

(iv) The partnership realizes gain of \$100 (\$250 amount realized minus \$150 remaining basis in QSB stock) on the sale of its QSB stock. Because the partnership reinvested its entire amount realized in new QSB stock and because the partnership made a timely election to apply section 1045, the partnership may treat all of this gain as section 1045 gain. A's share of the partnership section 1045 gain is \$50 (50% of \$100). Because A is an eligible partner under paragraph (a)(2) of this section, A can defer recognition of this gain subject to the nonrecognition limitation described in paragraph (a)(3) of this section. The smallest percentage interest that A held in PRS during the time that PRS held the QSB stock (determined without regard to the reduction that occurred as a result of PRS's distribution of QSB stock to A) is 50%. See paragraph (a)(3)(ii) of this section. Therefore, under the nonrecognition limitation, A can defer recognition of all \$50 (50% of \$100) of the gain allocated to A.

*Example 13. Contribution of replacement QSB stock to a partnership.* (i) On January 1, 2006, A, an individual, B, an individual, and X, a corporation, form PRS, a partnership. A, B, and X each contribute \$25 to PRS and agree to share all partnership items equally. On February 1, 2006, PRS purchases Stock 1, which is QSB stock in the hands of the partnership. PRS sells Stock 1 on November 4, 2006, for \$150. PRS realizes \$75 of gain from the sale of Stock 1 (none of which is treated as ordinary income) and allocates \$25 of gain to each of its partners. PRS informs the partners that it does not intend to make an election under section 1045 with respect to the sale of Stock 1. Each partner's share of the amount realized from the sale of Stock 1 is \$50. On November 30, 2006, A, an eligible partner within the meaning of paragraph (a)(2) of this section, purchases Stock 2, which is also QSB stock, for \$50 and makes a valid section 1045 election under paragraph (c)(1) of this section. Subsequently, A transfers Stock 2 to ABC, a partnership.

(ii) Because A purchased, within 60 days of PRS's sale of Stock 1, replacement QSB stock for a cost equal to A's share of the partnership's amount realized on the sale of Stock 1, and because A made a valid election to apply section 1045 with respect to A's share of the gain from PRS's sale of Stock 1, A does not recognize A's \$25 distributive share of the gain from PRS's sale of Stock 1. Before the contribution of Stock 2 to ABC, A's adjusted basis in Stock 2 is \$25 (\$50 cost minus \$25 nonrecognition amount). Upon the contribution of Stock 2 to ABC, A's basis in the ABC partnership interest is \$25, and ABC's basis in Stock 2 is \$25. However, Stock 2 does not qualify as QSB stock in ABC's hands because it was not acquired at original issue. Neither A nor ABC will be eligible for section 1045 treatment on a subsequent sale of Stock 2.

(h) *Effective date.* This section applies to sales of QSB stock on or after the date

final regulations are published in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04-15964 Filed 7-14-04; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

**RIN 1218-AC14**

[Docket No. S-775 A]

#### Steel Erection; Slip Resistance of Skeletal Structural Steel

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of proposed rulemaking; limited reopening of rulemaking record.

**SUMMARY:** OSHA is reopening the rulemaking record of Docket S-775, Steel Erection, to obtain comments and information on a provision that addresses the slip resistance of walking surfaces of coated structural steel members, 29 CFR 1926.754(c)(3), and Appendix B to that standard. This provision is scheduled to take effect on July 18, 2006. OSHA is considering whether to retain, amend, or revoke this provision, based on whether suitable and appropriate test methods for testing structural steel coatings, and whether slip-resistant coatings meeting the slip resistance criteria in the standard, can reasonably be expected to be available by the effective date. OSHA invites the public to submit additional comments and information relating to the appropriateness of § 1926.754(c)(3).

**DATES:** Submit written hearing requests and comments regarding this notice, by the following dates:

*Hard Copy:* Your hearing requests and comments must be submitted [postmarked or sent] by October 13, 2004.

