Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
California	Rohnert Park (City), Sonoma County.	Laguna de Santa Rosa Creek.	At downstream side of Redwood Highway South (US Route 101).	*95	*94
			Approximately 0.80 mile upstream of Redwood Highway South.	*105	*94
Maps available for inspection at the Rohnert Park City Public Works Department, 6750 Commerce Boulevard, Rohnert Park, California. Send comments to Mr. Steve Donley, Rohnert Park City Manager, 6750 Commerce Boulevard, Rohnert Park, California 94928.					
California	Tulare County (Unincorporated Areas).	Sheet Flow west of Sand Creek.	Approximately 0.47 mile downstream of Avenue 440.	#2	#1
			Approximately 0.56 mile upstream of Avenue 440.	#2	#1
Maps available for inspection at Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, California. Send comments to Mr. Brian Haddix, Tulare County Administrative Officer, 2800 West Burrel Avenue, Visalia, California 93291.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 3, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2691 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 27, 37, and 38

[Docket OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its Americans with Disabilities Act (ADA) and section 504 regulations to update requirements concerning rail station platforms, clarify that public transit providers are required to make modifications to policies and practices to ensure that their programs are accessible to individuals with disabilities, and codify the Department's practice concerning the issuance of guidance on disability matters.

Comment Closing Date: Comments should be submitted by April 28, 2006 for the proposed regulatory changes in this notice. Comments should be submitted by May 30, 2006 for responses to the seven items under the heading ''Request for Comment on Other Issues.'' Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST–

2006–23985] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number [OST–2006–23985] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), *bob.ashby@dot.gov* (e-mail). You may also contact Bonnie Graves, in the Office of Chief Counsel for the Federal Transit Administration, same mailing address, Room 9316 (202–366–4011), e-mail *bonnie.graves@fta.dot.gov*; and Richard Cogswell, of the Office of Railroad Development in the Federal Railroad Administration, VFRA Stop 20, 1120 Vermont Avenue, NW., Washington, DC 20005 (202–493–6388), e-mail *richard.cogswell@fra.dot.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule concerns two main substantive subjects, reasonable modifications to policies and practices of transportation providers and platform accessibility in commuter and intercity rail systems.

Reasonable Modifications of Policies and Practices

In proposed amendments to 49 CFR 37.5 and 37.169, the NPRM would clarify that transportation providers, including, but not limited to, public transportation entities required to provide complementary paratransit service, must make reasonable modifications to their policies and practices to ensure program accessibility. Making reasonable modifications to policies and practices is a fundamental tenet of disability nondiscrimination law, reflected in a number of Department of Transportation (DOT) and Department of Justice (DOJ) regulations (*e.g.*, 49 CFR 27.11(c) (3), 14 CFR 382.7(c); 28 CFR 35.130(b)(7)).

However, the DOT ADA regulations do not include language specifically requiring regulated parties to make reasonable modifications to policies and practices. The Department, when drafting 49 CFR part 37, assumed that § 37.21(c) would incorporate the DOJ provisions on this subject, by saying the following:

> Entities to which this part applies also may be subject to ADA regulations of the Department of Justice (28 CFR parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations.

Under this language, provisions of the DOJ regulations concerning reasonable modifications of policies and practices applicable to public entities, such as 28 CFR 35.130(b)(7), could apply to public entities regulated by DOT, while provisions of DOJ regulations on this subject applicable to private entities (*e.g.*, 28 CFR 36.302) could apply to private entities regulated by DOT. The one court decision that, until recently, had addressed the issue appeared to share the Department's assumption about the relationship between DOT and DOJ requirements (see *Burkhart* v. *Washington Area Metropolitan Transit Authority*, 112 F.3d 1207; DC Cir., 1997).

