to be used than would use of the term "competent person." MSHA does not consider this standard to be duplicative of the Part 48 training regulations since specific training is not an element in proposed standard 56/57.9501.

Existing standard 57.9-105 addresses the hazards created by flying rocks when broken rock or material is dumped into an empty chute. It requires either use of chute guards, or leaving sufficient material in the chute bottom to prevent flying rocks. The proposal would permit isolation of all persons from flying rocks or materials as an alternative to guarding the chute. Under the proposal, neither guarding nor isolation of persons would be required when sufficient material is left in the bottom of the chute.

Comment suggested that not all empty chutes would create flying rocks or material during chute-pulling operations and that posting or barricading the chute area would provide protection that is equivalent to guarding.

MSHA's experience has been that flying rocks are a major hazard during chute-pulling operations. Posting or barricading would not provide the necessary protection from this hazard since they do not isolate persons or confine the hazard.

Existing standard 57.9-106 requires ample warning to be given to persons who may be endangered by chute-pulling operations. The proposed rule clarifies "ample warning" by stating that persons who could be endangered must be warned and given time to clear the hazardous area.

Some commenters suggested that the standard should allow protective devices such as hand-held chains, safety lines and other devices as alternatives to warnings. However, MSHA believes that such devices do not offer a basis to alert persons that a chute is about to be pulled, nor do they provide protection from flying debris during chute-pulling.

Section 56/57.9502 Working around draw holes.

Existing standards 57.9-107 prohibits persons from standing over draw holes if there is a danger that the chute could be pulled unless platforms or safety lines are used. The preproposal draft clarified that the hazard associated with this practice is the risk of the material being bridged or withdrawn while someone is standing over the draw hole. The scope of this standard was also expanded from underground mining only to all mining operations because the hazard is present in all mining operations.

In response to commenters, MSHA has made several clarifying editorial changes in the proposed rule. Some commenters believe that this standard duplicates existing standard 55/56/57.16-2. However, at this point in the rulemaking process, MSHA believes these standards address separate hazards. Existing standard 55/56/57.16-2 addresses safety devices and practices for persons working in facilities such as bins and silos during material storage and handling activities whereas proposed standard 56/57.9502 involves working above a draw hole.

Section 57.9560 Draw holes.

Existing standards 57.9-103 requires that collars of open draw holes be kept free of muck and material. The standard is intended to protect against the hazard of falling materials striking persons below the hole. The preproposal draft clarified that this standard would not prohibit use of the draw hole during mucking operations nor the transfer of materials through the draw hole.

Commenters expressed concern that the working of the preproposal would permit collars of draw holes to be cluttered with muck or materials between shifts since mucking operations or material transfer could be viewed as and ongoing process. MSHA agrees and has changed the proposal to provide that collars of open draw holes must be free of muck or materials except during their transfer through the draw hole. When work around the collar stops, including brief stops between shifts, muck or material around the collar should be cleaned away to prevent hazards to persons by the inadvertent passage of material through the open draw hole. This standard is only applicable to underground operations.

Slushers

Section 56/57.9600 Backlash guards and securing.

This proposal makes only editorial changes to existing standard 55/56/57.9–15 which requires all slushers to be equipped with rollers and drum covers and to be securely anchored prior to use. It also requires backlash guards on slushers rated greater than 10 horsepower. These requirements provide protection for slusher cable snapping or becoming unsecured and by lessening the potential for injury that can be created by cable backlash.

Commenters were concerned that the standard could be misapplied to air tuggers that are not designed with rollers or cable guides. However, the standard would not apply to air tuggers, which is equipment having only one cable and one drum. These devices are not used for slushing operations and their low horsepower (10 hp or less) eliminates hazards associated with slushers.

Section 57.9660 Protection of signalmen underground.

Existing Standard 57.9–102 provides that signalmen used during slushing operations shall be positioned in a "safe place." The proposed rule clarifies that signalmen must be located away from possible contact with the cables, sheaves, or slusher buckets during slushing operations.

Some commenters suggested that movement of slushing materials should be addressed in the standard. Other commenters considered the existing requirements to be ambiguous. MSHA believes that the proposal clarifies these requirements by specifically listing the particular devices which could contact signalmen in a hazardous manner during slushing operations. MSHA agrees that slushing material movement could present a hazard to signalmen during these operations. However, the Agency believes that requiring signalmen to be located away from possible contact with the slusher's cables, sheaves, or buckets will also provide protection from the movement of material.

Safety Devices and Procedures

Section 56/57.9700 Air valves for pneumatic equipment.

Existing standard 55/56/57.9–26 requires a quick-close type air valve on each piece of pneumatic-powered loading, hauling, or dumping equipment. The valve must be set in the closed position except when the equipment is being operated. The proposed rule clarifies that the air valve must be a master manual-type valve which is required for all penumatic-powered equipment.

Some commenters suggested that the standard should apply only to self-propelled equipment. Other commenters requested retention of the existing standard's application to pneumatic equipment used for loading, hauling, and dumping. Commenters believed that the requirement to keep the valve in the closed position is unnecessary if the equipment is not connected to the air supply.

MSHA believes that a manual master quick-close type air valve is a necessary safety device for all types of peneumatic-powered equipment since they have a common method of operation, and present the same need for an emergency shut-off capability. This valve gives an equipment operator the capability to immediately shut down the equipment in the case of sudden or inadvertent movement. Agency field experience has found that equipment operators have been pinched and pinned against the rib when they have iandvertently hit the controls while disembarking from or performing tasks around equipment. The valve allows the equipment operator to maintain control of the equipment in these situations. MSHA believes that keeping the valve closed at all times avoids the potential for injury which may occur when an open valve is inadvertently connected to an open air supply thereby creating sudden movement of the pneumatic equipment.

Section 56/57.9701 Warnigs prior to starting or moving equipment.

Existing standard 55/56/57.9–5 requires operators to be certain, by the use of a signal or other means, that all persons are clear before starting or moving equipment. With the exception of clarifying that the standard would apply to "equipment operators," the preproposal draft retained the existing standard's wording.

The proposed rule specifies that a warning sound, which is audible above the surrounding noise level, or other effective means, must be used to warn persons in the vicinity that equipment is about to be started or moved. This change responds to the concern of several commenters regarding the existing standard's reference to operators being "certain" that persons are clear.

Although some commenters suggested that the standard should apply only to mobile equipment, MSHA believes that a start-up warning is necessary for other types of equipment involved in loading, hauling, or dumping, such as generators or crushers.

Derivation Table

The following derivation table lists: (1) The number of the proposed standard; (2) the number of the standard in the preproposal draft; and (3) the number of the existing standard.

Proposed number	Preproposal number	Existing number
56/57.9100	58.9–2	55/56/57.9–2
		55/56/57.9–73
56/57.9101	58.9–18	55/56/57.9–71
56/57.9102	58.9–13	55/56/57.9–40
		55/56/57.9–41
		55/56/57.9–67
		55/56/57.9–85
56/57.9103	58.9–14	55/56/57.9–39
56/57.9104	58.9–44	55/56/57.9–45
56/57.9105	58.9–42	55/56/57.9–62
56/57.9106	58.9–43	55/56/57.9–34
56/57.9107	58.9–69	55/56/57.9–70
56/57.9108	58.9–8	55/56/57.9–31
	58.9–9	55/56/57.9–32
56/57.9109	58.9–7	55/56/57.9–36
		55/56/57.9–37
56/57.9110	58.9–38	55/56/57.14–30
56/57.9111	58.9–86	55/56/57.9–69
56/57.9112	58.9–30	55/56/57.9–68
	58.9–31	55/56/57.9–49
	58.9–40	55/56/57.9–60
	58.9–22	55/56/57.9–104
57.9160	58.9–15	57.9–99
56/57.9200	58.9–1	55/56/57.9–1
56/57.9201	58.9–52	55/56/57.9–12
	58.9–53	55/56/57.9–10
	58.9–54	55/56/57.9–11
56/57.9202	58.9–3	55/56/57.9–3
56/57.9203	58.9–46	55/56/57.9–22
56/57.9204	58.9–32	55/56/57.9–74
56/57.9205	58.9–26	55/56/57.9–17
		55/56/57.9–23
		55/56/57.9–24
		57.9–113
56/57.9206	58.9–25	55/56/57.9–27
56/57.9207	58.9–36	55/56/57.9–25
56/57.9208	58.9–37	55/56/57.9–30
56/57.9209	58.9–87	55/56/57.14–13
56/57.9230	58.9–88	55/56/57.9–88
56/57.9231	58.9–20	55/56/57.9–87
56/57.9300	58.9–4	55/56/57.9–48
56/57.9301	58.9–60	55/56/57.9–46
56/57.9302	58.9–5	55/56/57.9–47
56/57.9303	58.9–66	55/56/57.9–20
		55/56/57.9–56
56/57.9304	58.9–68	55/56/57.9–66
56/57.9305	58.9–58	55/56/57.9–35
56/57.9306	58.9–28	55/56/57.9–52
56/57.9307	58.9–61	55/56/57.9–50
56/57.9308	58.9–27	55/56/57.9–51
56/57.9309	58.9–65	55/56/57.9–65
		57.9–97
56/57.9310	58.9–59	55/56/57.9–28
56/57.9311	58.9–62	55/56/57.9–16
56/57.9312	58.9–21	55/56/57.9–9
56/57.9313	58.9–34	55/56/57.9–59
56/57.9330	58.9–71	55/56/57.9–83
56.9360	58.9–16	57.9–96
56.9361	58.9–12	57.9–115
56.9362	58.9–57	57.9–116
57.9363	58.9–72	57.9–110
	58.9–73	57.9–111
57.9364	58.9–67	57.9–98
57.9365	58.9–33	57.9–112
56/57.9400	58.9–47	55/56/57.9–63
56/57.9401	58.9–75	55/56/57.9–57
56/57.9402	58.9–48	55/56/57.9–54
56/57.9403	58.9–50	55/56/57.9–58
56/57.9404	58.9–49	55/56/57.9–55
56/57.9405	58.9–76	55/56/57.9–61
56/57.9500	58.9–80	55/56/57.9–64

Proposed number	Preproposal number	Existing number
56/57.9501	58.9–78	55/56/57.9–72
	58.9–82	57.9–105
	58.9–79	57.9–106
56/57.9502	58.9–39	57.9–107
56/57.9560	58.9–77	57.9–103
56/57.9600	58.9–84	55/56/57.9–15
56/57.9660	58.9–81	57.9–102
56/57.9700	58.9–85	55/56/57.9–26
56/57.9701	58.9–24	55/56/57.9–5
Delete		55/56/57.9–19
Delete	58.9–63	55/56/57.9–42
Delete		55/56/57.9–53
Delete		57.9–114

Redesignation Table

For the convenience of the reader, the following redesignation table has been added as a cross-reference guide.

Existing Number	Proposed Number	
55/56/57.9–1	56.9200	57.9200
55/56/57.9–2	56.9100	57.9100
55/56/57.9–3	56.9202	57.9202
55/56/57.9–5	56.9701	57.9701
55/56/57.9–9	56.9312	57.9312
55/56/57.9–10	56.9201	57.9201
55/56/57.9–11	56.9201	57.9201
55/56/57.9–12	56.9201	57.9201
55/56/57.9–15	56.9600	57.9600
55/56/57.9–16	56.9311	57.9311
55/56/57.9–17	56.9205	57.9205
55/56/57.9–19		Remove
55/56/57.9–20	56.9303	57.9303
55/56/57.9–22	56.9203	57.9203
55/56/57.9–23	56.9205	57.9205
55/56/57.9–24	56.9205	57.9205
55/56/57.9–25	56.9207	57.9207
55/56/57.9–26	56.9700	57.9700
55/56/57.9–27	56.9206	57.9206
55/56/57.9–28	56.9310	57.9310
55/56/57.9–30	56.9208	57.9208
55/56/57.9–31	56.9108	57.9108
55/56/57.9–32	56.9108	57.9108
55/56/57.9–34	56.9106	57.9106
55/56/57.9–35	56.9305	57.9305
55/56/57.9–36	56.9109	57.9109
55/56/57.9–37	56.9109	57.9109
55/56/57.9–39	56.9103	57.9103
55/56/57.9–40	56.9102	57.9102
55/56/57.9–41	56.9102	57.9102
55/56/57.9–42		Remove
55/56/57.9–45	56.9104	57.9104
55/56/57.9–46	56.9301	57.9301
55/56/57.9–47	56.9302	57.9302
55/56/57.9–48	56.9300	57.9300
55/56/57.9–49	56.9112	57.9112
55/56/57.9–50	56.9307	57.9307
55/56/57.9–51	56.9308	57.9308
55/56/57.9–52	56.9306	57.9306
55/56/57.9–53		Remove
55/56/57.9–54	56.9402	57.9402
55/56/57.9–55	56.9404	57.9404
55/56/57.9–56	56.9303	57.9303
55/56/57.9–57	56.9401	57.9401
55/56/57.9–58	56.9403	57.9403
55/56/57.9–59	56.9313	57.9313
55/56/57.9–60	56.9112	57.9112
55/56/57.9–61	56.9405	57.9405
55/56/57.9–62	56.9105	57.9105
55/56/57.9–63	56.9400	57.9400
55/56/57.9–64	56.9500	57.9500
55/56/57.9–65	56.9309	57.9309
55/56/57.9–66	56.9304	57.9304
55/56/57.9–67	56.9102	57.9102
55/56/57.9–68	56.9112	57.9112
55/56/57.9–69	56.9111	57.9111
55/56/57.9–70	56.9107	57.9107
55/56/57.9–71	56.9101	57.9101
55/56/57.9–72	56.9501	57.9501
55/56/57.9–73	56.9100	57.9100
55/56/57.9–74	56.9204	57.9204
55/56/57.9–83	56.9330	57.9330
55/56/57.9–85	56.9102	57.9102
55/56/57.9–87	56.9231	57.9231
55/56/57.9–88	56.9230	57.9230
57.9–97	56.9309	57.9309
57.9–98		57.9364
57.9–99		57.9160
57.9–102		57.9660
57.9–103		57.9560
57.9–104	56.9112	57.9112
57.9–105	56.9501	57.9501
57.9–106	56.9501	57.9501
57.9–107	56.9502	57.9502
57.9–110		57.9363
57.9–111		57.9363
57.9–112		57.9365
57.9–113	56.9205	57.9205
57.9–114		Remove
57.9–115		57.9361
57.9–116		57.9362
55/56/57.14–13	56.9209	57.9209
55/56/57.14–30	56.9110	57.9110

III. Drafting Information

The principal persons responsible for preparing this proposed rule are: Thomas E. Anderson, Metal and Nonmetal Mine Safety and Health, MSHA; Brenda K. Smoak, Office of Standards, Regulations, and Variances, MSHA; and William B. Moran, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the proposed revisions to its standards for loading, hauling, and dumping at metal and nonmetal mines. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act. In this analysis, which is summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Since the rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses. A primary benefit of this proposal is that it would clarify compliance responsibilities and adopt performance-oriented standards. Clarified regulatory requirements should benefit both large and small mining operations. Performance-oriented standards maximize flexibility since they establish the safety objection without limiting the means to achieve it.

In the summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposed requirements with the costs of the existing requirements. A Copy of the full analysis is available upon request.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The proposed rule does not represent a significant economic impact on a substantial number of small businesses under the Regulatory Flexibility Act.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the requirements for labor, equipment purchase, and maintenance. In calculating the costs of the proposed rule, the Agency estimated one-time costs and annual recurring costs.

The proposed rule would affect approximately 13,200 mines. MSHA estimates that approximately 11,600 of these mines are small businesses. In the proposal, MSHA has reorganized, updated, and clarified existing provisions. The Agency also has proposed to delete duplicative provisions, and to modify the recordkeeping retention period for existing standard 55/56/57.9–1 (proposed standard 56/57.9200). There are 224 existing standards. MSHA's proposed rule reduces the total of 113 standards.

MSHA estimates that the total one-time costs associated with the existing requirements equal $39.7 million and that those associated with the proposed requirements equal $40.4 million. Continued compliance with the existing requirements costs an estimated $10.6 million on an annual recurring basis. Continued compliance with the proposed rule would cost an estimated $10.8 million on an annual recurring basis. MSHA's proposed rule would represent an increase in one-time costs of $774,000 over the existing requirements and an increase in annual recurring costs of $233,000.

Of the total one-time costs for both the existing and proposed requirements, approximately $9.0 million is attributable to costs associated with existing standard 55/56/57.9–74 (proposed standard 56/57.9204) which requires that dust be suitable controlled at mines where hazards to persons may be created as a result of impaired visibility. MSHA estimates annual recurring costs to be $1.8 million for vehicle and water tank maintenance.

Existing standard 55/56/57.9–22 (proposed standard 56/57.9203) requires that berms or guards be provided on the outer bank of elevated roadways. Total one-time costs for both the existing and proposed rule for industry compliance

with this standard are estimated to be $5.7 million. MSHA estimates annual recurring costs to be $600,000 for maintenance of existing berms and construction of new berms.

Existing standard 55/56/57.9–87 (proposed standard 56/57.9231) requires that heavy duty mobile equipment be provided with audible warning devices. Total one-time costs under both the existing and proposed rule are estimated to be $5.0 million. MSHA estimates that one-third of the warning devices would need to be replaced annually at a cost of $1.7 million.

Existing standard 55/56/57.9–88 (proposed standard 56/57.9230) requires roll-over protective structures (ROPS) for certain types of heavy duty self-propelled equipment. MSHA assumes that 90 percent of industry has ROPS which were placed on the equipment by the manufacturer; therefore, total one-time costs for both the existing and proposed rule are estimated to be $4.9 million for installation of ROPS at the remaining 10 percent of the mines. MSHA estimates no annual recurring costs for compliance with either the existing or proposed rule.

Existing standard 57.9–107 (proposed standard 56/57.9502) prohibits persons from standing on broken rock over draw points, if there is danger that the chute will be pulled, and requires that suitable platforms or safety lines be provided when work must be done in such situations. MSHA estimates that 50 percent of underground and surface operations would have draw points and need to use platforms or safety lines. MSHA has calculated costs for installed hook-up lines and for safety lines equipped with hook-up apparatus. No costs were assigned to platforms. Total one-time costs under both the existing and proposed rule are estmated to be $3.8 million. MSHA estimates annual recurring costs to be $1.1 million, which includes the cost of new hook-up lines installed in new drifts.

Existing standard 55/56/57.9–1 (proposd standard 56/57.9200) requires that self-propelled equipment that is to be used during a shift be inspected by the equipment operator before being placed in operation. MSHA estimates annual recurring costs for inspection of equipment and recording of defects to be $2.0 million under both the existing and proposed rule.

Existing standard 55/56/57.9–3 (proposed standard 56/57.9202) requires powered mobile equipment to be provided with adequate brakes. The Agency estimates annual recurring costs to be $1.3 million for both the existing and proposed rule.

Existing standard 55/56/57.14–13 (proposed standard 56/57.9209) requires that certain mobile equipment be provided with substantial canopies where flying or falling materials present a hazard to persons. MSHA estimates total one-time costs for compliance with the existing standard to be $397,000. Annual recurring costs for compliance with the existing standard are estimated to be $20,000. The proposed standard would require that equipment without substantially constructed canopies be equipped with a falling object protective structure (FOPS) which meets the specifications of the Society of Automotive Engineers or the American National Standards Institute. MSHA estimated one-time costs for compliance with the proposed standard to be $1.3 million. Annual recurring costs for compliance with the proposed standard would be $66,000.

Existing standard 55/56/57.9–63 (proposed standard 56/57.9400) requires that ramps and dumping facilities be of substantial construction and have suitable width, clearance, and head room to accommodate equipment using the facilities. MSHA estimates that five percent of the industry would need to modify dumping facilities. Total one-time costs under both the existing and proposed rule are estimated to be $1.3 million. MSHA estimates annual recurring costs for maintenance to be $132,000 under both the existing and proposed rule.

MSHA has estimated that there are no costs associated with existing standard 55/56/57.9–11 which requires that cab windows be of safety glass or equivalent. Proposed standard 56/57.9201 would require that windows be replaced in cabs when the cabs are originally equipped with windows, if non-replacement would expose the equipment operator to hazardous environmental conditions which would affect the operator's ability to safely operate the equipment. MSHA estimates annual recurring costs for compliance with the proposed rule to be $238,000.

In addition, there are 22 standards with nominal costs attached. MSHA estimates total one-time costs for industry compliance with these existing standards to be $6.3 million and annual recurring costs to be $2.0 million. One-time costs for industry compliance with these proposed standards are estimated to be $5.9 million and annual recurring costs are estimated to be $2.0 million, as tabulated below.

COST ANALYSIS SUMMARY

Existing rule			Proposed rule		
Existing standard	One-time cost [1]	Annual recurring cost [1]	Proposed standard	One-time cost [1]	Annual recurring cost [1]
.9–15	$48	$5	.9600	$48	$5
.9–20	212	21	.9303	212	21
.9–35	861	86	.9305	861	86
.9–48	199	20	.9300	199	20
.9–49	265	26	.9112	265	26
.9–54	636	518	.9402	636	518
.9–58	7	1	.9403	7	1
.9–59	331	33	.9313	331	33
.9–60	404	40	.9112	404	40
.9–61	424	424	.9405	424	424
.9–62	418	418	.9105	418	418
.9–64	132	13	.9500	132	13
.9–66	40	4	.9304	40	4
.9–69	828	83	.9111	166	17
.9–70	397	40	.9107	397	40
.9–71	596	60	.9101	596	60
.9–104	72	7	.9112	72	7
.9–105	80	80	.9501	80	80
.9–111	27	3	.9363	27	3
.9–112	294	147	.9365	294	147
.9–115	75	0	.9361	75	0
.14–30	0	0	.9110	238	12
Total	6,346	2,029		5,922	1,975
Million	(6.3)	(2.0)		(5.9)	(2.0)

[1] All cost estimates are in thousands (×1,000).

Fifty-six of the proposed standards have no expenditures or annual recurring costs to industry, but relate to common safe operating procedures.

The primary benefit of the proposed rule is the protection that the standards would provide to persons who could be endangered by hazards associated with mobile, self-propelled, and rail equipment. The Agency believes that compliance with the proposed standards would reduce the number of fatal mining accidents involving large mobile and self-propelled equipment. MSHA's fatality statistics reveal that for the years 1980 throught 1983, 154 of the 300 fatalities that occurred in the metal and nonmetal mining industry were attributable to powered haulage and machinery accidents. Non-fatal injuries for the same time period reflect that of the 47,000 injuries reported to MSHA, 10,000 involved powered haulage and machinery accidents. MSHA believes that this proposed rule will have a measurable effect in reducing mining injuries and fatalities associated with powered haulage accidents. For example, the proposed requirement for seat belts and the provision for stand-off tire inflation devices will have a significant effect in reducing the likelihood of serious injury. MSHA further believes that the clarifications in the proposal should result in a better understanding of the hazards involved and the performance required to address those hazards, thereby having a positive impact on injuries and fatalities. A decline in the number of mining injuries would reduce medical, disability and

insurance payments, as well as costs associated with lost productivity.

V. Paperwork Reduction Act

The retention provision of the existing recordkeeping requirement in existing standard 55/56/57.9-1 would be modified in the proposed rule to require that records of equipment defects affecting the safety of self-propelled equipment be retained from the date they are recorded until the defects are corrected. The recordkeeping burden itself has not been modified. Comments on the proposed paperwork provision in standard 56/57.9200 should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, 726 Jackson Place, NW., Washington, D.C. 20746, Attention: Desk Officer for MSHA.

VI. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Loading, hauling, and dumping, and Travelways.