*Facsimile and electronic transmission:* Your hearing requests and comments must be sent by October 13, 2004.

Please see the section entitled "Supplementary Information" for additional information on submitting written comments and hearing requests.

**ADDRESSES:** You may submit comments and hearing requests, *identified by Docket number (S-775 A) and RIN number (1218-AC14)*, by any of the following methods:

*Regular mail, express delivery, hand-delivery, and messenger service:* Submit three copies of comments, attachments, and hearing requests to the OSHA Docket Office, Docket No. S-775 A, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Please note that there may be delays in receiving comments and other materials by regular mail. Telephone the OSHA Docket Office at (202) 693-2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

*Facsimile:* Transmit hearing requests and comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693-1648.

*Agency Web site:* Submit comments and hearing requests electronically through OSHA's Web site at <http://ecommments.osha.gov>.

*Federal eRulemaking Portal:* Submit comments and hearing requests electronically at <http://www.regulations.gov>. Follow the instructions for submitting comments.

For detailed instructions on submitting comments and hearing requests, and for additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

All submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Most comments and submissions will be posted on OSHA's Web page (<http://www.osha.gov>). Contact the OSHA Docket Office for information about materials not available on OSHA's Web page and for assistance in using the Web page to locate docket submissions. Because comments sent to the docket are available for public inspection, the Agency cautions interested parties against including personal information such as Social Security numbers and birthdates with their submissions.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact OSHA's Office of Information and Consumer Affairs, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Tressi Cordaro, Office of Construction Standards and Guidance, Directorate of Construction, Room N-3468, OSHA, U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2020.

For additional copies of this notice, contact OSHA's Office of Publications, U.S. Department of Labor, Room N-3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1888. Electronic copies of this notice, as well as news releases and other relevant documents, are available on OSHA's Web page at <http://www.osha.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On January 18, 2001, (volume 66 of the **Federal Register**, page 5196), OSHA published a new construction standard for steel erection work, 29 CFR subpart R (Sections 1926.750 through 1926.761 and Appendices A through H). The new standard was developed through negotiated rulemaking, together with notice and comment under section 6(b) of the Occupational Safety and Health Act (OSH Act) and section 107 of the Construction Safety Act. In the course of that rulemaking, OSHA received evidence that workers were slipping and falling when working on painted or coated structural steel surfaces. The Agency decided that requiring the use of slip-resistant coatings on these surfaces would help to address the slipping and falling hazard. During the rulemaking, OSHA received evidence both in support of and in opposition to the technical feasibility of such a requirement.

The relevant provisions of the final rule are 29 CFR 1926.754(c)(3) and Appendix B of subpart R of part 1926. Paragraph (c)(3) of Section 1926.754 establishes a slip-resistance requirement for the painted and coated top surface of any structural steel member installed after July 18, 2006, on which employees are to walk. That paragraph reads as follows:

Slip resistance of skeletal structural steel. Workers shall not be permitted to walk the top surface of any structural steel member installed after July 18, 2006 that has been coated with paint or similar material unless documentation or certification that the coating has achieved a minimum average slip resistance of .50 when measured with an English XL tribometer or equivalent tester on a wetted surface at a testing laboratory is provided. Such documentation or certification shall be based on the appropriate ASTM standard test method conducted by a laboratory capable of performing the test. The results shall be available at the site and to the steel erector. (Appendix B to this subpart references appropriate ASTM standard test methods that may be used to comply with this paragraph (c)(3)).

Appendix B to Subpart R is entitled "Acceptable Test Methods for Testing Slip-Resistance of Walking/Working Surfaces (§ 1926.754(c)(3)). Non-Mandatory Guidelines for Complying with § 1926.754(c)(3)." The Appendix lists two acceptable test methods: Standard Test Method for Using a Portable Inclineable Articulated Strut Slip Tester (PIAST) (ASTM F1677-96); and Standard Test Method for Using a Variable Incidence Tribometer (VIT) (ASTM F1679-96).