However *Melton* v. *Dallas Area Rapid Transit (DART)*, 391 F. 3d 691; 5th Cir., 2004; cert. denied 125 S. Ct. 2273 (2005) took a contrary approach. In this case, the court upheld DART's refusal to pick up a disabled paratransit passenger in a public alley in back of his house, rather than in front of his house (where a steep slope allegedly precluded access by the passenger to DART vehicles). DART argued in the case that paratransit operations are not covered by DOJ regulations. ''Instead,'' as the court summarized DART's argument, ''paratransit services are subject only to Department of Transportation regulations found in 49 CFR part 37. The Department of Transportation regulations contain no analogous provision requiring reasonable modification to be made to paratransit services to avoid discrimination.'' (391 F.3d at 673).

The court essentially adopted DART's argument, noting that the permissive language of § 37.21(c) (''may be subject'') did not impose coverage under provisions of DOJ regulations which, by their own terms, said that public transportation programs were ''not subject to the requirements of [28 CFR part 35].'' See 391 F.3d at 675. ''It is undisputed,'' the court concluded

> That the Secretary of Transportation has been directed by statute to issue regulations relating specifically to paratransit transportation. Furthermore, even if the Secretary only has the authority to promulgate regulations relating directly to transportation, the reasonable modification requested by the Meltons relates specifically to the operation of DART's service and is, therefore, exempt from [DOJ] regulations in 28 CFR part 35 (Id.)

When a public entity like DART is operating under a plan approved by the Federal Transit Administration (FTA) under part 37, in the court's view, it is not required to make any further modifications in its service to meet ADA nondiscrimination requirements (Id.)

While the *Melton* decision is the controlling precedent only in the states covered by the 5th Circuit, the Department believes that it would be useful to amend its rules to clarify, nationwide, that public entities that provide designated public transportation, including but not limited to complementary paratransit, have the obligation to make reasonable modifications in the provisions of their services when doing so is necessary to avoid discrimination or provide program accessibility to services. The Department will do so by proposing to add language to a number of provisions of its ADA and 504 regulations.

First, in § 37.5, the general nondiscrimination section of the ADA rule, the Department would add a paragraph requiring all public entities providing designated public transportation to make reasonable modifications to policies and practices where needed to avoid discrimination on the basis of disability or to provide program accessibility to services. The language is based on DOJ's requirements and, like the DOJ regulation, does not require a modification if it would create an undue burden or fundamentally alter the nature of the entity's service.

Parallel language would be placed in revised § 37.169, replacing an obsolete provision pertaining to over-the-road buses. Under the proposed language, the head of an entity would have to make a written determination that a needed

reasonable modification created an undue burden or fundamental alteration. The entity would not be required to seek DOT approval for the determination, but DOT could review the entity's action (e.g., in the context of a complaint investigation or compliance review) as part of a determination about whether the entity had discriminated against persons with disabilities. In the case where the entity determined that a requested modification created an undue burden or fundamental alteration, the entity would be obligated to seek an alternative solution that would not create such an undue burden or fundamental alteration.

The Department wants to make sure that transit providers understand that the proposed new language concerning modification of policies, as well as other new provisions of the rule, are incorporated in the obligations that transit providers assume through their financial assistance relationships with FTA. In this connection, we would point out standard language in the FTA Master Agreement:

> The Recipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date FTA's authorized official signs the Grant Agreement or Cooperative Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Grant Agreement or Cooperative Agreement, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. Master Agreement at Section 2(c), Application of Federal, State, and Local Laws and Regulations

While it appears to the Department that this language is sufficient, we seek comment on whether any additional regulatory text language is needed on this point.

We would point out that language in the existing paratransit requirements of part 37 has an effect on paratransit providers very similar to that of the proposed reasonable modification language. 49 CFR 37.129(a) provides that, with the exception of certain situations in which on-call bus service or feeder paratransit service is appropriate, ''complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.'' This language was the subject of a recent guidance document posted on the Department's Web sites.

This guidance notes that the term ''origin to destination'' was deliberately chosen to avoid using either the term ''curb-to-curb'' service or the term ''door-to-door'' service and to emphasize the obligation of transit providers to ensure that eligible passengers are actually able to use paratransit service to get from their point of origin to their point of destination.