Dated: December 10, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

It is proposed to redesignate certain standards in Parts 55 and 56, Chapter I, Title 30 of the Code of Federal Regulations into Subpart H of Part 56 and to revise the redesignated standards.

1. It is proposed to remove the existing definition of "trip light" in §§ 55.2 and 56.2.

2. In §§ 55.9 and 56.9, it is proposed to remove existing standards 55.9-19, 55.9-42, 55.9-53, 56.9-19, 56.9-42, and 56.9-53.

3. In §§ 55.11 and 56.11, it is proposed to add new standards 55.11-8 and 56.11-8; the identical text to read as follows:

——— 11.8. Where restricted clearance creates a hazard to persons, the restricted area shall be conspicuously marked.

4. In §§ 55.14 and 56.14, it is proposed to redesignate standards 55.14-13 and 56.14-13 as § 56.9209, and redesignate standards 55.14-30 and 56.14-30 as § 56.9110. The text of these standards appears in new Subpart H below.

5. It is proposed to redesignate §§ 55.1 and 56.1 as § 56.1 in Subpart A of Part 56 and to revise the section to read as set forth below.

6. It is proposed to add a new § 56.9000 and to redesignate §§ 55.9 and 56.9 as Subpart H of Part 56 and to revise the sections to read as set forth below:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

Sec.

Authority: Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (30 U.S.C. 811).

Subpart A—General

§ 56.1 Purpose and scope.

This Part 56 sets forth mandatory safety and health standards for each surface metal or nonmental mine subject to the Federal Mine Safety and Health Act of 1977. The purpose of these standards is the protection of life, promotion of health and safety, and ther prevention of accidents.

Subpart H—Loading, Hauling, and Dumping

§ 56.9000 Definitions.

The following definitions apply in this subpart:

Berm. A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

Mantrip. A trip having the primary purpose of transporting persons to and from a work area.

Mobile Equipment. Equipment capable of moving or being moved readily.

Self-propelled Equipment. Equipment capable of moving itself.

Mobile Equipment

§ 56.9100 Safety defects.

(a) Defects in mobile equipment that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(b) When a defect makes continued operations of mobile equipment hazardous to persons, the equipment shall be taken out of service. A tag or other effective method of marking the

defective equipment shall be used to prohibit further operation until the defect is corrected.

§ 56.9101 Traffic control.

(a) To control hazards associated with the movement of mobile equipment, rules governing speed, right-of-way, and direction of movement shall be established and posted at each mine.

(b) Visible signs or signals that provide limiting or warning information shall be placed at appropriate locations on roadways, and shall be uniform in size and shape for each purpose.

§ 56.9120 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets;

(b) In beds of mobile equipment or railcars unless seated and provisions are made for secure travel;

(c) On top of loaded mobile equipment;

(d) Outside equipment operators' stations and outside beds of mobile equipment except when necessary for maintenance, testing, or training purposes, if provisions are made for secure travel. This requirement does not apply to trains;

(e) Between cars of trains, on the leading end of trains, the leading end of a single railcar, or in other locations on trains and locomotives that expose persons to hazards from train movement;

(f) In mobile equipment with unloading devices unless means are provided to prevent accidental starting of the unloading devices;

(g) To and from work areas in overcrowed mobile equipment; or

(h) In mobile equipment with tools, materials, and equipment unless the items are secured.

§ 56.9103 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen who are required to get on and off slowly moving trains in the performance of their work duties.

§ 56.9104 Loading, hauling, and unloading of equipment or supplies.

Equipment or supplies shall be loaded, secured during transport, and unloaded to prevent falling or shifting.

§ 56.9105 Loading and hauling large rocks.

Rocks shall be broken before loading if their size could endanger persons or affect the stability of mobile equipment.

§ 56.9106 Minimizing spillage.

Mobile equipment used for hauling of mined material shall be loaded to minimize spillage where a hazard to persons would be created.

§ 56.9107 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of meeting the loads to which it could be subjected shall also be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 56.9108 Securing movable parts.

(a) When moving between work places, booms, forks, buckets, beds, and similar movable parts on mobile equipment shall be secured in a safe travel position.

(b) When mobile equipment is unattended or not in use, dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground.

§ 56.9109 Parking procedure for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, mobile equipment with wheels or tracks shall be either chocked or turned into a bank or rib.

§ 56.9110 Blocking equipment in a raised position.

(a) Persons shall not work on, under, or from mobile equipment or a component of that equipment when the equipment or the component is in a raised position until the raised portion has been blocked or mechanically secured to prevent accidental lowering, and the mobile equipment has been blocked to prevent rolling.

(b) Equipment which is specifically designed as an elevated mobile work platform need not have the raised component blocked or mechanically secured during use as long as the raised component is equipped with load-locking devices. However, during repair or maintenance on such equipment, blocking or mechanical securing of the raised component is required.

§ 56.9111 Tire repair.

(a) Tires shall be deflated before repairs are started. When repair is necessary on either tire of a dual wheel, both tires shall be deflated before either is removed from the equipment.

(b) A wheel cage, restraining device, or stand-off inflation device, shall be used to prevent wheel locking rims from creating a hazard to persons during tire inflation.

§ 56.9112 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in vehicles.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection.

(c) Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area. The restricted area shall also be conspicuously marked.

Self-Propelled Equipment

§ 56.9200 Inspection prior to use; recording of defects.

(a) Self-propelled equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Defects affecting safety shall be reported to and recorded by the mine operator. Defects affecting safety which are discovered during operation of the equipment shall also be reported to and recorded by the mine operator.

(b) The records shall be kept at the mine or nearest mine office from the date the defects are recorded until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 56.9201 Operator's stations.

(a) If windows are provided on operators' stations of self-propelled equipment, the windows shall be made of safety glass or equivalent. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure operating visibility or may injure the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if removal would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled equipment shall be free of materials that may create a hazard to persons by impairing the safe operation of the equipment.

(d) The operators' station of self-propelled equipment shall not be

equipped or modified in a manner that obscures operating visibility.

§ 56.9202 Brakes.

(a) *Minimum requirements.* (1) Self-propelled equipment shall be equipped with a service brake system capable of stopping and holding the fully-loaded equipment on the maximum grade it travels. This standard does not apply to rail equipment.

(2) If equipped on self-propelled equipment, parking brakes shall be capable of holding the fully-loaded equipment on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when there is cause to believe that the service brake system does not function as required;

(2) The performance of the service brakes shall be evaluated according to Tables 1 and 2;

(3) The tests shall be conducted on equipment capable of traveling at least 10 miles per hour, and test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request four additional test runs with two runs to be conducted in each direction. The equipment shall not exceed the maximum stopping distance of at least three of the additional tests for the performance of the service brakes to be considered acceptable.

(4) Service brake tests shall be conducted under the direction of an MSHA inspector as follows:

(i) The equipment tested shall be fully-loaded;

(ii) The approach shall be of sufficient length and uniformity of grade so that a stable rate of speed can be maintained until application of the brakes. The ground shall be generally dry, level, and packed in the braking portion of the test course.

(iii) Auxiliary retarders shall not be used in the tests unless the retarder is simultaneously actuated by application of the service brake control.

(iv) The tests shall be conducted with the transmission in the gear appropriate to the speed the equipment is traveling.

(v) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopping position.

(5) Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake test will not be conducted. In such cases, MSHA will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

TABLE 1 [1]

Gross vehicle weight (pounds)	Machine Speed (mph)										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance (Feet)										
0 to 36,000	34	38	43	48	53	59	64	70	76	83	89
36,000 to 70,000	41	46	52	58	62	70	76	83	90	97	104
70,000 to 140,000	48	54	61	67	74	81	88	95	103	111	119
140,000 to 250,000	56	62	69	77	84	92	100	108	116	125	133
250,000 to 400,000	59	66	74	81	89	97	105	114	123	132	141
Over 400,000	63	71	78	86	94	103	111	120	129	139	148

[1] Stopping distances are computed using a constant deceleration of 9.66 FPS [2] and system response times of .5, 1, 1.5, 2, 2.25, and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2

[The speed of a vehicle can be determined by clocking it through a 100-foot measured course at constant velocity using Table 2. When the service brakes are applied at the end of the course, stopping distance can be measured and compared to Table 1.]

	Miles Per Hour										
	10	11	12	13	14	15	16	17	18	19	20
Seconds required to travel 100 feet	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

§ 56.9203 Berms.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists on one or both sides which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) The berms or guards shall be at least mid-axle height of the largest self-propelled equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) This standard is not applicable to rail beds.

§ 56.9204 Dust control.

Where hazards to persons may be created as a result of impaired visibility, dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads.

§ 56.9205 Operating speeds and control of equipment.

Operators of self-propelled equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 56.9206 Notification to the equipment operator.

Persons shall notify the equipment operator before getting on or off the equipment when an operator of self-propelled equipment is present.

§ 56.9207 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This requirement is not applicable when the equipment is specifically

designed to protect the equipment operator from falling objects.

§ 56.9208 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 56.9209 Falling objects protective structures (FOPS).

(a) Where falling objects may create a hazard to the equipment operator, fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures (FOPS).

(b) FOPS for front-end loaders and bulldozers shall meet the specifications of the Society of Automotive Engineers (SAE) publication J 231 (January 1981), which is incorporated by reference.

(c) FOPS for fork-lift trucks shall meet the specifications of American National Standards Institute (ANSI) standard B 56.1, Section 420—1975, published by the American Society of Mechanical Engineers, which is incorporated by reference.

(d) FOPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The FOPS model number; and

(3) The make and model number of the equipment for which the FOPS is designed.

(e) Front-end loaders, bulldozers and fork-lift trucks equipped with substantially constructed FOPS prior to [insert the effective date of the rule] are considered to be in compliance with this standard.

(f) Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 56.9230 Roll-over protective structures (ROPS) and seat belts.

(a) *Scope.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *Exclusions.* This standard does not apply to—

(1) Self-propelled equipment manufactured prior to July 1, 1969; or

(2) Over-the-road type tractors that pull trailers or vans on highways; or

(3) Equipment that is only operated by remote control.

(c) *Manufacturing performance requirements for seat belts.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of SAE J 386, "Seat Belts for Construction Machines," which is incorporated by reference.

(d) *Manufacturing performance requirements for ROPS.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of the following SAE publications, as applicable, which are incorporated by reference:

(1) SAE J 1040c, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines," or

(2) SAE J 1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors."

(e) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(f) *ROPS installation.* ROPS are to be installed on the equipment in accordance with the recommendations of the ROPS manufacturer. If the installation includes bolts and nuts, the bolts and nuts used to attach the ROPS to the equipment frame and to connect structural parts of the ROPS shall be SAE Grade 5 or 8 (SAE J 429, JAN80, "Mechanical and Material Requirements for Externally Threaded Fasteners," and SAE J 995, JUN79, "Mechnical and Material Requirements for Steel Nuts").

(g) *Requirements for ROPS manufactured prior to the effective date of this rule.* Self-propelled equipment manufactured prior to the effective date of this rule, and equipped with ROPS and seat belts that meet the installations, performance, and labeling requirements of 30 CFR 55.9–88, 56.9–88, and 57.9–88 (1983) are considered in compliance with paragraphs (c), (d), (e), and (f) of this section.

(h) *Maintenance and use.* (1) ROPS shall be maintained in a condition that meets the manufacturing performace requirements of this section.

(2) If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the requirements of this section before it is returned to service.

(3) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the requirements of this section.

(i) *Seat belts.* (1) Seat belts shall be worn by the equipment operator.

(2) Seat belts shall be kept free from grease, oil, and other deteriorating agents, maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 56.9231 Horns and back-up alarms on surface equipment.

(a) Self-propelled equipment shall be provided with a manually-operated horn or other audible warning device, and

(b) When the operator has an obstructed view to the rear, the equipment shall have either:

(1) An automatic reverse-actuated signal alarm that is audible above the surrounding noise level; or

(2) An observer to signal when it is safe to back up.

(c) An automatic reverse-actuated strobe light may be used at night as a substitute for an audible reverse alarm.

(d) This standard is not applicable to rail equipment.

Rail Equipment

§ 56.9300 Brakes.

Braking systems on railroad cars shall be maintained in functional condition.

§ 56.9301 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 56.9302 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 56.9303 Protection against moving or runaway equipment.

Stopblocks, bumper blocks, derail devices, track skates, or other equivalent devices, shall be in stalled wherever necessary to protect persons from moving or runaway railroad equipment.

§ 56.9304 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of meeting the loads to which it could be subjected.

§ 56.9305 Movement of independently operating equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 56.9306 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

§ 56.9307 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 56.9308 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, if present, is notified and the notice acknowledged.

§ 56.9309 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, then moved at the minimum tram speed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 56.9310 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 56.9311 Design, installation, and maintenance of trackage.

Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the mine operator shall be designed, installed, and maintained to provide safe operation consistent with speed and type of haulage.

§ 56.9312 Train warnings.

A warning that is audible above the surrounding nose level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 56.9313 Railroad crossings.

Permanent railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

§ 56.9330 Clearance for surface equipment.

At least 30 inches of continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible. Places where it is not possible to provide a 30-inch clearance shall be marked conspicuously.

Dumping Locations and Facilities

§ 56.9400 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the equipment using the facilities.

§ 56.9401 Anchoring stationary sizing devices.

Grizzlies, grates, and other stationary sizing devices shall be securely anchored.

§ 56.9402 Restraining devices.

Berms, bumper blocks, safety hooks, or similar restraining devices shall be provided at dumping locations to prevent overtravel and overturning.

§ 56.9403 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall also use signal lights to direct trucks where visibility is limited.

(c) When the truck operator cannot clearly recognize the spotter's signals, the truck shall be brought to a stop.

§ 56.9404 Unstable ground.

Where there is evidence that the ground at a dumping location may fail to support the weight of mobile equipment, loads shall be dumped a safe distance from the edge of the unstable area of the bank.

§ 56.9405 Trimming of stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

Chutes

§ 56.9500 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 56.9501 Chute hazards.

(a) Prior to chute-pulling, persons who may be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall use the proper tools to bar down material and shall locate themselves away from the hazard of falling material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be guarded or all persons shall be isolated from the hazard of flying rocks or material.

§ 56.9502 Working around drawholes.

Unless platforms or safety lines are used, persons shall not position themselves over draw holes if there is danger that broken rock or material may be withdrawn or bridged.

Slushers

§ 56.9600 Backlash guards and securing.

(a) Slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

Safety Devices and Procedures

§ 56.9700 Air valves for pneumatic equipment.

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment. The valve shall be closed except when the equipment is being operated.

§ 56.9701 Warnings prior to starting or moving equipment.

Before starting or moving equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons in the vicinity.

It is proposed to redesignate certain standards in Part 57, Chapter I, Title 30

of the Code of Federal Regulations into Subpart H of Part 57 and to revise the redesignated standards.

1. It is proposed to remove the existing definition of "trip light" in § 57.2.

2. In § 57.9, it is proposed to remove existing standards 57.9–19, 57.9–42, 57.9–53, and 57.9–114.

3. In § 57.11, it is proposed to add a new standard 57.11–8 to read as follows:

57.11–8. Where restricted clearance creates a hazard to persons, the restricted area shall be conspicuously marked.

4. In § 57.14, it is proposed to redesignate standard 57.14–13 as § 57.9209, and redesignate standard 57.14–30 as § 57.9110. The text of these standards appears in new Subpart H below.

5. It is proposed to redesignate § 57.1 as Subpart A of Part 57 and to revise the section to read as set forth below.

6. It is proposed to add a new § 57.9000 and to redesignate § 57.9 as Subpart H of new Part 57 and to revise the sections to read as set forth below:

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

Sec.

Authority: Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811).

Subpart A—General

§ 57.1 Purpose and scope.

This Part 57 sets forth mandatory safety and health standards for each underground metal or nonmetal mine subject to the Federal Mine Safety and Health Act of 1977. The purpose of these standards is the protection of life, promotion of health and safety, and the prevention of accidents.

Subpart H—Loading, Hauling, and Dumping

§ 57.9000 Definitions.

The following definitions apply in this subpart:

Berm. A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

Mantrip. A trip having the primary purpose of transporting persons to and from a work area.

Mobile Equipment. Equipment capable of moving or being moved readily.

Self-propelled Equipment. Equipment capable of moving itself.

Mobile Equipment

§ 57.9100 Safety defects.

(a) Defects in mobile equipment that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(b) When a defect makes continued operation of mobile equipment hazardous to persons, the equipment shall be taken out of service. A tag or other effective method of marking the defective equipment shall be used to prohibit further operation until the defect is corrected.

§ 57.9101 Traffic control.

(a) To control hazards associated with the movement of mobile equipment, rules governing speed, right-of-way, and direction of movement shall be established and posted at each mine.

(b) Visible signs or signals that provide limiting or warning information shall be placed at appropriate locations on roadways, and shall be uniform in size and shape for each purpose.

§ 57.9102 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets;

(b) In beds of mobile equipment or railcars unless seated and provisions are made for secure travel;

(c) On top of loaded mobile equipment;

(d) Outside equipment operator's stations and outside beds of mobile equipment except when necessary for maintenance, testing, or training purposes, if provisions are made for secure travel. This requirement does not apply to trains;

(e) Between cars of trains, on the leading end of trains, the leading end of a single railcar, or in other locations on trains and locomotives that expose persons to hazards from train movement;

(f) In mobile equipment with unloading devices unless means are provided to prevent accidental starting of the unloading devices;

(g) To and from work areas in overcrowded mobile equipment; or

(h) In mobile equipment with tools, materials, and equipment unless the items are secured.

§ 57.9103 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen who are required to get on and off slowly moving trains in the performance of their work duties.

§ 57.9104 Loading, hauling, and unloading of equipment or supplies.

Equipment or supplies shall be loaded, secured during transport, and unloaded to prevent falling or shifting.

§ 57.9105 Loading and hauling large rocks.

Rocks shall be broken before loading if their size could endanger persons or affect the stability of mobile equipment.

§ 57.9106 Minimizing spillage.

Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons would be created.

§ 57.9107 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of meeting the loads to which it could be subjected shall also be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 57.9108 Securing movable parts.

(a) When moving between work places, booms, forks, buckets, beds, and similar movable parts on mobile equipment shall be secured in a safe travel position.

(b) When mobile equipment is unattended or not in use, dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground.

§ 57.9109 Parking procedure for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, mobile equipment with wheels or tracks shall be either chocked or turned into a bank or rib.

§ 57.9110 Blocking equipment in a raised position.

(a) Persons shall not work on, under, or from mobile equipment or a component of that equipment when the equipment or the component is in a raised position until the raised portion has been blocked or mechanically secured to prevent accidental lowering, and the mobile equipment has been blocked to prevent rolling.

(b) Equipment which is specifically designed as an elevated mobile work platform need not have the raised component blocked or mechanically secured during use as long as the raised component is equipped with load-locking devices. However, during repair or maintenance on such equipment, blocking or mechanical securing of the raised component is required.

§ 57.9111 Tire repair.

(a) Tires shall be deflated before repairs are started. When repair is necessary on either tire of a dual wheel, both tires shall be deflated before either is removed from the equipment.

(b) A wheel cage, restraining device, or stand-off inflation device, shall be used to prevent wheel locking rims from creating a hazard to persons during tire inflation.

§ 57.9112 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in vehicles.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection.

(c) Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area. The restricted area shall also be conspicuously marked.

§ 57.9160 Supplies, materials, and tools on mantrips underground.

Supplies, materials, and tools other than small hand tools shall not be transported with persons in mantrips. Mantrips shall be operated independently of ore or supply trips.

Self-Propelled Equipment

§ 57.9200 Inspection prior to use; recording of defects.

(a) Self-propelled equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Defects affecting safety shall be reported to and recorded by the mine operator. Defects affecting safety which are discovered during operation of the equipment shall also be reported to and recorded by the mine operator.

(b) The records shall be kept at the mine or nearest mine office from the date the defects are recorded until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 57.9201 Operators' stations.

(a) If windows are provided on operators' stations of self-propelled equipment, the windows shall be made of safety glass or equivalent. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure operating visibility or may injure the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if removal would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled equipment shall be free of materials that may create a hazard to persons by impairing the safe operation of the equipment.

(d) The operators' stations of self-propelled equipment shall not be equipped or modified in a manner that obscures operating visibility.

§ 57.9202 Brakes

(a) *Minimum requirements.* (1) Self-propelled equipment shall be equipped with a service brake system capable of stopping and holding the fully-loaded equipment on the maximum grade it travels. This standard does not apply to rail equipment.

(2) If equipped on self-propelled equipment, parking brakes shall be capable of holding the fully-loaded

equipment on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when there is cause to believe that the service brake system does not function as required.

(2) The performance of the service brakes shall be evaluated according to Tables 1 and 2;

(3) The tests shall be conducted on equipment capable of traveling at least 10 miles per hour, and test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request four additional test runs with two runs to be conducted in each direction. The equipment shall not exceed the maximum stopping distance on at least three of the additional tests for the performance of the service brakes to be considered acceptable.

(4) Service brake tests shall be conducted under the direction of an MSHA inspector as follows:

(i) The equipment tested shall be fully-loaded;

(ii) The approach shall be of sufficient length and uniformity of grade so that a stable rate of speed can be maintained until application of the brakes. The ground shall be generally dry, level and packed in the braking portion of the test course.

(iii) Auxiliary retarders shall not be used in the tests unless the retarder is simultaneously actuated by application of the service brake control.

(iv) The tests shall be conducted with the transmission in the gear appropriate to the speed the equipment is traveling.

(v) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopping position.

(5) Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, MSHA will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

TABLE 1 [1]

Gross vehicle weight (pounds)	Machine Speed (mph)										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance + (Feet)										
0 to 36,000	34	38	43	48	53	59	64	70	76	83	89
63,000 to 70,000	41	46	52	58	62	70	76	83	90	97	104
70,000 to 140,000	48	54	61	67	74	81	88	95	103	111	119
140,000 to 250,000	56	62	69	77	84	92	100	108	116	125	133
250,000 to 400,000	59	66	74	81	89	97	105	114	123	132	141
Over 400,000	63	71	78	86	94	103	111	120	129	139	148

[1] Stopping distances are computed using a constant deceleration of 9.66 FPS [2] and system response times of .5, 1, 1.5, 2, 2.25, and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2

[The speed of a vehicle can be determined by clocking it through a 100-foot measured course at constant velocity using Table 2. When the service brakes are applied at the end of the course, stopping distance can be measured and compared to Table 1]

	Miles per hour										
	10	11	12	13	14	15	16	17	18	19	20
Seconds required to travel 100 feet	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

§ 57.9203 Berms.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists on one or both sides which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) The berms or guards shall be at least mid-axle height of the largest self-propelled equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) This standard is not applicable to railbeds.

§ 57.9204 Dust control.

Where hazards to persons may be created as a result of impaired visibility, dust shall be controlled at muck piles, material transfer points, and crushers, and on haulage roads.

§ 57.9205 Operating speeds and control of equipment.

Operators of self-propelled equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 57.9206 Notification to the equipment operator.

Persons shall notify the equipment operator before getting on or off the equipment when an operator of self-propelled equipment is present.

§ 57.9207 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This requirement is not applicable when the equipment is specifically designed to protect the equipment operator from falling objects.

§ 57.9208 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 57.9209 Falling object protective structures (FOPS).

(a) Where falling objects may create a hazard to the equipment operator, fork-

lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures (FOPS).

(b) FOPS for front-end loaders and bulldozers shall meet the specifications of the Society of Automotive Engineers (SAE) publication J 231 (January 1981), which is incorporated by reference.