The crux of the slip resistance requirement in § 1926.754(c)(3) is that the coating used on the structural steel walking surface must have achieved a minimum average slip resistance of 0.50 when measured by an English XL tribometer or equivalent tester on a wetted surface using an appropriate ASTM standard test method. In the preamble to the final rule, OSHA noted that the two ASTM standard test methods listed in Appendix B (ASTM F1677-96 and ASTM F1679-96) had not yet been validated through statements of precision and bias. In addition, representatives of the coatings industry indicated that it would take time to develop new coatings to meet the requirement. For these reasons, the Agency included the slip resistance requirement and delayed its effective date until July 18, 2006, because the evidence in the record indicated that it was reasonable to expect these technical developments to be completed by that date.

The slip-resistance requirements of the final steel erection standard were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Steel Coalition and the Resilient Floor Covering Institute. On April 3, 2003, OSHA entered into a settlement agreement with petitioners. In that agreement, OSHA agreed to provide the petitioners and other interested parties with a further opportunity to present evidence on the progress that has been made on slip resistant coatings and test methods. OSHA agreed to then evaluate the evidence in the expanded record on these topics and issue a final rule, not later than January 18, 2006, reaffirming, amending, or revoking the requirements in § 1926.754(c)(3). This notice is the first step in that process.

##### II. Reopening the Rulemaking Record

By this notice OSHA is reopening the rulemaking record for Docket S-775, Steel Erection, beginning July 18, 2004, to invite the public to submit additional comments and information relating to the appropriateness of § 1926.754(c)(3), and to request an informal public hearing.

As discussed earlier, OSHA determined, based on the evidence in the record at the time it issued the final rule in 2001, that slip-resistant coatings could be developed, and the testing methods for such coatings could be validated, within five years. The Agency recognizes that if this determination were to be in error, it would need to revise the slip-resistance provision in some respects, or possibly even to revoke it. While we can broadly indicate the range of options that could be considered, such as further extension of the effective date, recognition of other or additional test methods, or revocation of the requirement, for example, we cannot be more specific at this time in the absence of up-to-date information on what is currently being done to develop coating materials and to validate testing methods for those materials.

Accordingly, in this notice, we are asking for information on the following:

(1) Whether the test methods identified in § 1926.754(c)(3) and Appendix B to Subpart R—or any other test methods that are available, or reasonably can be expected to be available by July 18, 2006—are suitable and appropriate to evaluate the slip resistance of wetted coated skeletal structural steel surfaces on which workers may be expected to walk in connection with steel erection activities; and

(2) Whether skeletal structural steel coatings that comply with the slip resistance criterion of the Standard when tested under the identified method(s) are commercially available—or reasonably can be expected to be commercially available—by July 18, 2006, and whether the use of such coatings will be economically feasible.

##### III. Public Participation

The Agency requests members of the public to submit written comments and other information on the issues raised in this proposal. These comments may include objections and a request for an informal public hearing. See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and hearing requests. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSH Act and 29 CFR part 1911.11, members of the public may request an informal hearing by submitting such requests in accordance with the requirements set forth under the **DATES** and **ADDRESSES** sections of this notice. Because the scope of this proposal is so limited, we

are not requiring hearing requesters to file formal "objections" to the proposal. If you are requesting a hearing, you must:

- Include your name and address;
- Ensure that the request is sent or postmarked no later than October 13, 2004; and
- Provide a detailed summary of the evidence that you would intend to offer at the hearing.