> The preamble discussion of this provision made the following points: Several comments asked for clarification of whether [origin-to-destination] service was meant to be door-to-door or curb-to-curb, and some recommended one or the other, or a combination of the two. The Department declines to characterize the service as either. *The main point, we think, is that the service must go from the user's point of origin to his or her destination point.* It is reasonable to think that service *for some individuals or locations* might be better if it is door-to-door, while curb-to-curb might be better in other instances. This is exactly the sort of detailed operational decision best left to the development of paratransit plans at the local level. (56 FR 45604; September 6, 1991; emphasis added.)

In the local paratransit planning process, it would be consistent with this provision for a transit provider to establish either door-to-door or curb-to-curb service as the basic mode of paratransit service. Where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin to destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

For instance, the nature of a particular individual's disability, adverse weather conditions, or terrain obstacles may prevent him or her from negotiating the distance from the door of his or her home to the curb. A physical barrier (*e.g.*, sidewalk construction) may prevent a passenger from traveling between the curb and the door of his or her destination point. In these and similar situations, to ensure that service is actually provided ''from the user's point of origin to his or her destination point,'' the service provider may need to offer assistance beyond the curb, even though the basic service mode for the transit provider remains curb-to-curb.

Meeting this ''origin to destination'' requirement may well involve what is, in effect, a modification of an otherwise reasonable general policy provided for in an entity's paratransit plan. Like any reasonable modification, such assistance would not need to be provided if it created an undue burden or fundamental alteration. For example, the Department does not view transit providers' functions as extending to the provision of personal services. Drivers would not have to provide services that exceed ''door-to-door'' service (*e.g.*, go beyond the doorway into a building to assist a passenger). Nor would drivers, for lengthy periods of time, have to leave their vehicles unattended or lose the ability to keep their vehicles under visual observation, or take actions that would present a direct threat to safety. These activities would come under the heading of ''fundamental alteration'' or ''undue burden.''

In the interest of clarifying the Department's section 504 regulation, as well as its ADA regulation, on the issue of reasonable modifications of policies and practices, the Department is also proposing an amendment to 49 CFR part 27. This regulation, in § 27.11(c)(2)(iii), already requires recipients of DOT financial assistance to ''begin to modify * * * any policies or practices that do not meet the requirements of this part.'' To avoid any possibility of misunderstanding with respect to the obligation to make reasonable modifications, however, we propose to add a new paragraph (e) to the general nondiscrimination section. The language of this section is similar to that of proposed § 37.5(g) in the ADA regulation.

Consistent with the addition of the ''modifications of policies and practices'' language, we are also adding a definition of ''direct threat,'' using the language of the DOJ regulations (see 36 CFR 207(b)). It is important to note that, in order to be a basis for placing restrictions on access to individuals with disabilities, a transit provider would have to determine that a direct threat exists to the health or safety *of others.* The direct threat provision is not intended to permit restrictions that are aimed solely at protecting people with disabilities themselves. Moreover, a finding of direct threat must be based on evidence, not merely on speculation or apprehension about the possibility of a safety problem. In three different rulemakings (concerning use of three-wheeled scooters on transit vehicles, the accessibility of bus stops, and requirements for over-the-road buses), the Department has consistently emphasized that placing restrictions on access is not permissible in the absence of meeting a stringent direct threat standard. Transportation providers would not be required to seek the

Department's approval before applying the direct threat standard in a particular case. However, they should document such applications for possible FTA review in the context of compliance reviews or complaint investigations.