(c) FOPS for fork-lift trucks shall meet the specifications of American National Standards Institute (ANSI) standard B 56.1, Section 420—1975, published by the American Society of Mechanical Engineers, which is in corporated by reference.

(d) FOPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The FOPS model number; and

(3) The make and model number of the equipment for which the FOPS is designed.

(e) Front-end loaders, bulldozers and fork-lift trucks equipped with substantially constructed FOPS prior to [insert the effective date of the rule] are considered to be in compliance with this standard.

(f) Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmental Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 57.9230 Roll-over protective structures (ROPS) and seat belts.

(a) *Scope.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *Exclusions.* This standard does not apply to—

(1) Self-propelled equipment manufactured prior to July 1, 1959; or

(2) Over-the-road type tractors that pull trailers or vans on highways; or

(3) Equipment that is only operated by remote control.

(c) *Manufacturing performance requirements for seat belts.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of SAE J 386, "Seat Belts for Construction Machines," which is incorporated by reference.

(d) *Manufacturing performance requirements for ROPS.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of the following SAE publications, as applicable, which are incorporated by reference:

(1) SAE J 1040c, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines," or

(2) SAE J 1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors."

(e) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(f) *ROPS installation.* ROPS are to be installed on the equipment in accordance with the recommendations of the ROPS manufacturer. If the installation includes bolts and nuts, the bolts and nuts used to attach the ROPS to the equipment frame and to connect structural parts of the ROPS shall be SAE Grade 5 or 8 (SAE J 429, JAN80, "Mechanical and Material Requirements for Externally Threaded Fasteners," and SAE J 995, JUN79, "Mechanical and Material Requirements for Steel Nuts").

(g) *Requirements for ROPS manufactured prior to the effective date of this rule.* Self-propelled equipment manufactured prior to the effective date of this rule, and equipped with ROPS and seat belts that meet the installation, performance, and labeling requirements of 30 CFR 55.9–88, 56.9–88, and 57.9–88 (1983) are considered in compliance with paragraphs (c), (d), (e), and (f) of this section.

(h) *Maintenance and use.* (1) ROPS shall be maintained in a condition that meets the manufacturing performance requirements of this section.

(2) If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the requirements of this section before it is returned to service.

(3) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the requirements of this section.

(i) *Seat belts.* (1) Seat belts shall be worn by the equipment operator.

(2) Seat belts shall be kept free from grease, oil, and other deteriorating agents, maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 57.9231 Horns and back-up alarms on surface equipment.

(a) Self-propelled equipment shall be provided with a manually-operated horn or other audible warning device, and

(b) When the operator has an obstructed view to the rear, the equipment shall have either:

(1) An automatic reverse-actuated signal alarm that is audible above the surrounding noise level; or

(2) An observer to signal when it is safe to back up.

(c) An automatic reverse-actuated stroble light may be used at night as a substitute for an audible reverse alarm.

(d) This standard is not applicable to rail equipment.

Rail Equipment

§ 57.9300 Brakes.

Braking systems on railroad cars shall be maintained in functional condition.

§ 57.9301 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 57.9302 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 57.9303 Protection against moving or runaway equipment.

Stockblocks, bumper blocks, derail devices, track skates, or other equivalent devices, shall be installed wherever necessary to protect persons from moving or runaway railroad equipment.

§ 57.9304 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall

be used which is capable of meeting the loads to which it could be subjected.

§ 57.9305 Movement of independently operating equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 57.9306 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

§ 57.9307 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 57.9308 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, if present, is notified and the notice acknowledged.

§ 57.9309 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, then moved at the minimum tram speed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 57.9310 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 57.9311 Design, installation, and maintenance of trackage.

Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the mine operator shall be designed, installed, and maintained to provide safe operation consistent with speed and type of haulage.

§ 57.9312 Train warnings.

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 57.9313 Railroad crossings.

Permanent railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall be also be planked or filled between the rails.

§ 57.9330 Clearance for surface equipment.

At least 30 inches of continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible. Places where it is not possible to provide a 30-inch clearance shall be marked conspicuously.

§ 57.9360 Transporting tools and materials on locomotives underground.

Tools or materials except for properly located and secured rerailing devices shall not be carried on top of locomotives.

§ 57.9361 Mantrip trolley wire hazards underground.

Mantrips shall be covered if there is danger of persons contacting the trolley wire.

§ 57.9362 Train movement during shift changes underground.

During shift changes, the movement of trains carrying rock or material shall be limited to areas where the trains do not present a hazard to persons changing shifts.

§ 57.9363 Shelter holes.

(a) Shelter holes shall be—

(1) Provided at intervals adequate to assure the safety of persons along underground haulageways where continuous clearance of at least 30 inches from the farthest projection of moving equipment on at least one side of the haulageway cannot be maintained; and

(2) At least four feet wide, marked conspicuously, and provide a minimum 40-inch clearance from the farthest projection of moving equipment.

(b) Shelter holes shall not be used for storage.

§ 57.9364 Makeshift couplings.

Couplings used on underground rail equipment must be designed for that equipment. However, if hazards to persons are not created, makeshift couplings may be used to move disabled rail equipment for repairs.

§ 57.9365 Trip lights.

On underground rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

Dumping Locations and Facilities

§ 57.9400 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the equipment using the facilities.

§ 57.9401 Anchoring Stationary sizing devices.

Grizzlies, grates, and other stationary sizing devices shall be securely anchored.

§ 57.9402 Restraining devices.

Berms, bumper blocks, safety hooks, or similar restraining devices shall be provided at dumping locations to prevent overtravel and overturning.

§ 57.9403 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall also use signal lights to direct trucks where visibility is limited.

(c) When the truck operator cannot clearly recognize the spotter's signals, the truck shall be brought to a stop.

§ 57.9404 Unstable ground.

Where there is evidence that the ground at a dumping location may fail to support the weight of mobile equipment, loads shall be dumped a safe distance from the edge of the unstable area of the bank.

§ 57.9405 Trimming of stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

Chutes

§ 57.9500 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 57.9501 Chute hazards.

(a) Prior to chute-pulling, persons who may be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall use the proper tools to bar down material and shall locate themselves away from the hazard of falling material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be guarded or all persons shall be isolated from the hazard of flying rocks or material.

§ 57.9502 Working around draw holes.

Unless platforms or safety lines are used, person shall not position themselves over draw holes if there is danger that broken rock or material may be withdrawn or bridged.

§ 57.9560 Draw holes.

To prevent hazards to persons underground, collars of open draw holes shall be free of muck or materials except during transfer of the muck or material through the draw hole.

Slushers

§ 57.9600 Backlash guards and securing.

(a) Slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

§ 57.9660 Protected of signalmen underground.

Signalmen used during slushing operations shall be located away from possible contact with cables, sheaves, and slusher buckets.

Safety Devices and Procedures

§ 57.9700 Air valves for pneumatic equipment.

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment. The valve shall be closed except when the equipment is being operated.

§ 57.9701 Warnings prior to starting or moving equipment.

Before starting or moving equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons in the vicinity.

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Tuesday
December 18, 1984

Part III

Department of Health and Human Services

Office of Human Development Services

Head Start Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Head Start Program; Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice and request for comments on the proposed announcement of financial assistance to establish or expand Head Start projects.

SUMMARY: The Administration for Children, Youth and Families (ACYF) requests comments from the public on the proposed program announcement to establish new Head Start projects or to expand enrollment in current Head Start projects. Applications will be solicited when the announcement is published in final form.

DATE: Comments on this announcement must be received by January 17, 1985.

SUPPLEMENTARY INFORMATION:

.Attached is a proposed announcement of our intent to expand enrollment in the Head Start program.

We are requesting comments on this proposed announcement as required by Section 644(d) of the Head Start Act [42 U.S.C. 9839(d)], which states ". . . all rules, regulations, guidelines, instructions, and application forms shall be published in the **Federal Register** and shall be sent to each grantee with the notification that each grantee has the right to submit comments pertaining thereto prior to the final adoption thereof." The following proposed announcement is published here and will be mailed to grantees to comply with that requirement of the statute.

ADDRESS: In order to be considered, comments must be addressed to: Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

(Catalog of Federal Domestic Assistance Program Number 13.600 Project Head Start)

Dated: November 29, 1984.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: December 12, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Proposed Head Start Program Expansion Announcement

A. Scope of This Program Announcement

This announcement solicits applications from local public and private non-profit organizations that wish to compete for $37,800,000 in grants that are available in Fiscal Year 1985 to establish new Head Start programs or to increase funding and enrollment for agencies that already operate Head Start programs. Funds totalling $33,800,000 will be distributed on the basis of a State allotment formula to applicants proposing the development or expansion of conventional Head Start program options including standard, variation in center attendance, double session and home-based programs. The remaining $4,000,000 will not be distributed on a formula basis, but will be awarded through a national competition to applicants which propose innovative methods for the delivery of Head Start services.

The goals of the expansion effort are:

- To provide Head Start services to as many additional children as possible. At least 18,000 additional children are to be served nationally.
- To serve children and families in areas of high need in programs that provide high quality, comprehensive child development services.
- To demonstrate innovative approaches to addressing the needs of Head Start children and families.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves 442,100 children through a network of more than 1,280 grantees.

While Head Start is targeted primarily on children whose families have incomes below the poverty line or are eligible for public assistance, ACYF policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. Head Start also requires that a minimum of 10 percent of enrollment opportunities be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

C. Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C 9831 et seq.

The relevant regulations are:

- 45 CFR Part 1301, Head Start Grant Administration.
- 45 CFR Part 1302, Policies and Procedures for Selection.
- 45 CFR Part 1303, Procedures for Appeal for Head Start Agencies.
- 45 CFR Part 1304, Performance Standards.
- 45 CFR Part 1305, Eligibility.
- 45 CFR Part 74, Grants Administration.

D. Eligible Applicants

Any local public or private non-profit agency or organization within a community, including an existing Head Start grantee, is eligible to apply for funding to establish a new Head Start project or, in the case of existing Head Start grantees, to expand a current project. Applicants may propose serving children in communities where no Head Start project exists or they may propose serving additional children in communities where some children are already being served by Head Start but a need exists for additional children to be served. Except for compelling reasons, to be explained by the applicant, Head Start does not expect to fund new grantees for an enrollment level of less than 60 children.

Eligibility for funding to provide Head Start services to children living on Federally recognized Indian reservations or in Alaskan Native villages is restricted to applicants that are governing bodies of an Indian tribe or Alaskan Native Village, or which are the designated representatives of these bodies.

To be eligible for funding, all applicants must meet the requirements of 45 CFR 1302.1–1302.2 which require evidence of an applicant's legal status and financial viability. Copies of relevant regulations will be included in

the application kit discussed in Section N of this announcement.

E. Grantee Sharee of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal Government. The non-Federal share may be in cash or in-kind, fairly evaluated, including facilities, equipment, or volunteer services.

F. Criteria for Competitive Review of Conventional Projects

Applicants proposing to be funded from the $33.8 million available for projects that provide comprehensive Head Start services through the standard model, variation in center attendance model, double session model or home-based model (as described in Appendix A to the Head Start Performance Standards—45 CFR 1304) will be reviewed and evaluated competitively against the following criteria:

The Need for Services (30 points). This criterion will measure the need for Head Start services in the community an applicant proposes to serve, compared to the need that exists in other communities in a State. It will help direct new Head Start resources to areas in a State that have a combination of the greatest numbers and the highest percentages of unserved children. This criterion will also measure the extent to which the applicant proposes to serve families and children who have the most serious need for Head Start services, such as the poorest families, or adolescent or single parents and their children.

To enable as many different children as possible to participate in Head Start, applicants should propose serving children for one year, unless multiple years of service are necessary to meet the special needs, of individual children. In such instances, applicants should justify the need for such services. Applicants should give priority to serving children for whom public school or other comprehensive developmental services are not available. For example, it is not expected that applicants would propose serving five-year-old children in communities were kindergarten is available for these children.

(a) Twenty points under this criterion will be based on a comparision of the need for Head Start services in different counties in a State. Using nationally consistent 1980 Census data, points will be assigned to each county based on its population of unserved children eligible for Head Start. The points assigned will consider both the absolute number of unserved childern in a county and the percentage of eligible children who are unserved in a county. Applicants will receive these points automatically, based on the county in which they propose to operate. As many as five additional points will be assigned to all counties in which there is currently no Head Start program. (Points for projects in more than one county will be prorated based on the number of children to be served in each county.)

This portion of the criterion will not be applied to Indian or migrant projects, or projects in the Virgin Islands and Outer Pacific Islands (i.e. Guam, American Samoa, the Trust Territories of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands). This will result in a maximum score for these projects, which compete only against similar projects (i.e. Indian projects against Indian projects), of 80 points.

(b) Ten points under this criterion will be determined by the extent to which the applicant proposes to target Head Start services on the towns, districts, or neighborhoods in a county (or other appropriate jurisdiction, such as a Federal Indian reservation) that have the greatest need for services, compared to other areas in a county. This also includes the extent to which the applicant proposes to serve families and childern who have the most serious need for Head Start services compared to other eligible families and children from the target area.

(2) Program Design (15 points). This criterion will assess how well the services to be provided by the proposed program meet the needs of the particular children, families and community the applicant proposes to serve. This includes the extent to which the proposed program is available and responsive to the needs of the community and group to be served. This would include elements such as establishing appropriate service hours and staffing patterns, selecting convenient locations, and providing appropriate transportation.

In proposing a program design, applicants must adhere to Head Start regulations concerning program options for the standard Head Start model, variations in center attendance, double sessions, and home-based models. (Appendix A to the Head Start Performance Standards—45 CFR Part 1304, options 1–4.) Applicants who propose to operate designs other than the standard, double session, variation in center attendance or home-based options are encouraged to apply for funding from the $4,000,000 reserved for innovative projects.

Presently, approximately 90% of the children is center-based Head Start programs are provided sevices for four or more days per week. It is expected that most projects funded through this announcement will also provide services four or more days per week. ACYF is establishing minimum periods of service for children served through this announcement to make sure that the contact between the program and the child is minimally sufficient to allow the time needed to provide the wide range of services that result in long-term benefits for Head Start enrollees. Applicants proposing to implement a standard Head Start model, double sessions or variation in center attendance option must provide a minimum of three and half hours of services for three days each week during a minimum of 34 weeks of operation or justify why these minimum are inappropriate for the population being served.

Programs implementing a home-based option must provide a minimum, of one 90 minute home visit each week and two socialization experiences, lasting at least three and a half hours, each month during a minimum of 34 weeks of operation or justify why these minimums are inappropriate for the population being served.

Applicants must explain the resources, both ACYF and non-ACYF, that will be available to carry out all facets of the program which has been proposed.

(3) Program Quality (20 points). This criterion will measure the extent to which the application shows a capacity and an intent to provide Head Start services which fully meet the Head Start Program Performance Standards (45 CFR Part 1304) and other Head Start regulations. This includes the provisions made for the direct participation of parents in the planning, conduct and administration of the program, provisions to adequately serve at least 10 percent handicapped children in a "mainstream" setting, the suitability and availability of facilities and equipment proposed to be utilized in carrying out the Head Start program, and provisions to develop and manage training and technical assistance activities which are adequate to meet the needs of the proposed program. (Costs of services to handicapped children should be included in applicants' proposed budgets.)

In addition to showing how they plan to meet these regulatory requirements, applicants must show that the levels of staffing they propose are conducive to sound child development. In developing

staffing patterns, applicants should consider the ages and special needs, such as handicapping conditions, of the children they propose to serve. ACYF will not fund applicants which propose to serve more than 20 childern per class.

Applicants must show budget support for the proposed level of program quality.

(4) *Experience and Capability (20 points).* This criterion will measure the qualifications and experience of the applicant agency and staff in planning, organizing, and providing comprehensive child development services as the community level. This would include: the applicant's potential, based on experience, for administering the program effectively and for exercising sound fiscal management; the extent of involvement of parents and other community members and organizations in the development and planning of the application; the degree of support evidenced from relevant community organizations, service providers and community members; the extent to which classroom teachers to be hired have received appropriate training or have experience in early childhood education; the extent to which staff will be hired whose ethnic or racial backgrounds are reflective of the communities being served, the opportunities to be provided for employment of residents from the service area, and career development and training opportunities for paraprofessional and other staff; and the adequacy of plans to begin providing new services in a timely manner.

(5) *Cost Efficiency (15 points).* This criterion will measure the cost of services in terms of ACYF Head Start funds to determine which applicants can operate most efficiently and thereby provide the most services to children. The points under this criterion will be based on the cost of proposed projects in terms of Federal Head Start dollars for the annual cost per child and the hourly cost per child. Points will be assigned using an automated data system by ranking the costs proposed by each applicant against those proposed by other applicants from the same State. Similarly, the costs of an Indian project will be compared to those of other Indian projects and a migrant project's costs compared to those of other migrant projects. Applicants that propose the lowest costs per child will receive the most points and those that propose the highest costs per child will receive the fewest points.

G. Innovative Projects

Four million dollars is available for applicants which propose innovative methods for the delivery of Head Start services. These projects are intended to serve additional children using program designs that are better suited to meet the needs of individual children and their families in an applicant's community than conventional Head Start designs would be. Innovative projects must conform to requirements in Appendix A of the Head Start Performance Standards concerning Locally Designed Options—45 CFR Part 1304. Innovative projects must adhere to the following guidelines:

(a) The proposed project must represent a more effective approach to meeting the needs of the local community than would be possible through the use of standard models, variation in center attendance, double sessions, or home base models. Such projects might include, for example, demonstrations of employment-based Head Start programs which would augment existing day care programs to provide or arrange for comprehensive services in cooperation with businesses and industries. This would enable Head Start eligible children to be served while their parents receive job training leading to subsequent employment.

(b) The proposed project must be consistent with good developmental practices.

(c) The proposed project must be consistent with Head Start Performance Standards and must ensure that all components of Head Start are effectively delivered, *except that if the proposed project is operated by a current grantee as an adjunct to a Head Start project which delivers comprehensive services,* the innovative design can represent a special thrust or limited effort such as:

- Demonstrations extending health services to additional children (i.e. siblings of Head Start enrollees or other preschool children of families who are income eligible). Examples of such projects could include extending comprehensive health care to low income families who are not eligible for Medicaid/Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) or other third party comprehensive health services or providing dental sealant to protect children's teeth from cavities or providing services in urban areas to homeless families.
- Demonstrations of hearing preservation and the prevention of speech handicaps. In communities where Otitis Media is prevalent, services could be developed to adequately screen and treat children with recurrent ear infections.
- Demonstrations by American Indian grantees which result in their becoming EPSDT providers for Head Start children and their siblings on a reservation.

H. Criteria for Competitive Review of Innovative Projects

Applications proposing to be funded as innovative projects will be reviewed and evaluated against the following criteria:

(1) *Need for Proposed Program (20 points).* This criterion will measure the need for the type of Head Start services that is proposed by the applicant. Applicants must indicate who the target population is, where it is located, and why that target population should be given preference over other eligible populations.

(2) *Innovative Program Design (25 points).* This criterion will assess how well the services to be provided by the proposed program meet the needs of the particular children, families and communtiy the applicant proposes to serve. This would include elements such as establishing appropriate service hours and staffing patterns, selecting convenient locations, and providing appropriate transportation.

In proposing a program design, applicants must adhere to Head Start regulations on locally designed options (Part 1304, Appendix A, number 5).

(3) *Beneficial Impact (25 points).* This criterion will measure if the services to be provided or the knowledge or methods to be developed can be expected to impact beneficially on the target population. In measuring beneficial impact, applicants will also be assessed on the degree to which provisions have been made for the direct participation of parents in the planning, conduct, and administration of the program and the suitability and availability of facilities and equipment proposed to be utilized in carrying out the Head Start program. Applicants proposing comprehensive Head Start programs (as opposed to adjunct services to a comprehensive program) must fully meet Head Start Program Performance Standards (45 CFR Part 1304), including the provison to adequately serve at least 10% handicapped children in a mainstream setting.

(4) *Experience and Capability (20 points).* This criterion will measure the qualifications and experience of the applicant agency and staff in planning, organizing, and providing comprehensive child development services at the community level. This would include: the applicant's potential, based on experience, for administering

the program effectively and for exercising sound fiscal management; the extent of involvement of parents and other community members and organizations in the development and planning of the application; the degree of support evidenced from relevant community organizations, service providers and community members; the extent to which classroom teachers to be hired have received appropriate training or have experience in early childhood education; the extent to which staff will be hired whose ethnic or racial backgrounds are reflective of the communities being served, the opportunities to be provided for employment of residents from the service area, and career development and training opportunities for paraprofessional and other staff; and the adequacy of plans to begin providing new services in a timely manner.

(5) *Resonableness of Proposed Cost (10 points).* This criterion will measure if the cost of the proposed project is commensurate with the anticipated outcomes of the project (i.e. the cost per unit of service is reasonable). The extent to which other organizations are contributing funds for the project will also be considered.

I. Available Funds

In Fiscal Year 1985 Head Start proposes that $37,800,000 be used to expand Head Start enrollment. Assuming that acceptable applications are received, ACYF expects to award all of these funds to successful applicants responding to this announcement.

The following distribution of $33,800,000 in expansion funds for conventional projects is an estimate based primarily on the allotment formula contained in Section 640 of the Head Start Act. The estimated amounts in clude the mandatory allotments required by the statute plus, in most cases, funds from the Secretary's reserve portion of the Head Start budget which were distributed by using the population factors contained in the statutory formula. Where necessary, funds from the Secretary's reserve were added to enable States to receive a minimum of $50,000 with the exception of Mississippi. Funds for the American Indian and migrant programs and programs in the Virgin Islands and the Outer Pacific Islands were computed by giving each of these areas a pro rata share of the expansion funds, based on their FY 1984 funding level as a percent of the total FY 1984 Head Start funding level. Assuming satisfactory programmatic and fiscal performance, ACYF expects to continue to fund successful applicants in future years.

Not included in the funds allotted to States and other jurisdictions is $4,000,000 in discretionary funds from the Secretary's reserve. This money will be used to fund projects that are particularly innovative (See Section G of this announcement) in their proposed approach to providing Head Start services and without regard to the State in which an applicant is proposing to provide services. ACYF expects to fund successful applicants for innovative projects on an annual basis for a period not to exceed two years, assuming satisfactory programmatic and fiscal performance.

The table below shows the amount of funds ACYF estimates will be allotted for expansion in each State, for Indian and migrant projects, and for the Virgin Islands and Outer Pacific Islands.

	Estimated funds for expansion in fiscal year 1985
Region I:	
Connecticut	$50,000
Maine	50,000
Massachusetts	50,000
New Hampshire	53,000
Rhode Island	74,000
Vermont	50,000
Region II:	
New Jersey	692,000
New York	3,437,000
Purerto Rico	2,074,000
Region III:	
Delaware	692,000
Dist. of Columbia	50,000
Maryland	374,000
Pennsylvania	1,320,000
Virginia	474,000
West Virginia	180,000
Region IV:	
Alabama	485,000
Florida	1,363,000
Georgia	970,000
Kentucky	50,000
Mississippi	0
North Carolina	50,000
South Carolina	539,000
Tennessee	531,000
Region V:	
Illinois	2,228,000
Indiana	552,000
Michigan	1,547,000
Minnesota	170,000
Ohio	1,877,000
Wisconsin	757,000
Region VI:	
Arkansas	314,000
Louisiana	797,000
New Mexico	207,000
Oklahoma	181,000
Texas	1,662,000
Region VII:	
Iowa	254,000
Kansas	214,000
Missouri	476,000
Nebraska	132,000
Region VIII:	
Colorado	222,000
Montana	73,000
North Dakota	82,000
South Dakota	82,000
Utah	169,000
Wyoming	50,000
Region IX:	
Arizona	490,000
California	4,752,000
Hawaii	164,000
Nevada	72,000
Region X:	
Alaska	50,000
Idaho	91,000
Oregon	189,000
Washington	65,000
Virgin Islands and outer Pacific Islands	122,000
Total, State funds	31,026,000
American Indian progarms and migrant progarms	2,574,000
To be allocated	200,000
Total for conventional projects	33,800,000
Innovative projects	4,000,000
Total Funds for Expansion	$37,800,000

J. The Application Process

1. *Submission of Application.* Agencies and organizations interested in applying for funds may request application kits from Robert Foster, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

In order to be considered for a Head Start grant, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families (See Appendix B for Supplemental Instructions).