#### IV. Regulatory Analyses

The regulatory impact analysis for the final rule on steel erection contained detailed information on the entire final rule, including costs and benefits attributable to the slip-resistance provisions of § 1926.754(c)(3). As discussed earlier, those provisions are based on the Agency's determination, based on the record at the time, that slip-resistant coatings and testing methods would be developed and validated in time to meet the July 13, 2006 compliance date. The present notice does not propose to make specific changes to those provisions, but rather, is intended to solicit information that will either support the earlier determinations or indicate that they need to be revised. Accordingly, the findings of the 2001 regulatory analysis do not need to be revised at this time. OSHA believes that the reopening of the record on this limited issue is not a significant regulatory action for the purposes of EO 12866. OSHA also certifies that this reopening of the record will not have a significant impact on a substantial number of small entities, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

For the reasons stated above, OSHA has also determined that this proposal presents no issues involving Unfunded Mandates (UMRA) (2 U.S.C. 1501 *et seq.*) or Federalism (EO 13132).

#### V. Authority

This document was prepared under the Direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Secretary of Labor's Order 5-2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 12th day of July, 2004.

**John L. Henshaw,**  
*Assistant Secretary of Labor.*

[FR Doc. 04-16084 Filed 7-14-04; 8:45 am]

**BILLING CODE 4510-26-P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 212, 251, 261, and 295

**RIN 0596-AC11**

#### Travel Management; Designated Routes and Areas for Motor Vehicle Use

**AGENCY:** USDA, Forest Service.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Forest Service proposes to amend regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. The proposed rule would require the establishment of a system of roads, trails, and areas designated for motor vehicle use. The proposed rule also would prohibit the use of motor vehicles off the designated system, as well as motor vehicle use on the system that is not consistent with the classes of motor vehicles and, if applicable, the time of year, designated for use. The establishment and clear identification of a transportation and use system for motor vehicles on each National Forest would enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The proposed rule also would conform agency rules to the provisions of Executive orders 11644 and 11989 regarding off-road use of motor vehicles on Federal lands.

**DATES:** Comments must be received in writing by September 13, 2004.

**ADDRESSES:** Send written comments to Proposed Rule for Designated Routes and Areas for Motor Vehicle Use, c/o Content Analysis Team, P.O. Box 221150, Salt Lake City, UT 84122-1150; by e-mail to [trvman@fs.fed.us](mailto:trvman@fs.fed.us); or by facsimile to (801) 517-1014. Comments also may be submitted by following the

instructions at the Federal eRulemaking portal at <http://www.regulations.gov>.

All comments, including names and addresses when provided, will be placed in the rulemaking record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the office of the Content Analysis Team, 550 West Amelia Earhart Drive, Building 1, Suite 100, Salt Lake City, UT 84116, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (801) 517-1020 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Sharon Metzler, Recreation and Heritage Staff, (202) 205-0931, or Glenn Casamassa, Legislative Affairs Staff, (202) 205-1216.

#### SUPPLEMENTARY INFORMATION:

##### Background and Need for the Rule

Providing for the long-term sustainable use of National Forest System lands and resources is essential to maintaining the quality of the recreation experience in the National Forests. Motor vehicle use is an appropriate way to recreate in the National Forests, access hunting and fishing opportunities, sightsee, and otherwise enjoy recreational experiences on National Forest System lands. The growing use of motor vehicles, however, is prompting the Forest Service to revise its management of this use so that the agency can continue to provide opportunities desired by the public, while sustaining National Forest System lands and resources.

Off-road motor vehicle use for public enjoyment of the National Forest System has increased in recent years. Motor vehicle use off roads in the National Forest System may involve any motor vehicle that can travel off road, such as a sport utility vehicle and an off-highway vehicle (OHV). An OHV is a motor vehicle that is designed or retrofitted primarily for recreational use off road, including minibikes, amphibious vehicles, snowmobiles, off-highway motorcycles, go-carts, motorized trail bikes, and dune buggies. In the 1960s and 1970s, the opportunities that people enjoyed to hike, camp, and sightsee on the National Forests expanded to include the opportunities to operate motor vehicles across National Forest System lands, which provided access to areas previously accessible only on foot or by horse. As off-road motor vehicle use increased, questions arose about the current and potential impacts arising