In considering the effect of the ''reasonable modification'' language on paratransit operators, the Department wants to emphasize, in the strongest possible terms, that operators are not required to change their basic mode of service provision. An operator that has chosen ''curb-to-curb'' service is not required to change its system to be a ''door-to-door'' system for everyone. However, a ''curb-to-curb'' operator, in individual situations where it was genuinely necessary to take additional steps to ensure that a passenger can actually use the service, would have an obligation to make exceptions to its normal policy subject, as always, to the ''direct threat'' and ''undue burden/fundamental alteration'' limitations. Because of the limited, case-by-case nature of these exceptions, the Department believes that the proposed amendment would not have significant cost implications, but we seek comments on all the implications of the proposal.

We would also note that the effect of this proposal is not limited to paratransit. For example, fixed route bus systems often have a policy of stopping only at designated bus stops. However, there may be instances where there is a barrier at a particular bus stop to its use by passengers with disabilities (*e.g.*, construction, snowdrifts). In such a case, where it would not be unduly burdensome or pose a direct threat, it would be appropriate for the bus to move a short distance from the stop to pick up a passenger using a wheelchair at a place where the passenger could readily board the vehicle.

In addition to the ''modification of policies'' language from the DOJ ADA rules, there are other features of those rules that are not presently incorporated in the DOT ADA rules (e.g., pertaining to auxiliary aids and services). The Department seeks comment on whether it would be useful to incorporate any additional provisions from the DOJ rules into part 37.

Commuter and Intercity Rail Station Platform Accessibility

The second substantive change to the Department's ADA rules concerns rail station platforms in commuter and intercity rail modes. The revised § 37.41 would replace, for purposes of these modes, material presently found in §10.3.1(9) of Appendix A to Part 37. One of the purposes of this amendment is to maintain the status quo with respect to this requirement, given the adoption by DOT of the new ADAAG standards, which do not include this language. The NPRM would also make conforming amendments to provisions in 49 CFR part 38 concerning commuter rail and intercity rail cars.

Under the present § 10.3.1(9), level entry boarding is defined, in effect, as involving a vertical gap between car entrances and platform of no more than 5/8 inch, with a horizontal gap of no more than 3 inches. Exception 2 to § 10.3.1(9) provides that, ''where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirement, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices * * * shall suffice.'' Consistent with a recent guidance/interpretation document issued by the Department, this language should not be viewed as providing an unconstrained choice among various alternatives.

The Department strongly believes that, in choosing accessibility solutions, it is important—as the Department's 504 regulation has long stated (see 49 CFR 27.7(b)(2))—that service be provided ''in the most integrated setting that is reasonably achievable.'' In proposed §§ 37.5(h) and 37.169(c), the Department proposes to specifically include this principle in its ADA regulation as well. The implication of this principle in the rail station context is that the accessibility solution that provides service the most integrated setting should be chosen.

In the course of recent discussions with one rail system about its proposed platform design, a serious problem with the existing provisions of § 10.3.1(9) came to light. Because of physical and operational characteristics of intercity and commuter rail systems—as distinct from light and rapid rail systems—Federal Railroad Administration (FRA) staff advised that the 3 inch and 5/8 inch gap requirements were unrealistic: *i.e.*, it is very unlikely that any commuter or intercity rail system could ever meet these requirements. An FRA staff paper discussing this issue in greater detail has been placed in the docket for this rulemaking. The Department seeks comment on whether any other matters raised in this paper should be added to the ADA regulation, or whether a version of this paper should be made an appendix to the final rule.

To address both the technical feasibility and integrated, accessible service issues, the Department is proposing to revise platform design requirements. It should be noted that these requirements are intended to apply to *new* commuter and intercity rail facilities and systems. The Department seeks comment on whether the same approach should be followed with respect to alterations to existing stations and to commuter rail key stations and intercity rail stations that have not yet been modified for accessibility as required by the ADA, and on cost, feasibility, or other issues that may arise in that context.