The applications must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in the announcement and the instructions in the application kit.

An applicant may submit only one application for expansion funds for conventional projects for each of the three funding categories: (1) State funds, (2) American Indian funds, and (3) migrant funds. To compete for funds allocated to innovative programs, a separate applicaton must be sumitted. All applications must indicate the appropriate funding category.

One signed original and two copies of the grant application, including all attachments, are required. ACYF encourages the submission of an additional four copies to facilitate the review porcess. Applicants are encouraged to limit the length of their proposals. Completed applications must be sent to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201. The program announcement number (13.600 ———) Must be clearly identified on the application.

To help with the ACYF review process, we also request that you send one copy to the ACYF regional office official responsible for your State, or, if appropriate, to the Director of the American Indian or Migrant Programs Branch. The addresses of these officials are shown in Appendix A of this announcement.

2. *Executive Order 12372—Notification Process.* This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." State Processes or directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application, starting from the deadline date for application submission to HDS. Each State has established a State Single Point of Contact (SPOC) to fulfill the requirements of E.O. 12372. Applicants must submit required material to their SPOCs so HDS can obtain comments from the SPOCs as part of the award process. (Applications for programs to be administered directly by Federally recognized Indian tribes are exempt from the requirements of E.O. 12372.) Applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive specific instructions regarding the process. Required material should be sent to the SPOC as early as possible. SPOCs will submit their comments directly to Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013. HDS will notify the State of any application received which has no indication that the State Process has had an opportunity for review.

K. Priority for Funding

Section 641 of the Head Start Act requires that, in selecting applicants that are to receive expansion funding, priority be given in certain instances to Head Start grantees who were receiving Head Start funds on October 30, 1984, the date the Head Start Act was reauthorized. An applicant that is a current Head Start grantee would receive priority over a non-Head Start applicant in instances where both propose to serve the same community or geographic area and both score comparably in the competitive review (i.e., within 5 points of each other), unless ACYF makes a finding that the current Head Start grantee fails to meet Head Start program and fiscal requirements.

L. Selection of Successful Applicants

Applicants will be scored against the criteria explained above. The review will be conducted in Washington, D.C. Reviewers will be persons knowledgeable about Head Start and early childhood education and development, including parents of Head Start children (from States other than the one being reviewed), Federal staff, and other experts, such as university staff or staff of child development projects.

Once applications have been scored, they will compete with other applications from the State where services will be provided or, in the case of American Indian projects or migrant projects, against other American Indian or migrant projects. The number of grant awards within each State will depend on the State's allocation and on the number and characteristics of acceptable applications.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of applicants to be funded. Applications may be funded in whole or in part depending on relative need, applicant ranking and funds available. The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services. For example, this might apply to an applicant which has had large, chronic balances of unspent funds due to poor management, or one that has failed to serve children with programs of adequate quality or in agreed upon numbers. Another example might be an applicant whose past operations indicate that it would not be able or willing to effectively involve parents in the program. It may also be decided not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment.

Successful appplicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

M. Closing Date for Receipt of Applications

The closing date for receipt of applications will be 45 days after the final announcement. Applications may be mailed or hand delivered to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

2. Sent on or before the deadline date and receives by the granting agency in time for submission to the independent review group to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercal carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Hand Delivered Applications: Hand delivered applications are accepted at the Office of Human Development Services, Grants and Contract Management Division, North Building, Room 1740, 330 Independnce Avenue, SW., Washington, D.C., during the normal working hours of 8:30 A.M. to 5:00 P.M., Monday through Friday.

N. Availability of Application Forms and Additional Information

Application kits which contain the prescribed application forms and additional instructions for the applicant may be obtained by writing to Robert Foster, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington D.C. 20013

Appendix A—Regional Program Directors

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Mr. Richard Stirling, Regional Program Director, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203, (617) 223–6450

Region II: New Jersey, New York, Puerto Rico, Virgin Islands
Mr. Dennis Coughlin, Regional

Program Director, Office of Human Services, 26 Federal Plaza, Room 4249, New York, New York (212) 264–2974

Region III: Delaware, Dist. of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Mr. Alvin Pearis, Regional Program Director, Office of Human Development Services, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101 (215) 596–0356

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Mr. John Jordan, Regional Program Director, Office of Human Development Services, 101 Marietta Towers, Suite 903, Atlanta, Georgia, 30323 (404) 242–2134

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Mr. German White, Regional Program Director, Office of Human Development Services, 300 South Wacker Drive, 13th Floor, Chicago, IL 80806 (312) 353–6503

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Services, 1200 Main Tower, Room 2040, Dallas, Texas 75202 (214) 729–2976

Region VII: Iowa, Kansas, Missouri, Nebraska

Mr. Hilton Baines, Regional Program Director, Office Human Development Services, Room 284, 601 East 12th Street, Kansas City, Missouri 64106 (816) 758–5401

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Mr. David Chapa, Regional Program Director, Office of Human Development Services, Federal Office Building, Room 908, Denver, Colorado 80294 (303) 837–3972

Region IX: Arizona, California, Hawaii, Nevada, Outer Pacific Islands

Mr. Roy Fleischer, Regional Program Director, Office of Human Development Services, 50 United Nations Plaza, Room 445, San Francisco, California 94102, (415) 556–6153

Region X: Alaska, Idaho, Oregon, Washington

Mr. William Hayden, Regional Program Director, Office of Human Development Services, 2901 Third Avenue, Mail Stop 413, Seattle, Washington 98121 (206) 442–0838

American Indian and Migrant Programs Branches

Mr. Robert Foster, Director, Program Operations Division, P.O. Box 1182 Washington, D.C. 20013 (202) 755–7480

BILLING CODE 4130-10-M

APPENDIX B -- Proposed Supplemental Instructions for Completion of an Application for Head Start Expansion Funds

The supplemental instructions below expand on the basic instructions found in the OHDS booklet entitled "Instructions for Applying for Federal Assistance for HDS Programs." (Section I is for applications for conventional Head Start projects and Section II is for applications for Innovative Head Start projects.)

I. APPLICATION TO EXPAND OR INITIATE CONVENTIONAL HEAD START PROJECTS

Program Narrative (Part IV of Application)

Indicate by checking in the appropriate space if applicant is proposing to serve children in State program _____, American Indian program _____, migrant program _____. Applicants may submit only one application for each category.

(1) Need for Service

A. List proposed counties of service and number of children proposed to be served in each county.

	COUNTY	NO. OF CHILDREN
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

B. Discuss why proposed areas of service in counties listed above were chosen. Discuss which of the eligible children and families in these areas will be served and why these families will be given priority. Indicate number of children that will be enrolled in each service area. Explain why these areas have the greatest need for Head Start services compared to other areas in each county. Include letters of support from the community. (Enclose, as a separate document, a map of the county or counties you propose to serve, indicating the areas from which you plan to recruit children, and the sites at which centers will be located. Applicants that already serve children should show current service areas and sites in these counties.)

(2) Program Design

Indicate number of children you are proposing to serve for each Head Start delivery option listed below. Enter zero where option is not proposed. (LDOs will be funded using the $4 million for innovative projects.)

	NO. OF CHILDREN
Standard Option - Full Day	
Standard Option - Part Day	
Variations in Center Attendance	
Double Session	
Home Based	

For each proposed option, indicate below the number of hours per day, the number of days per week, and the number of days per year each child is in class (or socialization group). In computing the number of days per year exclude holidays, vacation days or other days when children are not expected to attend the program. If applicant is proposing to use the same option but with different hours/day or days/year for different groups of children, indicate appropriate hours and days in space below for each variation (A, B, and C). For Home-Based programs, count the annual number of socializaton experiences which take place and their duration.

	HOURS/DAYS			DAYS/WEEK			DAYS/YEAR		
	A	B	C	A	B	C	A	B	C
Standard - Full Day									
Standard - Part Day									
Variations in Center Attendance									
Double Session									
Home Based									

For each proposed option, indicate below the number of planned home visits per year made by a teacher or home visitor to each child's home. Also, indicate average time of each home visit. Follow above instructions if programs for different groups of children have different number or duration of home visits.

	NUMBER OF HOME VISITS PER YEAR			AVERAGE TIME OF HOME VISIT		
	A	B	C	A	B	C
Standard - Full Day						
Standard - Part Day						
Variations in Center Attendance						
Double Session						
Home Based						

For center based options, indicate the proposed number of classes.

Discuss the reasons for your proposed program design. Be sure to explain why this design(s) best serves the needs of the community. Discuss how proposed budget levels support the proposed program design(s).

(3) Program Quality

Discuss the basic objectives of your proposed program in terms of providing quality services to Head Start children.

Explain how services will be provided in the following areas:

- Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Dental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Mental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Social Services: Include type of agencies with which Head Start will be networking and types of services planned, etc.
- Nutrition: Include plans to educate children and parents in proper nutritional habits. Indicate how children will be assured of receiving nutritious meals, including whether meals will be catered or cooked on premises.
- Parent Involvement: Discuss proposed role of parents in planning, conduct, and administration of Head Start program.
- Handicapped: Discuss number of handicapped children to be enrolled, types of handicapping conditions, what kind of special services will be provided, by whom, where, etc.
- Discuss the role of the Policy Council in administering the proposed program.
- If proposing to serve bi-cultural children, explain what types of special services will be provided to these children and their families.
- Discuss proposed plans for use of volunteers; i.e., number, positions, etc.
- Discuss how proposed budget levels support program quality.

(4) Experience and Capability

List staff on budget sheets that follow. Discuss responsibilities and qualifications of proposed staff. On a separate page include resumes for Head Start Director, Component Coordinators, and Education staff positions.

- Discuss plans to provide employment opportunities in the Head Start program to parents and other community residents.
- Discuss training and career development opportunities that will be made available to program staff.
- Discuss previous organizational experience which would suggest capability of carrying out a child development program.
- Discuss organizational experience which shows ability to exercise sound fiscal management and effective program administration.
- Indicate if program will be administered by applicant or delegated to another organization. If delegated, provide reasons the applicant has decided to delegate and provide a list of the proposed delegate(s).
- Discuss the suitability of the proposed facilities and equipment to be utilized in carrying out the Head Start program.

(5) Reasonableness of Proposed Cost

Fill out Twelve Month Operating Budget and Start-up Cost Budget and provide justification for costs, as indicated in Section F, page 10, of the HDS Application Instructions.

Indicate what efforts were made to secure non-ACYF funds to supplement proposed program.

II. APPLICATION TO PROVIDE EXPANSION SERVICES UNDER AN INNOVATIVE DESIGN

Program Narrative (Part IV of Application)

Indicate by checking in the appropriate space if applicant is proposing to provide: comprehensive services provided in an innovative manner _____; or partial sevices as an adjunct to a current grantee providing comprehensive Head Start services _____.

(1) Need for Proposed Program

A. List proposed counties of service and number of children proposed to be served in each county.

	COUNTY	NO. OF CHILDREN
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

B. Discuss why proposed areas of service in counties listed above were chosen. Discuss which of the eligible children and families in these areas will be served and why these families will be given priority. Indicate number of children that will be enrolled in each service area. Explain why these areas have the greatest need for Head Start services compared to other areas in each county. Include letters of support from the community. (Enclose, as a separate document, a map of the county or counties you propose to serve, indicating the areas from which you plan to recruit children, and the sites at which centers will be located. Applicants that already serve children should show current service areas and sites in these counties.)

(2) Innovative Design

Indicate number of children you are proposing to serve for each Head Start delivery option you are proposing. Give a brief description of each proposed option (i.e. supplemental health services to siblings).

	OPTION (Describe)	NO. OF CHILDREN
A.	_____	_____
B	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____

For each proposed option, indicate below the number of hours per day, days per week, and days per year each child is in class. Also indicate the proposed number of home visits per year and the average time of each home visit. If proposed delivery options do not lend themselves to the following format, discuss in space below estimated number of child contact hours per day (per child) and indicate briefly what types of services will be provided during these contact hours.

OPTION	HOURS/DAY	HOURS/WEEK	DAYS/YEAR
A			
B			
C			
D			
E			

OPTION	HOME VISITS/YEAR	AVERAGE TIME OF HOME VISIT
A		
B		
C		
D		
E		

Discuss the enrollment criteria you propose to use (including ages of children). Explain the process by which children will be recruited and selected to participate in program.

Discuss the reasons for your proposed program design. Be sure to explain why this design(s) best serves the needs of the community.

Discuss how proposed budgets levels support the proposed program design(s).

(3) Beneficial Impact

Discuss the basic objectives of your proposed program in terms of providing quality services to Head Start children.

Explain how services will be provided in the following areas:

(Applicants who are proposing a less than comprehensive Head Start program as an adjunct to a current program are to complete only

those sections which are relevant to the applicant's proposed program design. For example, an applicant proposing to provide health services to the siblings of Head Start children would not be expected to complete the section on, for example, social services, unless the applicant's proposed program design was such that the provision of social services was essential to meeting the proposed objectives of the program.)

- Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Dental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Mental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Social Services: Include type of agencies with which Head Start will be networking and types of services planned, etc.

- Nutrition: Include plans to educate children and parents in proper nutritional habits. Indicate how children will be assured of receiving nutritious meals, including whether meals will be catered or cooked on premises.

- Parent Involvement: Discuss proposed role of parents in planning, conduct, and administration of Head Start program.

- Handicapped: Discuss number of handicapped children to be enrolled, types of handicapping conditions, what kind of special services will be provided, by whom, where, etc.

- Discuss the role of the Policy Council in administering the proposed program

- If proposing to serve bi-cultural children, explain what types of special services will be provided to these children and their families.

- Discuss proposed plans for use of volunteers; i.e., number, positions, etc.

- Discuss how proposed budget levels support program quality.

(4) Experience and Capability

- o List staff on budget sheets that follow. Discuss responsibilities and qualifications of proposed staff. On a separate page include resumes for Head Start Director, Component Coordinators, and Education staff positions.
- o Discuss plans to provide employment opportunities in the Head Start program to parents and other community residents.
- o Discuss training and career development opportunities that will be made available to program staff.
- o Discuss previous organizational experience which would suggest capability of carrying out a child development program.
- o Discuss organizational experience which shows ability to exercise sound fiscal management and effective program administration.
- o Indicate if program will be administered by applicant or why delegated to another organization. If delegated, provide reasons applicant has decided to delegate and provide a list of the proposed delegate(s).
- o Discuss the suitability of the proposed facilities and equipment to be utilized in carrying out the Head Start program.

(5) Cost Effectiveness

Fill out Twelve Month Operating Budget and Start-up Cost Budget and provide justification for costs, as indicated in Section F, page 10, of the HDS Application Instructions.

Indicate what efforts were made to secure non-ACYF funds to supplement proposed program.

TWELVE MONTH OPERATING BUDGET

Check one: Applicant Budget: ___
Delegate Budget Agency: ___

References in parentheses next to budget items refer to the object class category into which the cost must be placed in Part III, Section B, Column of the application form.

If the applicant proposes to fund delegate agencies, a separate twelve month budget must be completed by each delegate agency using a copy of this form. Applicants should also fill out a separate form and should include delegate agency costs on Line 12. Use of this form is not required for start-up costs.

1. PERSONNEL (object class category 6.a.)

ADMINISTRATIVE STAFF	NUMBER OF POSITIONS	AVERAGE NO. WKS. EMPLOYED PER YEAR	AVERAGE NO. HRS. EMPLOYED PER WEEK	ACYF BUDGET COST
Executive Director				$
Fiscal Officer/Accountant				
Head Start Director				
Bookkeeper				
Secretary				
Center Director				
_____				
_____				
COMPONENT STAFF				
Health Coordinator				
Nurse				
Handicap Services Coordinator				
Education Coordinator				
Teacher				
Teacher Assistant/Aide				
Home Visitor				
Social Service Coordinator				
Social Worker				
Parent Involvement Coordinator				
Cook				
Bus Driver				
_____				
_____				

1. TOTAL PERSONNEL: _____

	ACYF BUDGET COST
2. TOTAL FRINGE BENEFITS: (6.b)	
3. OCCUPANCY (6.h.)*	
Rent	
Utilities	
Telephone	
Bonding and Insurance	
Maintenance and Repair	
Other	
TOTAL OCCUPANCY:	
4. CHILD TRAVEL (6.h)	
Bus/Van Lease/Rental	
Vehicle Insurance	
Field Trips	
Vehicle Maintenance/Repair	
Other	
TOTAL CHILD TRAVEL:	
5. STAFF TRAVEL	
Out of Town (6.c.)	
Local (6.h)	
TOTAL STAFF TRAVEL	
6. FOOD (6.h)	
Children (Do not include food paid for by USDA)	
Staff	
Parent	
TOTAL FOOD:	

* If these services are provided through a contract, enter these costs on line 6.f.

ACYF BUDGET COST

7. FURNITURE AND EQUIPMENT (6.d)

Office	_____
Vehicle Purchase	_____
Classroom	_____
Playground	_____
Kitchen	_____
Other_____	_____
_____	_____
TOTAL FURNITURE/EQUIPMENT:	_____

8. SUPPLIES (6.e)

Office	_____
Cleaning	_____
Classroom	_____
Medical/Dental	_____
Kitchen	_____
Other_____	_____
_____	_____
TOTAL SUPPLIES:	_____

9. OTHER CHILD SERVICES (6.h)*

Medical Screening/Care	_____
Dental Exams/Care	_____
Mental Health Assessment/Care	_____
Nutrition Consultant	_____
Speech Therapy	_____
Other_____	_____
_____	_____
TOTAL OTHER CHILD SERVICES	_____

* If these services are provided by an individual who is not an employee, enter these costs on line 6.h. If these costs are provided by a firm through a contract, enter these costs on line 6.f.

	ACYF BUDGET COST
10. OTHER PARENT SERVICES	
Parent Activities (6.h)	_____
Parent Travel	
Out of town (6.c)	_____
Local (6.h)	_____
TOTAL OTHER PARENT SERVICES:	_____
11. OTHER	
Audit*	_____
Legal*	_____
Payroll/Accounting*	_____
Publications/Subscriptions	_____
Printing/Advertising	_____
Employee Medical Exams	_____
Staff Training/Technical Assistance	_____
Other_____	_____
_____	_____
TOTAL OTHER:	_____
12. TOTAL DELEGATE AGENCY BUDGET (6.f)**	_____
13. TOTAL INDIRECT COSTS (6.j)***	_____
GRAND TOTAL: (Enter on Worksheet C, Section 1, Line f)	*_____

* If these services are provided by an individual who is not an employee, enter these cost on line 6.h. If these costs are provided by a firm through a contract, enter these costs on line 6.f.

**If this line is applicable, attach a budget for each delegate agency.

***If this line is applicable, provide documentation on approved indirect cost rate.

APPENDIX C -- CHECKLIST OF MATERIALS AND FORMS REQUIRED FOR AN APPLICATION FOR HEAD START EXPANSION FUNDS

The following is a checklist of the items to be submitted in the expansion application. Make sure that each application is complete and all instructions are followed.

- Part I (Standard Form 424)
- Part II, Project Approval Information
- Part III, Budget Information (Twelve Month Line Item Budget) (Start-up Budget)
- Part IV, Program Narrative (Need for Service, Program Design, Program Quality, Experience and Capability, and Cost Effectiveness)
- Part V, Assurances
- Civil Rights Compliance Form (HHS-441)
- Rehabilitation Act Compliance Form (HHS-641)
- Protection of Human Subjects Form (HHS-596)
- Certification of Head Start Administration Costs Form
- New Grantee Fiscal Certification Form (only for applicants who are not currently receiving HDS grant funds)

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federal register

Tuesday
December 18, 1984

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 4700

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Revision of Existing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Revision of Existing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking revises the provisions on wild free-roaming horses and burros in Part 4700 to reduce the regulatory burden on the public, to clarify the management procedures of the Bureau of Land Management as they affect the public, to remove unnecessary self-regulating provisions, and to arrange the regulations by subject.

DATE: Comment period expires February 19, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, (202) 653–9215.

SUPPLEMENTARY INFORMATION: This proposed rulemaking completely revises Part 4700 of Title 43 of the Code of Federal Regulations. The regulations are completely reorganized to group provisions on the same subject into the same subpart. Redundant sections, obsolete definitions and provisions, and terms or provisions not authorized by law have been removed. Changes have been made to ease cumbersome and burdensome requirements on the public as much as possible, and provisions not affecting the public have been removed, to be included in the Manual of the Bureau of Land Management (BLM) where appropriate.

In the proposed rulemaking, §§ 4700.0–1, 4700.0–2 and 4700.0–6 have been rewritten to describe purpose, objectives and policy more specifically, and to inform the public of the bases for procedures and requirements contained in the regulations. The proposed rulemaking states as a matter of policy that the authorized officer, in administering the program, shall consult with Federal and State wildlife agencies and all other affected interests. Because this policy applies to all aspects of the wild free-roaming horse and burro program, the requirement for consultation has been removed from all other sections of the proposed rulemaking as a needless duplication. Amendments are proposed in the Definitions, § 4700.0–5, to clarify the meaning of some terms used in the regulations, to remove definitions that duplicate text contained elsewhere in the Part, and to remove terms whose use is obsolete or not authorized, or that are self-explanatory. The term "free-roaming" has been removed from several definitions and other provisions referring to "wild horses and burros," and is used in this proposed rulemaking to refer only to animals remaining at large and not in private maintenance.

The proposed rulemaking removes provisions that give procedural guidance and instruction to BLM personnel and do not affect the public. Any such provisions that contain information that may be useful to the public have been incorporated in the proposed rulemaking in the appropriate sections. Pertinent removed provisions will be included in the BLM Manual.

The proposed rulemaking amends existing Subpart 4730 as new Subpart 4710 to link the management of wild free-roaming horses and burros with the Bureau's planning system; to identify precisely the lands that will be considered for wild horse and burro management; to require that hard management area plans be prepared for all herd management areas; to allow the authorized officer to protect wild horses and burros and their habitat by closing certain lands to all or particular kinds of livestock grazing or by removing unauthorized livestock; to require that public lands inhabited by wild horses and burros be closed to grazing by domestic horses and burros; and to allow private landowners to maintain wild horses and burros on their land, so long as the animals are not enticed or removed to such land and are not detained there.

Subpart 4720 of the proposed rulemaking states the circumstances under which straying or excess wild horses and burros are to be removed from public and private lands, and the procedures for removing them.

The proposed regulations are reorganized and consolidated by subject matter. Although four new subparts—Destruction of Wild Horses and Burros, and Disposal of Carcasses (Subpart 4730), Motor Vehicles and Aircraft (Subpart 4740), Private Maintenance (Subpart 4750), and Compliance (Subpart 4760)—have been added, consolidation of the regulations and the elimination of unnecessary, unauthorized and obsolete provisions have reduced the length and complexity of the regulations. The new subparts incorporate the existing rules to the extent that they remain applicable, and add language where necessary to clarify requirements. For example, in Subpart 4740, explicit standards for vehicles are set forth to ensure the safe transport of wild horses and burros both by BLM personnel and by members of the public obtaining the animals for private maintenance.

New Subpart 4750 expands the existing regulations to incorporate all the requirements for private maintenance and adoption of wild horses and burros, including the requirement for adoption fees, qualification standards, conditions for the care and treatment of animals being maintained privately, and the replacement, under certain conditions, of animals that die during private maintenance.

Proposed Subpart 4730 consolidates the existing regulations on destruction of certain wild horses and burros and makes clear the limitations on methods of destruction. Section 4730.2, Disposal of Carcasses, is designed to avoid conflicts between Federal practices and State or local sanitation laws. The provision prohibiting receipt of compensation by a person disposing of a carcass is not intended to prohibit the sale of horse products by rendering plants, but rather only to prohibit the sale of animals to such plants and to discourage their slaughter for consumptive use.

The proposed regulations are written to alleviate regulatory burdens on persons who privately maintain wild horses and burros. The existing regulations, at § 4740.4–2(f), require the adopter to obtain a written statement from a veterinarian within 7 days of the death of an adopted animal. The proposed rulemaking would require only that the adopter notify the authorized officer within 7 days of the discovery of the death, escape or theft of an animal. The authorized officer then has discretion to investigate the circumstances of death and is required to investigate escape or theft. This modified provision will be less costly to the adopter and will encourage the adopter to report problems promptly. By starting the notification period on the date of discovery, the proposed rulemaking adds flexibility to cover cases where the problem is not discovered within 7 days of its occurrence, for whatever reason.

Section 4740.5(a) of the existing regulations limits the transfer of title to four animals per year per applicant. Section 4750.5(a) of the proposed rulemaking allows adopters credit for humane treatment of animals during the years before title was first offered in 1980. By accumulating credit for care at the rate of four horses or burros per year, an adopter can obtain title to more than four animals in the current year based on proper care of animals maintained privately during the 1970's. The limit is four animals for each year of such care.

Section 4740.5(b) of the proposed rulemaking modifies the requirement in § 4740.5(b) of the existing regulations for a veterinarian's certification that privately maintained horses and burros are receiving proper care and treatment. It allows such certification to be made by any qualified person, such as a cooperative extension agent, humane officer or the authorized officer of the Bureau of Land Management. Such officials are equally capable of providing the necessary certificate, and may be more familiar with the individual animal. The new process may be more convenient and less expensive for the adopter.

The proposed rulemaking deletes certain requirements not supported by law. References to "problem animals," a requirement that slaughterhouses retain title for 1 year after slaughtering, a prohibition of accepting an animal for slaughter without a Certificate of Title, and a provision that a private landowner may request that the BLM remove wild horses and burros only from fenced land, have all been eliminated. There is no reference in the law to "problem animals"; there is no legal justification for Federal control of animals once title passes; and a Federal District Court in Oregon has ruled that the requirement that animals shall be removed by the Federal Government only from fenced private land is unsupported by law, and that slaughterhouses need not obtain a Certificate of Title.

The principal author of this proposed rulemaking is John S. Boyles, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A limited number of veterinarians, cooperative extension agents and human officials may be insignificantly affected by the rulemaking. The certification required for adopters to receive title is needed on a nonrecurring basis. The changes allow adopters flexibility in choosing the official from whom they obtain a certification, resulting in some cost-savings. Adopters are required to pay a fee to obtain the animals and to provide information to show their ability to provide humane transport, facilities and care for the animals. An insignificant number of individuals may be deterred from participating by the fee or qualification standards for humane care.

Information collection requirements for Applications for Adoption of Wild Horse(s) or Burro(s) and for Applications for Title to Wild Horse(s) and Burro(s) have been approved by the Office of Management and Budget and assigned clearance numbers 1004–0042 and 1004–0046, respectively. Additional information collection requirements contained in this proposed rulemaking, relating to requests for removal of strayed animals from private land (§ 4720.2–1), and applications for private maintenance of 4 or more wild horses or burros (§ 4750.3–3), have been submitted to the Office of Management and Budget for review.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the provisions of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Act of June 28, 1934, as amended (43 U.S.C. 315), it is proposed to amend Part 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

GROUP 4700—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

Subpart 4700— General

Sec.

Subpart 4710—Management Considerations

Subpart 4720—Removal

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Carcasses

Subpart 4740—Motor Vehicle and Aircraft

Subpart 4750—Private Maintenance

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340). Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315).

§ 4700.0–1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0–2 Objectives.

The objectives of these regulations are management of wild horses and burros as recognized components of the public lands under the principle of multiple use; protection of wild horses and burros from unauthorized capture, branding, harassment or death; and humane care and treatment of wild horses and burros.

§ 4700.0–3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, and 4341–4347).

§ 4700.0–5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Appropriate management level" means the median number of wild horses or burros 2 years old or older to be maintained on a herd management area

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(d) "Band" means either a group of wild horses or burros running together, or a lone wild horse or burro.

(e) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(f) "Excess wild horses or burros" means wild horses or burros (1) which have been removed from an area by the unauthorized officer pursuant to applicable law, or (2) which must be removed from an area in order to attain the appropriate management level.

(g) "Herd" means one or more bands using the same general area.

(h) "Humane treatment" means kind and merciful handling compatible with standard animal husbandry practices, without causing unnecessary stress or suffering to a wild horse or burro.

(i) "Inhumane treatment" means any intentional action or failure to act that causes stress, injury, or death to a wild horse or burro and is not compatible with standard animal husbandry practices.

(j) "Lame wild horse or burro" means a wild horse or burro with malfunctioning limbs that permanently impair its freedom of movement.

(k) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration, inability to fend for itself, suffering, or closeness to death.

(l) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(m) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(n) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(o) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act.

§ 4700.0–6 Policy.

(a) Wild horses and burros and their habitat shall be managed to maintain vigorous populations of healthy animals in balance with the productive capacity of the public lands.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers nationwide for private maintenance and care.

(f) Fees shall be required from qualified individuals adopting excess wild horses and burros to defray part of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be compatible with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics, including, but not limited to, habitat condition and trend, the age, sex and social structure of bands and herds, and the condition and physical characteristics of the animals.

§ 4710.3 Management areas.

§ 4710.3–1 Herd management areas.

The authorized officer shall establish herd management areas for the maintenance and management of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, and the relationships with other uses of the public lands. The authorized officer shall prepare a herd

management area plan, which may cover one or more herd management areas.

§ 4710.3-2 Wild horse and burro ranges.

Herd management areas may also be designated by the authorized officer as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

§ 4710.4 Constraints on management.

Management of wild horses and burros shall be confined to areas used by herds as yearlong habitat in 1971. Management of wild horses and burros shall be at the minimum level necessary to obtain the objectives identified in approved land use plans and herd management area plans.

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing by domestic horses and burros.

(c) Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions in full force and effect on the date specified in the notice or decision, regardless of appeal.

§ 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock in areas adjacent to or within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.

§ 4710.7 Maintainance of wild horses and burros on unfenced privately controlled lands.

Individuals controlling unfenced lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands. Individuals who maintain wild free-roaming horses and burros on their lands shall notify the authorized officer and shall supply a reasonable estimate of the number of such animals so maintained. Individuals shall not remove or entice wild horses or burros from the public lands or detain them on private lands.

Subpart 4720—Removal

§ 4720.1 Removal of excess animals from public lands.

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order:

(a) Old, sick, or lame animals shall be destroyed in accordance with Subpart 4730 of this title;

(b) Additional excess animals for which an adoption demand by qualified individuals exists shall be captured and made available for private maintenance in accordance with Subpart 4750 of this title; and

(c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with Subpart 4730 of this title.

§ 4720.2 Removal of strayed or excess animals from private lands.

§ 4720.2-1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request should indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

§ 4720.2-2 Removal of excess animals from private lands.

If the authorized officer determines that proper management requires the removal of wild horses and burros from private lands, the authorized officer shall obtain the written consent of the private owner before entering or using such lands.

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Carcasses

§ 4730.1 Destruction.

Except as an act of mercy, no wild horse or burro shall be destroyed without the authorization of the authorized officer. Wild horses and burros shall be destroyed in the most humane and cost efficient manner possible.

§ 4730.2 Disposal of carcasses.

Carcasses of wild horses or burros shall be disposed of in accordance with State or local sanitation laws. No compensation of any kind shall be received by any agency or individual disposing of a carcass.

Subpart 4740—Motor Vehicles and Aircraft

§ 4740.1 Use of motor vehicles or aircraft.

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction.

(b) Before using helicopters in the capture of wild horses or burros or motor vehicles for their transport to adoption processing facilities, the authorized officer shall conduct a public hearing in the State where wild horses or burros are to be gathered.

§ 4740.2 Standards for vehicles used for transport of wild horses and burros.

(a) Use of motor vehicles for transport of wild horses or burros shall be in accordance with appropriate local, State and Federal laws and regulations applicable to the humane transportation of horses and burros, and shall include, but not be limited to, the following standards:

(1) The interior of enclosures shall be free from protrusions that could injure animals;

(2) Equipment shall be in safe conditions and of sufficient strength to withstand the rigors of transportation.

(3) Enclosures shall have ample head room to allow animals to stand normally;

(4) Enclosures for transporting two or more animals shall have partitions to separate them by age and sex as deemed necessary by the authorized officer;

(5) Floors of enclosures shall be covered with nonskid material;

(6) Enclosures shall be adequately ventilated and offer sufficient protection to animals from inclement weather and temperature extremes; and

(7) Unless otherwise approved by the authorized officer, transportation shall be limited in sequence to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

(b) The authorized officer shall not load wild horses or burros if he/she determines that the vehicle to be used for transporting the wild horses or

burros is not satisfactory for that purpose.

Subpart 4750—Private Maintenance

§ 4750.1 Private maintenance.

The authorized officer shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.

§ 4750.2 Health, identification, and inspection requirements.

§ 4750.2-1 Health and identification requirements.

(a) An individual determined to be qualified by the authorized officer shall verify each excess animal's soundness and good health, determine its age and sex, and administer tests for communicable diseases, immunizations and worming compounds.

(b) Documentation conforming compliance with State health inspection and immunization requirements for each wild horse or burro shall be provided to each adopter by the authorized officer.

(c) Each animal offered for private maintenance, including orphan and unweaned foals, shall be individually identified by the authorized officer with a permanent freeze mark of alpha numeric symbols on the left side of its neck. The freeze mark identifies the animal as Federal property subject to the provisions of the Act and these regulations by a patented symbol, the animal's year of birth, and its individual identification number. The authorized officer shall record the freeze mark on the documentation of health and immunizations. For purposes of this subpart, a freeze mark applied by the authorized officer is not considered a brand.

§ 4750.2-2 Brand inspection.

The authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, for each animal to be transported across the State where the adoption center is located only. The adopter shall be responsible for obtaining inspections for brands required by other States to or through which the animal may be transported.

§ 4750.3 Application requirements for private maintenance.

§ 4750.3-1 Application for private maintenance of wild horses and burros.

An individual applying for a wild horse or burro shall file an application with the Bureau of Land Management on a form aproved by the Director. The application shall be accompained by a nonrefundable graranteed remittance of $25 (cashier's check, money order, bank draft, or any other form of remittance other than personal, company or payroll checks). If the application is approved by the authorized officer, the remittance shall be applied against the adoption fee required by § 4750.4-2 of this subpart.

§ 4750.3-2 Qualification standards for private maintenance.

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

(1) Be of legal age for entering contracts as determined by the law of the State or United States trust territory where the individual is a resident;

(2) Have no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations;

(3) Have adequate feed, water, shelter, space, and transport equipment to provide humane care and treatment to the number of animals requested; and

(4) Have obtained no more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing by the authorized officer.

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3-1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

§ 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

(a) An individual applying for more than 4 wild horses or burros within a 12-month period, or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location, shall provide written certification that the applicant's facilities and capabilities appear adequate to maintain and care for the number of animals requested. This certification shall be obtained from a veterinarian, local humane official, cooperative extension agent or similarly qualified person approved by the authorized officer.

(1) The certification shall assert that the facilities satisfy Bureau of Land Management requirements, shall contain a description of the facilities, including corral size, pasture size and shelter, barn or stall dimensions, and shall note discrepancies between the facilities inspected and representations made in the application form.

(2) When an applicant requests 25 or more animals or when more than 24 animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer.

(b) Any individual or group requesting to maintain more than 4 wild horses or burros at a single location shall also provide the following information:

(1) A summary of the age, sex, and number of wild free-roaming horses or burrow requested by species;

(2) Requested adoption date and center location;

(3) If applicable, names, addresses and telephone numbers of all applicants represented by any power of attorney submitted with the request;

(4) A transportation plan that describes the transport vehicle and any rest-stops;

(5) A distribution plan for delivering the animals to their assigned adopters;

(6) Names, addresses, and a concise background of the experience of the individuals who will handle the adopted animals during transportation and distribution; and

(7) When the adopted animals will be maintained at a single location or where the applicants have been solicited by the holder of their power of attorney, a concise statement outlining the arrangements, including duties and responsibilities of the parties, for maintaining the animals.

§ 4750.3-4 Approval or disapproval of applications.

If an application is approved, the authorized officer shall offer the individual an opportunity to select the appropriate number, sex, age and species of animals from those available. If the authorized officer disapproves an application for private maintenance because the applicant lacks adequate facilities or transport, the individual may correct the shortcoming and file a new application.

§ 4750.4 Private maintenance of wild horses and burros.

§ 4750.4-1 Private Maintenance and Care Agreement.

To obtain a wild horse or burro, a qualified applicant shall execute a Private Maintenance and Care Agreement and agree to abide by its terms and conditions, including but not limited to the following:

(a) Title to wild horses and burros covered by the agreement shall remain in the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Cerificate of Title is issued by the authorized officer;

(b) Wild horses and burros covered by the agreement shall not be destroyed,

except as an act of mercy, without the prior approval of the authorized officer;

(c) Wild horses and burros covered by the agreement shall not be sold or otherwise exploited commercially, neglected, abandoned, inhumanely treated, branded or otherwise marked permanently, or used for bucking stock;

(d) Freeze marks identifying wild horses and burros covered by the agreement shall not be altered or destroyed;

(e) Wild horses and burros covered by the agreement shall not be transferred permanently to another location or to the care of another individual without the prior approval of the authorized officer;

(f) Wild horses and burros covered by the agreement shall be made available for physical inspection upon written request by the authorized officer;

(g) The authorized officer shall be notified within 7 days of discovery of the death, theft or escape of wild horses and burros covered by the agreement; and

(h) Maintaining and properly caring for wild horses and burros covered by the agreement shall be the responsibility of the adopter.

§ 4750.4–2 Adoption fee.

(a) An individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of $125 per horse and $75 per burro, except that no fee shall be paid for an orphan foal under the age of 6 months or an unweaned foal under the age of 6 months accompanying its mother. The authorized officer shall credit the advance payment required by § 4750.3–1 of this subpart to the total adoption fee and collect the remaining adoption fee from the individual when the Private Maintenance and Care Agreement is executed.

(b) The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadoptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

§ 4750.4–3 Request to terminate Private Maintenance and Care Agreement.

An adopter may request to terminate his/her responsibility for an animal by submitting a written relinquishment of the Private Maintenance and Care Agreement for that animal. The authorized officer shall take possession of the animal upon receipt of the written relinquishment.

§ 4750.4–4 Replacement animals.

The authorized officer shall replace an animal, upon request by the adopter, if (a) within 60 days of the execution of the Private Maintenance and Care Agreement the animal dies or is required to be destroyed due to a condition that existed at the time of placement with the adopter; and (b) the adopter provides, within a reasonable time, a statement by a veterinarian certifying that reasonable care and treatment would not have corrected the condition. Transportation costs of the replacement animal shall be paid by the adopter.

§ 4750.5 Application for title to wild horses and burros.

(a) An adopter who has abided by the terms and conditions of the Private Maintenance and Care Agreement for 12 months may apply for title to the wild horse(s) and burro(s) covered by the agreement. A qualified adopter may be granted title to no more than 4 animals per 12-month period of proper private maintenance. This credit may be accumulated from year to year if not used.

(b) An adopter applying for title shall file an application with the Bureau of Land Management. The adopter shall submit with the application a statement from a veterinarian, cooperative extension agent, local humane official, or similarly qualified individual approved by the authorized officer certifying that he/she has inspected the animal for which title is requested and that the animal is receiving proper care and treatment. The adopter shall certify that he/she has provided care and treatment in accordance with the Private Maintenance and Care Agreement.

(c) If the application for title is approved, the authorized officer shall issue a Certificate of Title for each animal. Effective the date of issuance of the Certificate of Title, Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act or regulations under this title.

Subpart 4760—Compliance

§ 4760.1 Compliance with the Private Maintenance and Care Agreement.

(a) An adopter shall comply with the terms and conditions of the Private Maintenance and Care Agreement and these regulations. The authorized officer may verify compliance by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained. The authorized officer may authorize a cooperative extension agent, local humane official or similarly qualified individual to verify compliance.

(b) The authorized officer shall conduct an investigation when a complaint concerning the care, treatment, or use of a wild horse or burro is received by the Bureau of Land Management.

(c) The authorized officer may require, as a condition for continuation of a Private Maintenance and Care Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care of is being maintained in unsatisfactory conditions. The adopter shall be given reasonable time to complete the required corrective actions.

Subpart 4470—Prohibited Acts, Administrative Remedies, and Penalties

§ 4770.1 Prohibited acts.

The following acts are prohibited:

(a) Maliciously injuring or harassing a wild horse or burro;

(b) Removing or attempting or remove a wild horse or burro from the public lands without authorization from the authorized officer;

(c) Destroying a wild horse or burro without authorization from the authorized officer except as an act of mercy;

(d) Selling or attemping to sell, directly or indirectly, a wild horse or burro;

(e) Commercially exploiting a wild horse or burro;

(f) Treating a wild horse or burro inhumanely;

(g) Using a wild horse or burro for bucking stock;

(h) Violating a term or condition of the Private Maintenance and Care Agreement;

(i) Applying a brand;

(j) Removing or altering a freeze mark.

§ 4770.2 Civil penalties.

(a) A grazing permittee or lessee who has been convicted or otherwise found in violation of any of these regulations may be subject to suspension or cancellation of the grazing permit or lease and of the grazing preference, as provide in § 4170.1–1 of this title.

(b) An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care

Agreement may result in the cancellation of the agreement, repossession of wild horses and burros included in the agreement, and disapproval of requests by the adopter for additional excess wild horses and burros.

§ 4770.3 Administrative remedies.

Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal in accordance with 43 CFR 4.4 within 30 days of receipt of the written decision.

§ 4770.4 Arrest.

The Director of the Bureau of Land Management may authorize an employee who witnesses a violation of the Act or these regulations to arrest without warrant any person committing the violation, and to take the person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so authorized shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisons of the Act of these regulations.

§ 4770.5 Criminal penalties.

Any person who commits any act prohibited in section 4770.1 of these regulations shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both, for each violation. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in 18 U.S.C. 3401.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

August 15, 1984.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 150

Airport Noise Compatibility Planning; Development and Submission of Airport Operator's Noise Exposure Map and Noise Compatibility Planning Program; Final Rule and Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 18691; Amdt. No. 11-25; Revision of Part 150]

14 CFR Parts 11 and 150

Airport Noise Compatibility Planning; Development and Submission of Airport Operator's Noise Exposure Map and Noise Compatibility Planning Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule revises and makes final the FAA's interim rule that prescribes requirements for airport operators who choose to submit noise exposure maps and develop airport noise compatibility planning programs to the FAA. This regulation is needed to implement portions of the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 *et seq.*). It amends the interim rule adopted on January 19, 1981 (46 FR 8316). The revisions reflect, in part, comments invited and received following promulgation of the interim rule.

DATES: Effective date of this amendment is January 18, 1985. Comments must be received on or before June 14, 1985.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 18691, 800 Independence Avenue, SW., Washington, D.C. 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION: The purpose of these regulations is to implement portions of Title I of the Aviation Safety and Noise Abatement Act of 1979 as amended (49 U.S.C. 2101 *et seq.*, the "ASNA Act"). These final regulations amend and make final the interim regulations promulgated January 19, 1981 (published in 46 FR 8316, January 26, 1981). That interim rule was issued in order to meet the statutory deadline to prescribe regulations by February 28, 1981. Although the interim rule was based largely on Notice No. 76-24 (41 FR 51522), full implementation of the statutory dictates required certain provisions in the rule that varied in some respects from those proposed in the notice. Accordingly, comments were invited on the interim rule based on the rule text and experience under the rule. A number of interested persons submitted written comments to the public regulatory docket. All comments received have been reviewed and considerd in the issuance of this final rule. They are discussed below.

Comments Invited

The FAA has determined that it is approprite to adopt this revision of Part 150 without additional public notice and comment on the text thereof. In view of the fact that the FAA has already received comments on the interim rule and that, except for a shift of certain review functions within the FAA, the changes in Part 150 are all either editorial or clarifying in nature, notice and public procedure are unnecessary. In addition, the FAA has been ordered by the United States Court of Appeals for the District of Columbia Circuit (*People of the State of Illinois* v. *Langhorne Bond*, No. 81-1317, September term, 1983) to promulgate final regulations governing airport noise abatement planning and noise assessment methodology no later than December 18, 1984.

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on regulations, even when not required to do so be statute. The DOT policy further provides that prior notice may be foregone when it can reasonably be anticipated that such action will not result in the receipt of useful information. In such a case the initiating office, nevertheless, is to provide notice and opportunity to comment subsequent to the final regulation. This procedure will assure that continued public participation is allowed and also permit the FAA to assure compliance with the Judicial deadlines. Accordingly, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this amendment. Communications should identify the regulatory docket and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this amendment must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 18691." All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Synopsis of the Final Rule

As provided under the ASNA Act, these regulations apply to any "public use airport" as defined by Section 502(17) of the Airport and Airway Improvement Act of 1982. It should be noted that, although Part 150 specifies requirements that must be met when submitting noise exposure maps and airport noise compatibility planning programs to the FAA, the submission of these maps and programs is completely voluntary.

These proposed amendments also incorporate changes required by amendments to the ASNA Act, Docket comments received during the February 28, 1981 through December 31, 1981 comment period, and the practical experience gained by the FAA in implementing the program. FAA's internal processing of Part 150 submissions are modified to simplify the airport operator's procedural requirements and to place primary review responsibility in the FAA's regional offices.

Overview of the Changes

As required by the Act, the regulations as revised establish a single system of measuring aircraft noise and a single system for determining the exposure of individuals to noise in the vicinity of airports. The regulations as revised also establish a standardized airport noise compatibility planning program, including: (1) Voluntary development and submission to the FAA of noise exposure maps and noise compatibility programs by airport operators; (2) standard noise methodologies and units; (3) identification of land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) the procedures and criteria for preparation and submission of noise exposure maps and noise compatibility programs.

This rule changes the administrative process to be followed by the FAA when it receives a noise exposure map or airport noise compatibility program (or their revisions) from an airport operator in accordance with the ASNA

Act. Airport operators volunteering to participate in the program submit five copies of their noise exposure maps, noise compatibility programs, and their revisions to the Director of the FAA Regional Office having jurisdiction over the area in which the airport is located. If the submission conforms to the applicable requirements, it is received by the FAA and a notice of receipt is published in the **Federal Register**. Submissions which do not conform, will be returned by the Regional Director to the airport operator for further consideration and development to comply with Part 150.

The Regional Director (or designee) conducts the necessary evaluations of noise compatibility programs and, within the prescribed time period, recommends to the Administrator whether to approve or disapprove the program. The region is provided broad discretion to conduct the evaluation and to follow the necessary procedures to ensure that the decision will be made efficiently and on a well-informed and reasoned basis. Some of the evaluation criteria are prescribed under section 104 of the ASNA Act, but in other situations, such as those relating to flight procedures or affecting the safe and efficient use of the navigable airspace, the FAA will apply appropriate policy and program criteria to the matters presented by the program. The FAA considers only one program at a time for any specific airport; if a program is already under review, it will have to be revised or withdrawn by the applicant before the FAA will review another program. Except for specific situations, each revised program will be considered under the proposed rule as a new program. Under prescribed conditions, an approval may be revoked or modified for cause after notice to the airport operator. Determinations became effective upon issuance and continue until revoked or modified.

In framing the ASNA Act, the Congress reaffirmed the FAA's responsibilities to review local actions for flight safety and for economic burden. Under ASNA, the proposal of restrictions or other actions under a noise compatibility program is entirely discretionary on the part of the airport operator; however, review of the operator's proposal by the FAA for safety and economic burden is not optional. Once submitted to the FAA, each noise compatibility program must be scrutinized and be approved or disapproved under all of the criteria in section 104 of the ASNA Act.

Administrative Process

This rule describes the revised administrative process the FAA will follow when it receives a noise exposure map or airport noise compatibility program (and their revisions) in accordance with the requirements of the ASNA Act. As previously indicated, the Director of the FAA Region in which the airport is situated has, through delegation from the Administrator, the primary responsibility for administering the Part 150 airport noise compatibility planning program. The FAA Region will evaluate the submission and will coordinate any aspects of the noise program affecting other agency programs.

The process provides for notice to the public of the receipt of each airport "noise exposure map" and "noise compatibility program" by publication in the **Federal Register** when, based on a preliminary review, the requirements for those submissions are satisfied. It provides a means for timely and thorough evaluation by the FAA of the measures presented in each program to ensure an informed and reasoned determination on whether that program should be approved. That decision is based on the program itself, information presented or developed during the evaluation, and other information available to the agency.

The administrative process does not include adversary pleadings or proceedings in which interested persons submit their complaints, evidence, or arguments for a "record" of hearing as the sole basis upon which the Administrator's determination on a program will be made. Instead, Section 103(a)(1) of the ASNA Act provides that, before a Noise Exposure Map is submitted to the FAA, it be prepared "in consultation with any public agencies and planning agencies in the area surrounding the airport." FAA's role is then simply to approve or disapprove a subsequent program within the 180-day time set by Congress. Section 104(b) of the ASNA Act requires the Administrator to approve or disapprove each program submitted in accordance with the Act (except those measures relating to flight procedures) within 180 days after it is received or, upon failure to do so, the program is "deemed" to be approved. Except for those measures relating to flight procedures, the Administrator must approve a program if the measures to be undertaken under the program: (1) Would not create an undue burden on interstate or foreign commerce, (2) are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, and (3) the program provides for its revision made necessary by a revised noise exposure map. Clearly, those decisions do not preempt local authority or responsibility for land use decisions.

Program measures relating to proposals for revised flight procedures for noise control or abatement purposes were treated separately from other measures under the ASNA Act, and the interim regulation, in view of their potential impact on air safety and on the efficient and prudent management of the Nation's air transportation system. As specified herein, FAA determinations relating to the use of flight procedures for noise control purposes may be issued either in connection with the decisions made on other portions of the program or they may be issued separately. The FAA recognizes that a proposal concerning flight procedures may be an integral part of a noise compatibility program so that it would be difficult to approve the program if the flight procedures are considered separately. Consequently, the FAA intends to conduct its evaluation of flight procedures together with, and at the same time as, its evaluation of the rest of the program and to issue its determinations at the same time within the 180 days, whenever possible. It is only when further extensive evaluation may be necessary relative to flight procedures which cannot be accomplished within the 180 days allowed for program approval or disapproval that the FAA will issue a separate determination. A separate determination on flight procedures will then be made within an indefinite, but reasonable, time after receipt of the program.

Section 104(a) of the ASNA Act specifically excludes (from the 180-day rule) those portions of a program that "relate to" flight procedures, not just the flight procedures themselves.

An airport operator may revise or withdraw a noise compatibility program at any time before a determination is issued on that program by the Administrator; in addition, the Regional Director may terminate evaluation of the program immediately upon notice of the intent to revise or withdraw a program. A revised program will be treated as a new program and a new 180-day review period will begin unless the Regional Director finds that, in light of the overall program, the modifications can be evaluated separately and integrated into the unmodified portions of the program without exceeding the 180-day review period or creating an undue workload or

expense to the Government. The FAA will evaluate only one program at a time for any one airport.

Discussion of Comments on the Interim Rule

As previously stated, interested persons have been afforded the opportunity to participate in development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed December 31, 1981. All comments received have been reviewed and considered in the issuance of this final rule.

Twenty public comments were received in response to the notice contained in the interim rule (Docket No. 16729); about half supported the interim rule as published, while the others contained specific suggestions and recommendations for change. In addition to comments directly on the rule, several commenters took the opportunity to comment on other aspects of the ASNA Act.

The assignment of specific responsibilities for local airport noise control planning and implementation to the local airport proprietor, users' groups, planning agencies, and the FAA received considerable discussion. The general consensus among those responding in support of the interim rule procedures was that, without a regulation, many airport noise problems will be overlooked until they are beyond the point of simple or effective solution. Although a majority of individuals responding to the docket were in agreement that the development of noise plans by airport proprietors was a desirable goal, many specific and significant objections to individual sections of the interim rule were raised. The primary objections were with those sections dealing with the interactions between groups and the consultations required as a condition of approval by the FAA. While the commenters seldom agreed on what should be required, it was possible to discern a consensus that the provisions of the interim rule were too vague and indistinct to be really useful guidance.

The comments received in public Docket No. 16729 are discussed below. They are grouped by broad categories of issues.

Safety Reviews

One commenter was concerned with the scope of safety reviews of actions that may be proposed by airport proprietors under FAR Part 150. A trade association of U.S. airlines asserted that the present text restricts the safety reviews to "flight procedures." It was suggested that safety involves other areas, such as displaced thresholds, reverse thrust usage, and glide slopes.

The FAA certainly agrees that the matters listed by the commenter are deserving of safety reviews if and when such actions are proposed for implementation. However, it should be noted that they are already included in FAR Part 150. The definition of flight procedures in § 150.7 includes "any requirements, limitations, or other actions affecting the operation of aircraft in the air or on the ground." This final rule continues the use of the general definition of flight procedures in order to avoid inserting a list of specific actions. Such lists tend to be exclusionary and need more frequent revision.

Aircraft Operational Controls vs. Land Use Controls

This docket received several comments regarding the emphasis that should be placed on aircraft operational controls or limitations relative to emphasis on land use controls. One commenter stated that "greater emphasis should be placed on flight procedures which diminish aircraft noise at its source or lessen its impact on noise sensitive areas." Another commenter stated that land use controls and off-airport construction techniques with limited aircraft operational modifications would be acceptable but remained opposed to aircraft noise restrictions beyond those already required by FAR Part 36. The commenter continued that "it would be serious error on the part of FAA to adopt a policy that encourages local airport operators to establish additional noise restrictions and thus adversely impact the fleet transition process." This final rule will not limit, in any way, FAA's close review of proposed operating restrictions with respect to the impact of such proposals or the fleet transition process.

It is not the intent of the FAA through FAR Part 150 to encourage one noise abatement alternative over another but through the very process set forth in Part 150 to provide a reasonable planning and implementation approach to ensure that maximum noise abatement benefits are derived in a manner that does not place an undue burden on air commerce, is not discriminatory, and does not adversely affect the safe and efficient use of airspace. The Part 150 process provides a voluntary avenue for airport proprietors to gain Federal approval of noise abatement proposals.

Level of Federal Involvement in Local Planning

One commenter observed that most airports serving air transportation have been in existence for a long time with known incompatible land uses in the airport environs. The commenter believes that there are few situations where political, social, and financial conditions would permit conversion of these uses to compatible ones. Two commenters expressed concern about the degree of Federal involvement as stated in the interim regulation and the effect it may have on diminishing local responsibilities relative to noise controls. One of these, the American Association of Airport Executives, complained that attempts by local proprietors to protect the citizens from noise have run afoul of Federal action through the courts or otherwise citing restraint of trade or discrimination. On the other hand, the Air Transport Association (ATA) argued for the establishment of its proposed national aircraft noise abatement program which would preclude FAA approval of plans which unduly affect interstate commerce, jeopardize safety, unjustly discriminate or interfere with safe and efficient use of airspace. ATA's proposal would allow for local involvement by initiation of a plan by the local proprietor and opportunity for public review.

FAA proposes to support the ATA position with respect to factors which should not be allowed and has provided for them in the Program Standards section of Appendix B and in paragraph 150.35(b) on program approval.

Voluntary vs. Mandatory Planning

Nine comments were received on whether or not Part 150 should *require* at least some airport proprietors to submit noise exposure maps and noise compatability programs. For instance, the city of Chamblee, Georgia, stated that all airports with an Airport Operating Certificate should be required to submit their noise maps and programs as a condition for their certification, that any airport with noncompatible uses should be required to hold advertised public hearings during the plan development process, and should receive Federal assistance with respect to the costs incurred in developing these plans. The Attorney General of the State of Illinois went further and suggested that Part 150 should be revised to allow citizens and communities that are severely noise impacted to require the airport operator to engage in the noise abatement planning programs. FAA

encourages all affected communities to participate in the land use and related compatibility planning process, but does not wish to interfere in local decisions concerning which local government body should exercise legal jurisdiction over such planning.

On the other hand, the City of Syracuse, New York, and agencies of several states (Alaska, Arizona, and Maryland) supported voluntary participation in the Part 150 process. They felt that a uniform national requirement for the preparation and submission of noise maps and programs, whether or not the airport had a demonstrable noise problem, would be burdensome and unnecessary. The FAA agrees with this position. Further, the ASNA Act requires that the process be voluntary. Therefore, that principle is maintained in the final rule.

The Department of Law of the State of New York, however, expressed concern that the voluntary nature of Part 150 could lead to noncompliance and to subsequent undermining of the purpose and intent of the rule. They urged some strengthening of sanctions, either positive or negative, to encourage wider use of the Part 150 process. The FAA shares the expressed concern and believes the New York suggestion to be appropriate. Nothing in the ASNA Act or other statutes prohibits the government from encouraging airport operators to participate. In fact, the ASNA Act, itself, provides that certain legal protections exist for those airport operators submitting maps, and authorizes grants of funds for airport noise compatibility planning and for projects to carry out approved noise compatibility programs.

Of particular concern are those airport operators who, in the name of noise abatement, consider only some of the alternatives and some of the economic impacts of those alternatives, and then proceed with a particular course of action without full and public consultation with the FAA and other affected parties. In this regard the ATA suggested that noise program submissions should not be approved without demonstrations of attempts to balance noise mitigation with burden on interstate commerce, promotion of competition, energy conservation, undue discrimination, efficient use of airspace, cost benefits, and other trades. The FAA believes that, as currently adopted, the Part 150 process permits this. The final rule does not limit FAA's ability to consider these factors.

Review of Existing Local Noise Control and Planning Actions

Several commenters had questions or made statements regarding the relationship between existing local plans or actions regarding noise abatement and how they would relate to or fit in with the Part 150 program objectives.

Part 150 submissions of compatibility can be logical extensions to existing local plans and programs. Separate from this proposal, the FAA has funded and otherwise participated in airport noise abatement and land use compatibility planning under the ADAP Planning Grant Program. Many of these planning efforts are conducted in such a manner that, with minor modifications, the resultant plans would qualify for submission under Part 150. There are provisions in this rule to waive certain requirements of the rule for those locations which began their studies prior to the end of the fiscal year in which the interim rule was issued.

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests, ensuring broad public and aeronautical participation, and, finally, balancing all of these interests to assure a reasonable, nonarbitrary, and nondiscriminatory result. That result must be consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

Relation to Airport Proprietor's Responsibility

As stated above, Part 150, like the ASNA Act itself, does not place a duty on airport operators to submit noise compatibility programs to the FAA, or to refrain from implementing programs unless they are approved by the FAA. In this sense, the provisions of Part 150 are not mandatory. However, the FAA believes that the provisions of Part 150, like those in the ASNA Act, are essential to the attainment of an adequate weighing and balancing of air transportation and air commerce objectives against the myriad of social, community, and other real interests that may be affected by airport noise. In addition, it is clear from the legislative history of the Act that the Congress intended to establish a standardized framework for ensuring that localized airport noise restrictions are based on a broad base of information and are thus reasonable, fair, and responsive to the needs of both air commerce and the community.

The FAA, therefore, views Part 150, or a process similar to it (whether or not the process is approved by the FAA), as setting forth the kind of rational decision-making procedure that is appropriate to meet the test of reasonableness set forth by the United States Court of Appeals for the Second Circuit in *British Airways Board, et al.* v. *Port Authority of New York and New Jersey*, 558 F.2d 2075 (1977). In that case, the Court noted that the Federal government conceded that it may not preempt airport proprietors from promulgating their own noise regulations (as is also stated in Part 150), but then went on to consider what limits, if any, apply to the airport proprietor who seeks to restrict the use of its airport for noise purposes. The Court noted the pervasive scheme of FAA regulation of aircraft operation and noise abatement, and set the stage for its conclusion as follows: "Implicit in the Federal scheme of noise regulations, which accords to local airport proprietors the critical responsibility for controlling permissible noise levels in the vicinity of their airports, is the assumption that their responsibility will be exercised in a fair, reasonable and nondiscriminatory manner." (558 F.2d 82). The Court considered both the airport proprietor's liability for noise damages flowing from *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962) and the wide range of air commerce responsibility and activities that are covered by the protective mantle of preemption (citing *City of Burbank* v. *Lockheed Air Terminal, Inc.*, 411 U.S. 624, (1973)), and then struck a reasoned accommodation between each of these conflicting interests. Accordingly, the Court held that the Port Authority "* * * is vested only with the power to promulgate reasonable, nonarbitrary and nondiscriminatory regulations that establish acceptable noise levels for the airport and its immediate environs. Any other conduct by an airport proprietor would frustrate the (aviation) statutory scheme and unconstitutionally burden the commerce Congress sought to foster." (588 F.2d 84).

The Court also noted that the duty to act reasonably is further stated in Federal airport development grants which, pursuant to 49 U.S.C. 1718(a)(1), provide that the Federally funded airport will be "available for public use on fair and reasonable terms and without unjust discrimination" (558 F.2d 84).

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests,

ensuring broad public and aeronautical participation, and, finally, balancing all of these interests in a manner that is needed to assure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

This duty is carried forward, without change under the Airport and Airway Improvement Act of 1982 (at 49 U.S.C. 2210).

Public Involvement

Two commenters proposed that proponents actively seek public involvement in the review of noise compatibility programs rather than merely passively await public comment. Another commenter recommended that the rule emphasize that a "critically important purpose of noise compatibility planning" is to provide for direct involvement in the planning process; it was stated that successful efforts require a thorough understanding of the legal responsibilities (and limits) of the parties involved. It was further recommended that this involvement take place early in the process when there is still opportunity to develop mutually acceptable plans and that more explicit instructions be given regarding citizen participation generally. FAA agrees with these comments and has revised § 150.23(d) accordingly.

One commenter proposed that a formal docket be established upon receipt of a noise exposure map to provide a means for filing written comments and assuring adequate consideration and that all comments received should be included in submissions of noise compatibility programs. This commenter suggested that a summary could be substituted, but only if the commenters (to the noise exposure map docket) agreed that it was fair representation of their comments. Since the responsibility for local coordination of draft noise exposure maps and draft noise compatibility programs rests with the airport operator and with local public and planning agencies (See Sections 103 and 104 of the ASNA Act), FAA does not agree that an FAA or other Federal docket is appropriate. The proposed rule does require, for both the submission of noise exposure maps and noise compatibility programs, a signed statement by the airport operator stating that full coordination with responsible local public agencies has been accomplished (See § 150.23 (d) and (e)). The procedures set forth for evaluation of the program in § 150.33 include ample provision for FAA to confer with affected parties and otherwise ascertain the validity of the material submitted. Nothing in the rule would prevent any party from pointing out to FAA any aspects of the program he or she feels should have a bearing on final disposition.

In response to comments recommending that the FAA specify the form and nature of consultation and mandate public meetings at critical stages during development of a plan, FAA believes that the methods for ensuring proper coordination at the local level should be left entirely to local government. Accordingly, these comments are not accepted.

One commenter suggested that "states" be specifically included as among the public agencies with whom airport operators consult in the process of developing noise exposure maps and compatibility programs. FAA agrees and proposes to revise §§ 150.21(b) and 150.23(c) accordingly.

Internal Review and Approval Processes Within FAA

The FAA agrees with the recommendation of several commenters that more authority be given to FAA regional offices in the review and approval process. The proposed rule reflects changes which give the FAA Regional Directors primary responsibility for program review and approval with FAA Regional Airports Divisions having a central role in coordination of FAA's review of noise exposure maps and compatibility programs. However, specific overview is to be retained in FAA headquarters and approvals by the Administrator.

The Air Transport Association (ATA) has recommended specific changes in Subpart C regarding the internal review process and factors to be considered. For the most part, FAA agrees with these suggestions and has made changes accordingly. FAA cannot accept ATA's recommendation relative to limiting automatic approval, after the 180-day review period, only to those options strictly under local control. The final regulation reflects the provisions in the law as regards those items which are exempt from the automatic approval provisions (i.e., items related to flight procedures).

Funding Availability for Noise Planning

Several commenters indicated the strong need for noise abatement funding. One respondent made the point that a positive step of encouragement of sponsor participation in the Part 150 program would be the attractiveness or probability of funding through the Federal grant program. Another commenter said that, without the good prospect of funding, many of these plans would be counterproductive and even frustrating to the public. This would include loss of credibility to the aviation industry because of the real possibility that the Part 150 process would generate public expectations of noise relief with no guarantees of the funding to implement the measures that would produce that relief.

There is no commitment within Part 150 to provide for the funding of particular projects, nor is there any guarantee that any part of an approved compatibility program will be funded on the Federal level. There is nothing in Part 150 that prohibits local or state funding of projects recommended in approved compatibility programs.

Land Use Compatibility Table

One commenter stated a belief that land uses are not inherently incompatible with specific noise levels. It should be noted that there is no intent to preempt local determinations concerning land use compatibility for noise purposes. We believe that the Land Use Compatibility Table used in the interim regulation, and retained in the final rule, is fair, that it represents the best available information on the subject, and that it fully meets the requirements of the ASNA Act. Like other parts of the rule, it is not intended to replace site specific determinations by local authorities or to supplant other appropriate criteria for use in local programs. Instead, the Table identifies consistent national guidelines for the resolution of airport noise compatibility problems and for needs arising out of the ASNA Act.

The FAA appreciates the intent of another commenter's suggestion that certain changes be made to Part 150 Land Use Compatibility Guidelines to make them more consistent with the Federal Interagency Committee on Urban Noise Guidelines. Specifically, the commenter requested that the Table pick up a note in the Guidelines that states in part that "although local conditions may require residential use, it is discouraged (between L_{dn} 65 and 70 dB) and strongly discouraged (between L_{dn} 70 and 75 dB)." While it is FAA policy to advise against new residential development within the L_{dn} 65 dB contour, the purpose of the Table is to set a clear unambiguous national guidance for the purpose of potential funding of subsequent projects. Since the proposed language would make it less clear as to which situations meet the guidelines and which do not, the note has not been accepted.

Background Noise

Two comments were received on the impact of other (nonairport) noise sources on airport noise compatibility programs. The Arizona Department of Transportation expressed the view that where other noise sources are causing problems in conjunction with airport noise, the airport noise compatibility program should take this into account. They point out that some land uses are incompatible with major arterial streets or with certain industries, as well as with some airport noise levels. In the FAA's opinion, this fact is, or should be, a major consideration in the development of any airport noise compatibility program. No airport is conceived in a vacuum or operated in isolation. Rather, each airport is designed and operated to serve the unique needs of the communities around it. This is historically a major goal of responsible noise planning. Instead, such planning ideally seeks to integrate the airport with its environs by employing land uses that complement airport activities but which are not disturbed by normal airport operations. Obviously, at some airports compatible land uses could include areas for high-noise industrial activities and might also include transportation corridors. Thus, the FAA agrees with the comment that noise compatibility programs should take into account ambient noise levels. However, it is also apparent that there are many airports and communities where it would be unnecessary for the Federal Government to require precise measurements or estimates of ambient noise. Therefore, the FAA maintains the policy that, for purposes of FAR Part 150 maps and programs, no land use shall be identified as noncompatible where the self-generated cumulative noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the cumulative noise from aircraft and airport sources.

The second comment concerning background noise levels expressed the opinon that it would be difficult to determine such ambient noise levels without noise monitoring systems, since the Integrated Noise Model and other computer models do not generally estimate nonaircraft noise. In part, the FAA agrees but does not propose to make noise monitoring systems mandatory.

During the drafting of the interim FAR Part 150, the FAA carefully considered use of a method proposed by the U.S. Environmental Protection Agency (EPA). The EPA proposal included among other things methods for measuring or computing what they called the "community background noise level." While the FAA rejected the proposal to require the use of this method, nothing in the interim FAR Part 150 or in this final rule precludes an airport proprietor from using it in appropriate situations. Another accepted quick handbook method of estimating ambient noise due to other transportation sources such as railway or roadway is the Department of Housing and Urban Development (HUD) "Interim Noise Assessment Guidelines." This is a worksheet method that gives a close approximation of probable noise due to other sources. However, the FAA agrees with the commenter that it is generally more accurate to determine background noise levels by measurement. This does not mean that the FAA endorses or recommends for this purpose permanently installed noise monitoring systems at fixed points throughout each community surrounding every airport. Certainly such systems serve a valued function in many communities. For instance, the FAA maintains a system for the two federally-owned airports in the Washington, D.C. area. From this and other experience, the FAA believes that small portable systems, possibly even sound level meters, are more appropriate for the determination of nonaircraft levels in broad areas.

Alternative Contour Methods

One commenter suggested that smaller general aviation airports should be allowed to develop noise exposure contours by using simplified procedures. Specifically, the suggestion was to use procedures published by the FAA several years ago in Report No. FAA–AS–75–1 entitled, *Developing Noise Exposure Contours for General Aviation Airports.*

The FAA agrees in part with the suggestion. The interim text of Sec. A150.103 required the use of an approved computer program, such as the FAA's Integrated Noise Model (INM). After consideration of the suggestion, it now appears that this language was too restrictive in requiring the use of only computer programs. Accordingly, the text of Sec. A150.1 is broadened to include any approved equivalent. It should be noted that approval of any proposed equivalent will be contingent upon its capability to produce essentially the same results (contours) as the INM computer program, from standardized technical information input about the airport, its operations, and environs. Generally, the burden to demonstrate equivalency to the FAA will be with the applicant. However, the FAA will maintain a list of programs and other methods that have been already approved.

Report No. FAA–AS–75–1 has been examined to see whether it produces equivalent results to the INM. Report FAA–AS–75–1 was developed a number of years ago with the intent that it be used to provide a simplified method to estimate noise for purposes of depicting impacts associated with an environmental assessment for proposed airport development at non air carrier airports. The latest FAA guidance on environmental impact threshold criteria allows the report to be used as a rought estimate to determine if there is the potential for serious noise impacts, and, if not, to produce contours for general aviation airports. The method lacks flexibility and is overly conservative (i.e., tends to overpredict impact). Because of the flexibility which is required to analyze noise abatement procedures fully and the degree of accuracy desired under Part 150, use of this particular handbook method would not be acceptable as an equivalent.

Another commenter noted that the interim rule does not recognize that there may be prior local or state requirements that conflict with the new regulation. He cited the example of one state that required the preparation of DNL noise contours for certain airports. According to the commenter, these maps "have been developed using a variety of methods more-or-less different from the INM of the rule." He suggested that FAR Part 150 should be amended to allow for continued use of these other methods for consistency.

The FAA disagrees with this suggestion and believes that continued use of methods which do not reflect the state-of-the-art in noise prediction is undesirable and would work to the airport operator's detriment since older models tend to overpredict noise contours when compared to newer models. However, the FAA recognizes the burden involved in requiring work to be redone as new models come on line and, therefore, proposes to accept as an "FAA-approved equivalent" the use of a noise methodology which represented an equivalent to the INM state-of-the-art at the time the noise exposure maps and noise compatibility programs were prepared, provided that the contours are shown using DNL. One of the primary thrusts of Title I of the ASNA Act was to require the FAA to standardize the methodology used in the reporting and evaluation of aircraft and airport noise. Although participation in the FAR Part 150 noise compatibility planning process is, under ASNA, voluntary on the part of airport proprietors, the establishment of

"a single system for determining the exposure of individuals to noise which results from the operations of an airport" is not discretionary for the FAA. Instead, the FAA is required to establish this single system by regulation for the purpose of approval of noise compatability proposals, even though no person is required to apply for, or have, such approval. Thus, the requirement is not just to compute or calculate contours in standardized units of L_{dn} but to compute or calculate those contours in a consistent and uniform manner and to compare the land uses within those contours against a national guideline.

Revision of Noise Exposure Map

Several commenters expressed confusion regarding the contents of the submittal documentation of the noise exposure map, especially the 1985 or 5-year map. They further indicated that it was unclear when a map must be revised. A primary point of confusion was in the definition of "substantial new noncompatible land use" in Section 103 of ASNA and that of "significant" in Section 107 of the same Act. The FAA agrees that these points were unclear and need further explanation.

As indicated in Section 103 of ASNA, a noise exposure map is required to be revised when any change in airport operation would create any substantial new noncompatible use in any area surrounding the airport. "Substantial new noncompatible use" is now defined in Section 150.21(d). Another comment questioned whether the requirement for revision applies to the current map, the 1985 or 5-year map, or both. Section 150.21(d) indicates that, so long as the change in airport operation does not exceed the 1985 or 5-year forecast map to the extent that it would create a substantial new noncompatible use (as defined therein) with respect to that map, no revision is necessary. The 1985 or 5-year map remains in submitted status even after the year 1985 or subsequent year has passed, until it is required to be revised because of a substantial new noncompatible use with respect to that map.

Sections 150.21 (g) and (h) have been added to clarify the relationship of Section 107 of ASNA to the process described in Part 150. The term "significant" in Section 107(a) of ASNA is defined in relationship to the revision of the noise exposure map.

Other Comments

In addition to the comment already noted, the Attorney General of the State of Illinois made other comments related to matters in litigation that were not comments on the substance of the interim rule.

SECTION-BY-SECTION ANALYSIS OF THE CHANGES TO THE RULE

The final rule establishing the FAA's "Airport Noise Control and Abatement Planning" program is a revision of the interim Part 150 to the Federal Aviation Regulations (14 CFR Part 150). This part, as revised, consists of three subparts and two technical appendixes described as follows:

Subpart A—General Provisions

Section 150.1 Is Entitled "Scope and Purpose"

The applicability of Part 150 is specified in § 150.3. As prescribed in the amended ASNA Act, it now covers the airport noise compatibility planning activities of operators of all public use airports not used exclusively by helicopters, as defined in the amended ASNA Act; e.g., any public airport, any privately owned reliever airport, and any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft which is used or to be used for public purposes. The FAA will receive and evaluate submissions of noise programs from any of the covered airports in order to provide the benefits of the planning, evaluation, and FAA advice to those airport operators wishing to participate. By so doing, the rule covers approximately 2,800 airports.

Section 150.5 specifies the limitations of Part 150. Subsections (a), (b), and (c) have nonsubstantive changes made for clarification. A new subsection (d) is added to clarify that responsibility for the interpretation of the effects and placement of noise contours upon specific subjacent land uses lies with appropriate local governments rather than with the FAA.

Section 150.7 prescribes the definitions of certain terms used in Part 150. Other special usages of terms are provided in those appendixes in which the term appears.

The word "airport" is now defined to cover all public use airports not used exclusively by helicopters, as defined in Section 101(1) of the ASNA Act as amended.

A Part 150 "airport operator" is changed to comply with the amended ASNA Act.

"Noise exposure maps," has the unnecessary requirement for topographic data deleted, and has other changes for clarification.

"Noncompatible land use," also has minor changes for clarification.

Section 150.9 contains the designation of standardized noise systems prescribed under section 102 of the ASNA Act. "Uses of land which are normally compatible * * *," has been moved to a new § 150.11 and changed for clarification. References to FAA approved equivalents in subsections (a) and (b) have been moved to a new subsection (c) and expanded for clarification.

Section 150.11 incorporations by reference, has been renumbered, § 150.13. Minor changes have been made for clarification and the addresses in subsection (e) have been updated.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

Subpart B of Part 150 prescribes the substantive and procedural standards for airport operators wishing to develop original or revised noise exposure maps (and the related descriptions of projected airport operations) and proposed noise compatibility programs. It also describes the response of FAA Regional Directors in receiving submissions and in publishing notices in the **Federal Register.**

Section 150.21 covers noise exposure maps and the related documentation under § 103 of the ASNA Act. Section (b) is changed to reflect the new administrative procedures by directing that all copies of airport operator submissions be sent to the FAA Regional Directors.

Section (a)(1) is changed to reflect the passing of the 1982 calendar year and now requires the future data forecast for the fifth calendar year beginning after the date of submission. Additional technical changes are made to both subsections (1) and (2) to clarify the information actually needed.

Section 150.21(b) is changed to clarify the existing requirements for consultation in the preparation of noise exposure maps and to require submission of basic documentation of that consultation. Some of these requirements were previously included in subsection 150.21(e).

Section 150.21(c) is changed to reflect the new administrative procedures and for clarification.

Section 150.21(d), which indicates the circumstances under which an acceptable map must be revised because of changes in airport operations that would create any substantial, new noncompatible land uses, has been expanded to more clearly delineate these circumstances.

For purposes of Part 150, a change in airport operation which creates a

substantial new noncompatible use is an increase in the yearly day-night average sound level of L_{dn} 1.5 dB or greater as a result of aircraft operations which either cause a land area to become noncompatible for the first time or increases the noncompatibility of a previous noncompatible area. The requirement in § 150.21(d) for revision of the noise exposure map is related to the definition of "significant" changes in Section 107(a) of ASNA. When an airport realizes a "significant" change in the type or frequency of aircraft operations, in airport layout, in flight patterns, or in nighttime operations which either individually or cumulatively results in a L_{dn} 1.5 dB increase in noncompatibility, that change would create a "substantial new noncompatible use" and triggers this need for a map revision. This, of course, leaves the responsibility for monitoring these factors on the airport operator.

A revised map is not required if the changes increase the contours of the existing map but are still within the parameters of either the 1985 or 5-year forecast map so that, while the contours may be larger than or different from the map of existing conditions, they are not larger than or different from the forecast conditions. The FAA believes that this situation reflects the fact that the noise contours are changing just as the airport operator had forecast and that this forecast map has been available for public review; therefore, no revision is necessary. It is only when changes in airport operations (i.e., type and/or frequency of aircraft operations, number of nighttime operations, flight patterns, or airport layout) would cause the noise contours to increase in a way that is larger than or different from the forecast conditions and on an order of magnitude that would create a "substantial", (again, defined as an increase of L_{dn} 1.5 dB or more) new noncompatible use as defined in Part 150 definitions that a revised map is required. Changes in land uses or demographics in the area around the airport do not automatically require the submission of a revised map. At some point in the future, when the forecast year has been reached or passed, no revised map is necessary until changes in airport operations create substantial, new noncompatible uses. Comments are invited on whether revised noise exposure maps should be required when local ambient noise levels are substantially changed or the changes result in new noncompatible uses. The FAA will review comments on this issue and will consider further action, if appropriate. Revised noise exposure maps are treated the same, both substantively and procedurally, under Part 150 as initial submissions of maps.

Section 150.21(f) has been renumbered § 150.21(e).

Section 150.21(f) has been added to reflect Section 107 of ASNA which deals with circumstances under which a person who acquires a property interest in an area surrounding an airport for which a noise exposure map has been submitted shall be entitled to recover damages with respect to noise attributable to the airport.

In new § 150.21(g) the term "significant", in Section 107(a) of ASNA is defined for Part 150 in relation to a change or increase that would result in a substantial, new noncompatible use. This serves to tie together the requirement to revise the noise exposure map with the significant circumstances expressed in Section 107(a) so that the two will occur in unison.

Section 150.23 governs Part 150 noise compatibility programs and their revisions, pursuant to portions of section 104 of the ASNA Act. Any Part 150 airport operator, who has submitted a noise exposure map, may submit to the FAA a "noise compatibility program."

Section 150.23(a) has been revised to reflect the new administrative procedures.

Section 150.23(b) has been renumbered as (c) and a new paragraph (b) inserted to clarify acceptance and review sequence when a map and a program are submitted together. The FAA will not begin the 180-day formal review period for the program until after the FAA has had an opportunity to review the map and has found it in compliance with the applicable requirements.

Section 150.23(c), which gives requirements for developing and preparing noise compatibility programs, is expanded to include the requirements for an FAA-approved equivalent. These requirements are also delineated in Appendix B under Sec. B150.9 and are further described in this preamble under the analysis of that section.

As with the noise exposure maps, it is the FAA's intention to require as little modification as possible of documents prepared under previously funded or approved programs for acceptance under Part 150, where consistent with the need to ensure full equivalency.

Section 150.23(d) is renumbered (e) and a new (d) is added. It covers opportunity for public involvement and is in response to the comments received. FAA will not intervene in the consultative process used by local government.

Section 150.23(e) contains a description of the minimum content of a noise compatibility program. Subsection (1) is simplified for clarity. Subsection (4) is changed to place additional emphasis on citizen participation in response to the comments received. Other changes are made for additional clarity. Subsection (5) is changed to clarify the need to prevent the introduction of additional noncompatible uses from future airport operations. Subsection (7) is changed to clarify the documentation requirements for public comments. Subsection (8) is changed to add the estimated costs of proposals as a requirement. Subsection (9) is changed to clarify the requirements for revision of the program.

Subpart C—Evaluation and Determination of Effects of Noise Compatibility Programs

Subpart C of Part 150 describes the procedure followed and general criteria applied by the FAA to determine the pertinent effects of proposed noise compatibility programs and whether the proposed program should be approved or disapproved.

Section 150.31 prescribes the procedure and initial response of the FAA when it receives (from a Part 150 airport operator) a noise compatibility program. Section 150.31(a) is changed so that the Regional Director acknowledges to the airport operator receipt of five copies of the program and conducts a preliminary review of the submission. Section 150.31(b) is renumbered (c) and a new (b) is added. If based on the preliminary review the Regional Director finds that it does not conform to the application requirements of Part 150, it will be returned to the airport operator for reconsideration.

Section 150.31(c), which covers acceptable programs and the FAA's requirements for publication of a **Federal Register** notice is clarified, is brought into conformance with the revised administrative procedures, and reduced in bulk.

Section 150.31(d) has been added to clarify the starting date of the mandated 180-day approval period.

Section 150.33 describes the process for evaluation of the programs. It is clarified, brought into conformance with the revised administrative procedures, and reduced in bulk. In conducting the evaluation, the Regional Director (or designee) will take the lead and have the primary responsibility. It is expected that the FAA Regional Airports Divisions will have a central role in the program reviews since they maintain

basic working relationships with airport operators, have experience with airport noise planning studies done prior to Part 150, and have responsibility for the airport grant program which may provide funding for noise planning and noise projects. The region will send two copies of each program which has been accepted on the basis of preliminary review to FAA headquarters. Detailed internal FAA guidance or orders will be issued to the regional offices establishing criteria for approval of noise compatibility programs. Specific overview is to be retained by FAA headquarters offices to assure overall quality and uniformity of the reviews and a uniform high quality for approved programs. Approval of a program must be by the Administrator (Section 150.35(b)). Any headquarters comments will be sent to the region to incorporate in its review. The Regional Director (or designee) may, to the extent considered necessary, confer with other officials, persons, and agencies which may have responsibilities or information pertinent to the issues.

Section 150.35 governs the issuance of determinations on noise compatibility programs. Section 150.35(a) now includes the provision that no conditional approvals be given and clarifies the program items which are not subject to the 180-day rule. Section 150.35(d) clarifies the criteria for revision of a program. It also incorporates former § 150.23(c). Sections 150.35 (d) through (f) are renumbered. Section 150.35(d) is changed to add two conditions under which an FAA approval of a program or a portion thereof may be rescinded: when a term or condition of the program or its approval is violated, and when a flight procedure or other FAA action upon which the approved program is dependent is subsequently disapproved or rescinded by the FAA. Section 150.35(e) is revised for clarification.

Appendix A—Noise Exposure Map Development

Appendix A to Part 150 contains the technical description and standards constituting the methodology for developing acceptable airport noise exposure maps. Section A150.5(b) and its accompanying Table 1, "Tolerances Allowed on the A-Weighting Characteristics for Type 2 Meters," were redundant and have been deleted. Section A150.5(c) has been renumbered (b) and technical corrections have been made. This section is also changed to clarify that the computer based noise prediction program used must be either the FAA's Integrated Noise Model (INM) or an FAA approved equivalent. Additional technical corrections have been made to Sections A150.1(b) and A150.3(b). Section A150.5(a) is changed to clarify the types of sound measuring equipment which must be used.

Section A150.101 prescribes the content requirements for noise exposure maps, while Sections A150.101 (a) and (b) have technical corrections. Section A150.101(c) is changed for clarification. Section A150.101(e) is changed for clarification, subsection (8) which was redundant is deleted, and subsection (9) is renumbered. A new subsection (9) has been added to clarify the scale and graphic quality of the maps. Location of historic preservation sites, which had been previously overlooked, has been added to the items in subsection (6).

New section A150.101(f) excepts noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. Such studies include Airport Noise Control and Land Use Compatibility (ANCLUC) studies, airport master plans, site selection studies, and environmental impact statements and findings of no significant impact. The date October 1, 1981, reflects the FAA's intention to apply this exception to studies begun before the end of the fiscal year in which the interim Part 150 was issued.

As previously noted, Appendix A, Table 1, identifies the land uses which are normally compatible with the various exposure levels of individuals to noise. The table has been changed to give schools their own subcategory, to recognize their usual close relationship to residential areas and to not appear to encourage their location in a noisier environment than for residential. The footnote to Table 1 has been changed to clarify the local responsibility in determining the relationship between specific properties and specific noise contours. Technical changes have been made to the key and notes to the table for clarification.

Section A150.105 has been simplified for clarity.

Appendix B—Airport Noise Compatibility Program Development

Appendix B to Part 150 prescribes the content and technical methodology for developing airport noise compatibility programs. Those programs set forth the specific measures the airport operator (or other person or agency responsible) has taken, or proposes to take, in light of the noise exposure map for that airport, to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible uses.

Section B150.1(b), which states the purposes of a noise compatibility program, has been rewritten for additional clarity and to state better the purpose as defined by the ASNA Act.

Section B150.3 has been rewritten to indicate clearly the need for an accurate and complete noise exposure map as the basis for determining the need for a noise compatibility program and for developing a responsive compatibility program.

Section B150.5(a) is revised to include reduction of the probability of the establishment of additional noncompatible uses.

Section B150.5 (e), (f), and (g) are added to comply fully with the requirements of the ASNA Act.

Sections B150.7 (a) and (b) have been reorganized for increased clarity. Section B150.7(c) has been added to require clear identification of the agencies responsible for implementing the program and the agreed upon schedule.

New Section B150.9 is similar, but not identical, to Section A150.10(f). Section B150.9 excepts noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. The list of exceptions is somewhat different from and shorter than the list of exceptions for noise exposure maps. Ambient noise levels and estimates of numbers of people impacted are considered by the FAA to be more critical for program purposes than for maps, and so these have not been excepted from programs. Airport operators may submit to the FAA previously prepared programs with adequate supplemental documentation for those items not excepted to meet the requirements of Part 150.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all changes to Part 150. FAA determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. This rule imposes no additional costs on the Federal Government.

The amendments in this rule will provide benefits in the aggregate to the aviation industry and the general public. These amendments provide benefits to

aviation by deleting unnecesary requirements, updating and clarifying the text, and relaxing certain documentation requirements. The regulations are more concise and easier to understand. In addition, the final Part 150 is expected to provide several other benefits to the general public, including: commonality and a more logical progression of the rules, reduced complexity and streamlining of the approval process for maps and programs. These changes provide a regulation that is easier to read and understand. Additionally, it reduces the amount of study time for persons who are responsible for knowing and complying with the regulation. No additional costs result from the rule changes.

Regulatory Flexibility Determination

As detailed in the evaluation, all but one of the changes to Part 150 are editorial or clarifying changes. This one would shift primary responsibility for review of maps and programs from FAA headquarters to the Regional Directors. This change results in improved governmental efficiency.

Therefore, it is certified that the revised rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.ID), a Finding of No Significant Impact has been made. The changes incorporated in this final rule (which are primarily organizational, administrative, and clarifying), do not significantly affect the quality of the human environment.

Paperwork Reduction Act

Information collection requirements contained in this regulation (sections 9d, 12, and 20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0517.

Conclusion

All but one of these amendments are either editorial or clarifying in nature. One amendment is administrative and shifts responsibility for certain review functions within the FAA. For these reasons the FAA has determined that this document involves a regulation which is not major under Executive Order 12291. However, since this document concerns a matter on which there is substantial public interest, it is considered to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since the amendments are editorial, clarifying and administrative, resulting in no substantial costs or cost savings, it is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation may be examined in the regulatory docket or obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 11

Reporting and recordkeeping requirements.

14 CFR Part 150

Airports, Noise control.

The Final Rule

Accordingly, the Federal Aviation Regulations (14 CFR Parts 11 and 150) are amended, effective January 18, 1985, as follows:

PART 11—[AMENDED]

1. By amending § 11.101 of Part 11 by adding at the end of the table in paragraph (b) the following:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
Section 150.21 and 150.23	2120-0517

2. By revising Part 150 to read as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

Subpart A—General Provisions

Sec.
150.1 Scope and purpose.
150.3 Applicability.
150.5 Limitations of this part.
150.7 Definitions.
150.9 Designation of noise systems.
150.11 Identification of land uses.
150.13 Incorporations by reference.

Subpart B—Submission of Noise Exposure Maps and Noise Compatibility Programs

150.21 Noise exposure maps and descriptions of projected operations.
150.23 Noise compatibility programs.

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

Sec.
150.31 Preliminary review; acknowledgments.
150.33 Evaluation of programs.
150.35 Determinations; publications; effectivity.

Appendix A—Noise Exposure Maps
Appendix B—Noise Compatibility Programs

Authority: Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421, and 1431); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Secs. 101, 102, 103(a), and 104 (a) and (b), Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b)); 49 CFR 1.47(m); and Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 et seq.).

Subpart A—General Provisions

§ 150.1 Scope and purpose.

This part prescribes the procedures, standards, and methodology governing the development, submission, and review of airport noise exposure maps and airport noise compatibility programs, including the process for evaluating and approving or disapproving those programs. It prescribes single systems for— (a) measuring noise at airports and surrounding areas that generally provides a highly reliable relationship between projected noise exposure and surveyed reaction of people to noise; and (b) determining exposure of individuals to noise that results from the operations of an airport. This part also identifies those land uses which are normally compatible with various levels of exposure to noise by individuals. It provides technical assistance to airport operators, in conjunction with other local, State, and Federal authorities, to prepare and execute appropriate noise compatibility planning and implementation programs.

§ 150.3 Applicability.

This part applies to the airport noise compatibility planning activities of the operators of "public use airports," not used exclusively by helicopters, as that term is used in Section 101(1) of the ASNA Act as amended (49 U.S.C. 2101) and as defined in section 503(17) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2202).

§ 150.5 Limitations of this part.

(a) Pursuant to the ASNA Act (49 U.S.C. 2101 et seq.), this part provides for airport noise compatibility planning and land use programs necessary to the purposes of those provisions. No submittal of a map, or approval or disapproval, in whole or part, of any

map or program submitted under this part is a determination concerning the acceptability or unacceptability of that land use under Federal, State, or local law.

(b) Approval of a noise compatibility program under this part is neither a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

(c) Approval of a noise compatibility program under this part does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and applicable regulations, directives, and guidelines.

(d) Acceptance of a noise exposure map does not constitute an FAA determination that any specific parcel of land lies within a particular noise contour. Responsibility for interpretation of the effects of noise contours upon subjacent land uses, including the relationship between noise contours and specific properties, rests with the sponsor or with other state or local government.

§ 150.7 Definitions.

As used in this part, unless the context requires otherwise, the following terms have the following meanings.

"Airport" means any public use airport, not exclusively used by helicopters, as defined by the ASNA Act, including: (a) Any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned; (b) any privately owned reliever airport; and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.

"Airport noise compatibility program" and "program" mean that program, and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B of this part, including the measures proposed or taken by the airport operator to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible land uses within the area.

"Airport Operator" means, the operator of an airport as defined in the ASNA Act.

"ASNA Act" means the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 et seq.).

"Average sound level" means the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.

"Compatible land use" means the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under Appendix A (Table 1) of this part.

"Day-night average sound level" (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time." The symbol for DNL is L_{dn}.

"Noise exposure map" means a scaled, geographic depiction of an airport, its noise contours, and surrounding area developed in accordance with section A150.101 of Appendix A of this part, including the accompanying documentation setting forth the required descriptions of forecast aircraft operations at that airport during the fifth calendar year beginning after submission of the map, together with the ways, if any, those operations will affect the map (including noise contours and the forecast land uses).

"Noise level reduction" (NLR) means the amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

"Noncompatible land use" means the use of land that is identified under this part as normally not compatible with the outdoor noise environment (or an adequately attenuated noise reduction level for the indoor activities involved at the location) because the yearly day-night average sound level is above that identified for that or similar use under Appendix A (Table 1) of this part.

"Regional Director" means the Director of the FAA Region having responsibility for the geographic area in which the airport in question is located.

'Restriction affecting flight procedures" means any requirement, limitation, or other action affecting the operation of aircraft, in the air or on the ground.

"Sound exposure level" means the level, in decibels, of the time integral of squared A-weighted sound pressure during a specified period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a duration of one second.

"Yearly day-night average sound level" (YDNL) means the 365-day average, in decibels, day-night average sound level. The symbol for YDNL is also L_{dn}.

§ 150.9 Designation of noise systems.

For purposes of this part, the following designations apply:

(a) The noise at an airport and surrounding areas covered by a noise exposure map must be measured in A-weighted sound pressure level (L_A) in units of decibels (dBA) in accordance with the specifications and methods prescribed under Appendix A of this part.

(b) The exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day-night average sound level (YDNL) calculated in accordance with the specifications and methods prescribed under Appendix A of this part.

(c) Uses of computer models to create noise contours must be in accordance with the criteria prescribed under Appendix A of this part.

§ 150.11 Identification of land uses.

For the purposes of this part, uses of land which are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of this part. Determination of land use must be based on professional planning criteria and procedures utilizing comprehensive, or master, land use planning, zoning, and building and site designing, as appropriate. If more than one current or future land use is permissible, determination of compatibility must be based on that use most adversely affected by noise.

§ 150.13 Incorporations by reference.

(a) *General.* This part prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated by reference and were approved for incorporation by reference by the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that affects compliance with standards and procedures of this part will be made under 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this part is as follows:

International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters," dated 1973.

(d) *Availability for purchase.* Published material incorporated by reference in this part may be purchased at the price established by the publisher or distributor at the following mailing addresses.

IEC publications:

(1) The Bureau Central de la Commission Electrotechnique, Internationale, 1, rue de Varembe, Geneva, Switzerland.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this part is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(3) The respective Regional Offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts 01803.

(ii) Eastern Regional Office, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, New York 11430.

(iii) Southern Regional Office, 3400 Norman Berry Drive, East Point, Georgia (P.O. Box 20636, Atlanta, Georgia) 30320.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois 60018.

(v) Central Regional Office, 601 East 12th Street, Kansas City, Missouri 64106.

(vi) Southwest Regional Office, 4400 Blue Mound Road, (P.O. Box 1689), Fort Worth, Texas 76101.

(vii) Northwest Mountain Regional Office, 17900 Pacific Highway, South, C-68966, Seattle, Washington 98168.

(viii) Western Pacific Regional Office, 15000 Aviation Boulevard, Hawthorne, California (P.O. Box 92007, Worldway Postal Center, Los Angeles) 90009.

(ix) Alaskan Regional Office, 701 "C" Street, Box 14, Anchorage, Alaska 99513.

(xi) European Office, 15, Rue de la Loi (3rd Floor) B1040 Brussels, Belgium.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, D.C.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

§ 150.21 Noise exposure maps and related descriptions.

(a) Each airport operator may after completion of the consultations and public procedure specified under paragraph (b) of this section submit to the Regional Director five copies of the noise exposure map (or revised map) which identifies each noncompatible land use in each area depicted on the map, as of the date of submission, and five copies of a map each with accompanying documentation setting forth—

(1) The noise exposure based on forecast aircraft operations at the airport for the fifth calendar year beginning after the date of submission (based on reasonable assumptions concerning future type and frequency of aircraft operations, number of nightime operations, flight patterns, airport layout including any planned airport development, planned land use changes, and demographic changes in the surrounding areas); and

(2) The nature and extent, if any, to which those forecast operations will affect the compatibility and land uses depicted on the map.

(b) Each map, and related documentation submitted under this section must be developed and prepared in accordance with Appendix A of this part, or an FAA approved equivalent, and in consultation with states, and public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within the L_{dn} 65 dB contour depicted on the map, FAA regional officials, and other Federal officials having local responsibility for land uses depicted on the map. This consultation must include regular aeronautical users of the airport. The airport operator shall certify that it has afforded interested persons adequate opportunity to submit their views, data, and comments concerning the correctness and adequacy of the draft noise exposure map and descriptions of forecast aircraft operations. Each map and revised map must be accompanied by documentation describing the consultation accomplished under this paragraph and the opportunities afforded the public to review and comment during the development of map. One copy of all written comments received during consultation shall also be filed with the Regional Director.

(c) The Regional Director acknowledges receipt of noise exposure maps and descriptions and indicates whether they are in compliance with the applicable requirements. The Regional Director publishes in the **Federal Register** a notice of compliance for each such noise exposure map and description, identifying the airport involved. Such notice includes information as to when and where the map and related documentation are available for public inspection.

(d) If, after submission of a noise exposure map under paragraph (a) of this section, any change in the operation of the airport would create any "substantial, new noncompatible use" in any area depicted on the map beyond that which is forecast for the fifth calendar year after the date of submission, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map. A change in the operation of an airport creates a substantial new noncompatible use if that change results in an increase in the yearly day-night average sound level of 1.5 dB or greater in either a land area which was formerly compatible but is thereby made noncompatible under Appendix A (Table 1), or in a land area which was previously determined to be noncompatible under that Table and whose noncompatibility is now significantly increased. Such updating of the map shall include a reassessment of those areas excluded under Sec. A150.101(e)(5) of Appendix A because of high ambient noise levels. If the five-year forecast map is based on assumptions involving recommendations in a noise compatibility program which are subsequently disapproved by the FAA, a revised map must be submitted if revised assumptions would create a substantial, new noncompatible use not indicated on the initial five-year map. Revised noise exposure maps are subject to the same requirements and procedures as initial submissions of noise exposure maps under this Part.

(e) Each map, or revised map, and description of consultation and opportunity for public comment, submitted to the FAA, must be certified

as true and complete under penalty of 18 U.S.C. 1001.

(f) (1) The ASNA Act provides, in Section 107(a) (49 U.S.C. 2107(a)), that: no person who acquires property or an interest therein after the date of enactment of the Act in an area surrounding an airport with respect to which a noise exposure map has been submitted under Section 103 of the Act shall be entitled to recover damages with respect to the noise attributable to such airport if such person had actual or constructive knowledge of the existence of such noise exposure map unless, in addition to any other elements for recovery of damages, such person can show that—

(i) A significant change in the type or frequency of aircraft operations at the airport; or

(ii) A significant change in the airport layout; or

(iii) A significant change in the flight patterns; or

(iv) A significant increase in nighttime operations; occurred after the date of the acquisition of such property or interest therein and that the damages for which recovery is sought have resulted from any such change or increase."

(2) The Act further provides in Section 107(b), (49 U.S.C. 2107(b)): That for this purpose, "constructive knowledge" shall be imputed, at a minimum, to any person who acquires property or an interest therein in an area surrounding an airport after the date of enactment of the Act if—

(i) Prior to the date of such acquisition, notice of the existence of a noise exposure map for such area was published at least three times in a newspaper of general circulation in the county in which such property is located; or

(ii) A copy of such noise exposure map is furnished to such person at the time of such acquisition.

(g) For this purpose, the term "significant" in paragraph (f) of this section means that change or increase in one or more of the four factors which results in a "substantial new noncompatible use" as defined in § 150.21(d), affecting the property is issue. Responsibility for applying or interpreting this provision with respect to specific properties rests with local government.

§ 150.23 Noise compatibility programs.

(a) Any airport operator who has submitted an acceptable noise exposure map under § 150.21 may, after FAA notice of acceptability and other consultation and public procedure specified under paragraphs (b) and (c) of this section, as applicable, submit to the Regional Director five copies of a noise compatibility program.

(b) An airport operator may submit the noise compatibility program at the same time as the noise exposure map. In this case, the Regional Director will not begin the statutory 180-day review period (for the program) until after FAA reviews the noise of the applicable requirements.

(c) Each noise compatibility program must be developed and prepared in accordance with Appendix B of this part, or an FAA approved equivalent, and in consultation with FAA regional officials, the officials of the state and of any public agencies and planning agencies whose area, or any portion or whose area, of jurisdiction within the L_{dn} 65 dB noise contours is depicted on the noise exposure map, and other Federal officials having local responsibility of land uses depicted on the map. Consultation with FAA regional officials shall include, to the extent practicable, informal agreement from FAA on proposed new or modified flight procedures. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For other airports, consultation must include, to the extent practicable, aircraft operators using the airport.

(d) Prior to and during the development of a program, and prior to submission of the resulting draft program to the FAA, the airport operator shall afford adequate opportunity for the active and direct participation of the states, public agencies and planning agencies in the areas surrounding the airport, aeronautical users of the airport, and the general public to submit their views, data, and comments on the formulation and adequacy of that program.

(e) Each noise compatibility program submitted to the FAA must consist of at least the following:

(1) A copy of the noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c).

(2) A description and analysis of the alternative measures considered by the airport operator in developing the program, together with a discussion of why each rejected measure was not included in the program.

(3) Program measures proposed to reduce or eliminate present and future noncompatible land uses and a description of the relative contribution of each of the proposed measures to the overall effectiveness of the program.

(4) A description of public participation and the consultation with officials of public agencies and planning agencies in areas surrounding the airport, FAA regional officials and other Federal officials having local responsibility for land uses depicted on th map, any air carriers and other users of the airport.

(5) The actual or anticipated effect of the program on reducing noise exposure to individuals and noncompatible land uses and preventing the introduction of additional noncompatible uses within the area covered by the noise exposure map. The effects must be based on expressed assumptions concerning the type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including planned airport development, planned land use changes, and demographic changes within the L_{dn} 65 dB noise contours.

(6) A description of how the proposed future actions may change any noise control or compatibility plans or actions previously adopted by the airport proprietor.

(7) A summary of the comments at any public hearing on the program and a copy of all written material submitted to the operator under paragraphs (c) and (d) of this section, together with the operator's response and disposition of those comments and materials to demonstrate the program is feasible and reasonably consistent with obtaining the objectives of airport noise compatibility planning under this part.

(8) The period covered by the program, the schedule for implementation of the program, the persons responsible for implementation of each measure in the program, and, for each measure, documentation supporting the feasibility of implementation, including any essential governmental actions, costs, and anticipated sources of funding, that will demonstrate that the program is reasonably consistent with achieving the goals of airport noise compatibility planning under this part.

(9) Provision for revising the program if made necessary by revision of the noise exposure map.

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

§ 150.31 Preliminary review: acknowledgments.

(a) Upon receipt of a noise compatibility program submitted under § 150.23, the Regional Director acknowledges to the airport operator

receipt of the program and conducts a preliminary review of the submission.

(b) If, based on the preliminary review, the Regional Director finds that the submission does not conform to the requirements of this part, he disapproves and returns the unacceptable program to the airport operator for reconsideration and development of a program in accordance with this Part.

(c) If, based on the preliminary review, the Regional Director finds that the program conforms to the requirements of this part, the Regional Director publishes in the **Federal Register** a notice of receipt of the program for comment which indicates the following:

(1) The airport covered by the program, and the date of receipt.

(2) The availability of the program for examination in the offices of the Regional Director and the airport operator.

(3) That comments on the program are invited and, will be considered by the FAA.

(d) The date of signature of the published notice of receipt starts the 180-day approval period for the program.

§ 150.33 Evaluation of programs.

(a) The FAA conducts an evaluation of each noise compatibility program and, based on that evaluation, either approves or disapproves the program. The evaluation includes consideration of proposed measures to determine whether they—

(1) May create an undue burden on interstate or foreign commerce (including unjust discrimination);

(2) Are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and

(3) Include the use of new or modified flight procedures to control the operation of aircraft for purposes of noise control, or affect flight procedures in any way.

(b) The evaluation may also include an evaluation of those proposed measures to determine whether they may adversely affect the exercise of the authority and responsibilities of the Administrator under the Federal Aviation Act of 1958, as amended.

(c) To the extent considered necessary, the FAA may—

(1) Confer with the airport operator and other persons known to have information and views material to the evaluation;

(2) Explore the objectives of the program and the measures, and any alternative measures, for achieving the objectives.

(3) Examine the program for developing a range of alternatives that would eliminate the reasons, if any, for disapproving the program.

(4) Convene an informal meeting with the airport operator and other persons involved in developing or implementing the program for the purposes of gathering all facts relevant to the determination of approval or disapproval of the program and of discussing any needs to accommodate or modify the program as submitted.

(d) If requested by the FAA, the airport operator shall furnish all information needed to complete FAA's review under (c).

(e) An airport operator may, at any time before approval or disapproval of a program, withdraw or revise the program. If the airport operator withdraws or revises the program or indicates to the Regional Director, in writing, the intention to revise the program, the Regional Director terminates the evaluation and notifies the airport operator of that action. That termination cancels the 180-day review period. The FAA does not evaluate a second program for any airport until any previously submitted program has been withdrawn or a determination on it is issued. A new evaluation is commenced upon receipt of a revised program, and a new 180-day approval period is begun, unless the Regional Director finds that the modification made, in light of the overall revised program, can be integrated into the unmodified portions of the revised program without exceeding the original 180-day approval period or causing undue expense to the government.

§ 150.35 Determinations; publications; effectivity.

(a) The FAA issues a determination approving or disapproving each airport noise compatibility program (and revised program). Portions of a program may be individually approved or disapproved. No conditional approvals will be issued. A determination on a program acceptable under this part is issued within 180 days after the program is received under § 150.23 of this part or it may be considered approved, except that this time period may be exceeded for any portion of a program relating to the use of flight procedures for noise control purposes. A determination on portions of a program covered by the exceptions to the 180-day review period for approval will be issued within a reasonable time after receipt of the program. Determinations relating to the use of any flight procedure for noise control purposes may be issued either in connection with the determination on other portions of the program or separately. Except as provided by this paragraph, no approval of any noise compatibility program, or any portion of a program, may be implied in the absence of the FAA's express approval.

(b) The Administrator approves programs under this part, if—

(1) It is found that the program measures to be implemented would not create an undue burden on interstate or foreign commerce (including any unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses;

(2) The program provides for revision if made necessary by the revision of the noise map; and

(3) Those aspects of programs relating to the use of flight procedures for noise control can be implemented within the period covered by the program and without—

(i) Reducing the level of aviation safety provided;

(ii) Derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(iii) Adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

(iv) Adversely affecting any other powers and responsibilities of the Administrator prescribed by law or any other program, standard, or requirement established in accordance with law.

(c) When a determination is issued, the Regional Director notifies the airport operator and publishes a notice of approval or disapproval in the **Federal Register** identifying the nature and extent of the determination.

(d) Approvals issued under this part for a program or portion thereof become effective as specified therein and may be withdrawn when one of the following occurs:

(1) The program or portion thereof is required to be revised under this part or under its own terms, and is not so revised;

(2) If a revision has been submitted for approval, a determination is issued on the revised program or portion thereof, that is inconsistent with the prior approval.

(3) A term or condition of the program, or portion thereof, or its approval is violated by the responsible government body.

(4) A flight procedure or other FAA action upon which the approved

program or portion thereof is dependent is subsequently disapproved, significantly altered, or rescinded by the FAA.

(5) The airport operator requests rescission of the approval.

(6) Impacts on flight procedures, air traffic management, or air commerce occur which could not be foreseen at the time of approval.

A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operator of the FAA's intention to rescind or modify the determination for the reasons stated in the notice. The airport operator may, during the 30-day period, submit to the Regional Director for consideration any reasons and circumstances why the determination should not be rescinded or modified on the basis stated in the notice of intent. Thereafter, the FAA either rescinds or modifies the determination consistent with the notice or withdraws the notice of intent and terminates the action.

(e) Determinations may contain conditions which must be satisfied prior to implementation of any portion of the program relating to flight procedures affecting airport or aircraft operations.

(f) Noise exposure maps for current and five year forecast conditions that are submitted and approved with noise compatibility programs are considered to be the new FAA accepted noise exposure maps for purposes of Part 150.

Appendix A—Noise Exposure Maps

Part A—General

Part B—Noise Exposure Map Development

Part C—Mathematical Descriptions

Part A—General

Sec. A150. Purpose.

(a) This appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. it also identifies land uses which, for the purpose of this part are considered to be compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of the FAA's Integrated Noise Model (INM) or an FAA approved equivalent, for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, under this part, it should be accomplished in accordance with Sec. A150.5 of this appendix.

Sec. A150.3 Noise descriptors.

(a) *Airport Noise Measurement.* The A-Weighted Sound Level, measured, filtered and recorded in accordance with Sec. A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) *Airport Noise Exposure.* The yearly day-night average sound level (YDNL) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise around airports.

Sec. A150.5 Noise measurement procedures and equipment.

(a) Sound levels must be measured or analyzed with equipment having the "A" frequency weighting, filter characteristics, and the "slow response" characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters" as incorporated by reference in Part 150 under § 150.11. For purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in IEU 179, are acceptable.

(b) Noise measurements and documentation must be in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI 51.13, dated 1971 as revised 1979, entitled "ANS—Methods for the Measurement of Sound Pressure Levels"; ARP No. 796, dated 1969, entitled "Measurement of Aircraft Exterior Noise in the Field"; "Handbook of Noise Measurement," Ninth Ed. 1980, by Arnold P.G. Peterson; or "Acoustic Noise Measurement," dated Jan., 1979, by J.R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels (L_{AM}); for computation or validation of the yearly day-night average level (L_{dn}), measurements must be reported in sound exposure level (L_{AE}); as defined in Sec. A150.205 of this appendix.

Part B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land uses.

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop L_{dn} contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than L_{dn} 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and indentify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of L_{dn} 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the L_{dn} 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this Part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The L_{dn} 70 dB noise contour and data related to L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 differ between L_{dn} 65–70 dB and the L_{dn} 70–75 dB, determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(4) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

TABLE 1.—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
Residential						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing and Production						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM = Standard Land Use Coding Manual.
Y (Yes) = Land Use and related structures compatible without restrictions.
N (No) = Land Use and related structures are not compatible and should be prohibited.
NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

(8) Residential buildings not permitted.

Sec. A150.103 Use of computer prediction model.

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved methodology or computer program, such as the Integrated Noise Model (INM). In considering approval of a methodology or computer program, key factors include the demonstrated capability to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) The following information must be obtained for input to the calculation of noise exposure contours:

(1) A map of the airport and its environs at an adequately detailed scale (not less than 1 inch to 8,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the

takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

Sec. A150.105 Identification of public agencies and planning agencies.

(a) The airport proprietor shall identify each public agency and planning agency whose jurisdiction or responsibility is either wholly or partially within the L_{dn} 65 dB boundary.

(b) For those agencies identified in (a) that have land use planning and control authority, the supporting documentation shall identify their geographic areas of jurisdiction.

Part C—Mathematical Descriptions

Sec. A150.201 General.

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level (L_{dn}), the data necessary for its calculation, and the methods for computing it.

Sec. A150.203 Symbols.

The following symbols are used in the computation of L_{dn}:

Measure (in dB)	Symbol
Average Sound Level, During Time T	L_T
Day-Night Average Sound Level (individual day)	L_{dnl}
Yearly Day-Night Average Sound Level	L_{dn}
Sound Exposure Level	L_{AE}

Sec. A150.205 Mathematical computations.

(a) Average sound level must be computed in accordance with the following formula:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\int_0^T 10^{L_A(t)/10}\,dt\right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; $L_A(t)$ is the instantaneous time varying A-weighted sound level during the time period T.

(1) Note: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\sum_{i=1}^{n} 10^{L_{AEi}/10}\right] \quad (2)$$

where L_{AEi} is the sound exposure level of the i-th event, in a series of n events in time period T, in seconds.

(2) Note: When T is one hour, L_T is referred to as one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn}=10\log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt + \int_{0700}^{2100} 10^{L_A(t)/10}\,dt + \int_{2100}^{2400} 10^{[L_A(t)+10]/10}\,dt\right)\right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn} = 10\log_{10}\frac{1}{365}\sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where L_{dni} is the day-night average sound level for the i-th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE} = 10\log_{10}\left(\frac{1}{t_o}\int_{t_1}^{t_2} 10^{L_A(t)/10}\,dt\right) \quad (5)$$

where t_o is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval t_1 to t_2.

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

Appendix B—Noise Compatibility Programs

Sec. B150.1 Scope and purpose.

(a) This appendix prescribes the content and the methods for developing noise compatibility programs authorized under this part. Each program must set forth the measures which the airport operator (or other person or agency responsible) has taken, or proposes to take, for the reduction of existing noncompatible land uses and the prevention of the introduction of additional noncompatible land uses within the area covered by the noise exposure map submitted by the operator.

(b) The purpose of a noise compatibility program is:

(1) To promote a planning process through which the airport operator can examine and analyze the noise impact created by the operation of an airport, as well as the costs and benefits associated with various alternative noise reduction techniques, and the responsible impacted land use control jurisdictions can examine existing and forecast areas of noncompatibility and consider actions to reduce noncompatible uses.

(2) To bring together through public participation, agency coordination, and overall cooperation, all interested parties with their respective authorities and obligations, thereby facilitating the creation of an agreed upon noise abatement plan especially suited to the individual airport location while at the same time not unduly affecting the national air transportation system.

(3) To develop comprehensive and implementable noise reduction techniques and land use controls which, to the maximum extent feasible, will confine severe aircraft YDNL values of L_{dn} 75 dB or greater to areas included within the airport boundary and will establish and maintain compatible land uses in the areas affected by noise between the L_{dn} 65 and 75 dB contours.

Sec. B150.3 Requirement for noise map.

(a) It is required that a current and complete noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c) be included in each noise compatibility program:

(1) To identify existing and future noncompatible land uses, based on airport operation and off-airport land uses, which have generated the need to develop a program.

(2) To identify changes in noncompatible uses to be derived from proposed program measures.

(b) If the proposed noise compatibility program would yield maps differing from those previously submitted to FAA, the program shall be accompanied by appropriately revised maps. Such revisions must be prepared in accordance with the requirements of Sec. A 150.101(e) of Appendix A and will be accepted by FAA in accordance with § 150.35(f).

Sec. B150.5 Program standards.

Based upon the airport noise exposure and noncompatible land uses identified in the map, the airport operator shall evaluate the several alternative noise control actions and develop a noise compatibility program which—

(a) Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(b) Does not impose undue burden on interstate and foreign commerce;

(c) Provides for revision in accordance with § 150.23 of this part.

(d) Is not unjustly discriminatory.

(e) Does not derogate safety or adversely affect the safe and efficient use of airspace.

(f) To the extent practicable, meets both local needs and needs of the national air transportation system, considering tradeoffs between economic benefits derived from the airport and the noise impact.

(g) Can be implemented in a manner consistent with all of the powers and duties of the Administrator of FAA.

Sec. B150.7 Analysis of program alternatives.

(a) Noise control alternatives must be considered and presented according to the following categories:

(1) Noise abatement alternatives for which the airport operator has adequate implementation authority.

(2) Noise abatement alternatives for which the requisite implementation authority is vested in a local agency or political subdivision governing body, or a state agency or political subdivision governing body.

(3) Noise abatement options for which requisite authority is vested in the FAA or other Federal agency.

(b) At a minimum, the operator shall analyze and report on the following alternatives, subject to the constraints that the strategies are appropriate to the specific airport (for example, an evaluation of night curfews is not appropriate if there are no night flights and none are forecast):

(1) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations.

(2) The construction of barriers and acoustical shielding, including the soundproofing of public buildings.

(3) The implementation of a preferential runway system.

(4) The use of flight procedures (including the modifications of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.

(5) The implementation of any restriction on the use of airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to—

(i) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;

(ii) Capacity limitations based on the relative noisiness of different types of aircraft;

(iii) Requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA;

(iv) Landing fees based on FAA certificated or estimated noise emission levels or on time of arrival; and

(v) Partial or complete curfews.

(6) Other actions or combinations of actions which would have a beneficial noise control or abatement impact on the public.

(7) Other actions recommended for analysis by the FAA for the specific airport.

(c) For those alternatives selected for implementation, the program must identify the agency or agencies responsible for such implementation, whether those agencies have agreed to the implementation, and the approximate schedule agreed upon.

Sec. B150.9 Equivalent Programs.

(a) Notwithstanding any other provision of this Part, noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks.

(2) A noise contour of L_{dn} 70 dB resulting from aircraft operations and data related to the L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 of Appendix A differ between L_{dn} 65–70 dB and L_{dn} 70–75 dB, the determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(3) The categorization of alternatives pursuant to Sec. B150.7(a), although the persons responsible for implementation of each measure in the program must still be identified in accordance with § 150.23(e)(8).

(4) Use of ambient noise to determine land use compatibility.

(b) Previously prepared noise compatibility program documentation may be supplemented to include these and other program requirements which have not been excepted.

(Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421, and 1431); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Secs. 101, 102, 103(a), and 104 (a) and (b), Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b)); 49 CFR 1.47(m); and Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 et seq.))

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Donald D. Engen,

Administrator.

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