Under the proposed § 37.41, level-entry boarding is the basic requirement. If the original 3 inch and 5/8 inch gap requirements can be met, then nothing further need be done. Otherwise, platforms (in coordination with cars) must meet a maximum 10–13 inch horizontal gap requirement. With respect to the vertical gap, the requirement would be that the vertical gap between the car floor and the boarding platform would be able to be mitigated by a bridge plate or ramp with a 1:8 slope or less, under a 50% passenger load consistent with 49 CFR 38.95(c). Such gaps are typical of longstanding passenger rail systems and do not present a hazard to boarding for the majority of passengers.

Bridge plates would be used to connect the platform with each accessible car to facilitate independent boarding by wheelchair users and other passengers who cannot step across the platform gaps. This means that it is not adequate to provide access to some cars but not others, which is contrary to the principle of providing service in an integrated setting. The only exception would be for an old, inaccessible car being used on the system (*e.g.*, certain 1950s-era two-level cars still being used on some systems, which cannot readily be entered and used by most persons with disabilities even if platform and door heights are coordinated). The Department seeks comment on whether a ramp slope of 1:8 provides an appropriate opportunity for independent access to cars by wheelchair users. If not, what sort of assistance, if any, would be appropriate to require? We note that, in some systems, requiring a slope less steep than 1:8 might require bridge plates or ramps to be impractically long.

The Department seeks comment on any operational issues that could arise in the context of level-entry boarding to all cars in a train (*e.g.*, dwell time or headway issues resulting from deployment—particularly manual deployment—of bridge plates or ramps). As with any proposal, we seek comment on any cost or feasibility issues that could be involved.

Only if the rail system determines—with the concurrence of the FRA or Federal Transit Administration (FTA) Administrator—that meeting these requirements is operationally or structurally infeasible could the rail system use an approach not involving level-entry boarding, such as mini-high platforms or lifts. Even in such a case, the rail system would have to ensure that access was provided to each accessible car on a train. The concept we have of infeasibility is twofold. On one hand, there could be some situations in which, from a design or engineering point of view, meeting these requirements simply cannot be done. On the other hand, there could be situations in which meeting the requirements creates an undue burden. We believe from our experience that situations falling into either of these categories are likely to be extremely rare, but we think it would be useful to have a mechanism in the regulation for assessing any situations that may arguably fall into one of them. We also seek comment on whether there are any ''bright line'' criteria that the Department might usefully add to this section to assist transit providers in determining whether meeting the proposed requirements is infeasible in a given situation.

The Department is aware that, on a range of issues, there can be disagreements between commuter rail authorities and freight railroads whose track the commuter railroads use. Where any such disagreements pertain to the accessibility of a commuter rail station, we believe that 49 CFR 37.57 (based on a statutory provision in the ADA, 42 U.S.C. 12162(e)(2)(C)) is relevant. This section provides that ''An owner or person in control of an intercity or commuter rail station shall provide reasonable cooperation to the responsible person(s) for that station with respect to the efforts of the responsible person to comply with the requirements of this subpart.'' We seek comment on whether any additions to this provision are necessary in order to ensure that disagreements between freight railroads and commuter rail authorities or Amtrak do not thwart the efforts of passenger railroads to ensure accessibility to passenger stations.

In some existing and proposed systems using mini-high platforms set back from the platform edge, the platform design has had the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform. The FRA regards such an arrangement as a hazard to passenger safety, since it may place passengers uncomfortably close to moving trains. Consequently the proposed rule would prohibit such designs. In addition, following FRA safety advice, the proposed rule would require that any obstructions on a platform (stairwells, elevator shafts, seats, etc.) must be set at least 6 feet back from the edge of a platform.

To ensure coordination of these requirements for platform accessibility with rail cars, a proposed amendment to § 37.85 would require new cars purchased for commuter rail systems to have floor heights identical to those of Amtrak cars serving the area in which the commuter system will be operated. This means that cars in the eastern part of the U.S. would have floor heights of 48 inches above top of rail, while those in the western part of the U.S. would have floor heights of 15 inches above top of rail. The purpose of this proposal is to prevent situations—some of which the Department has encountered—in which Amtrak and commuter rail cars with different floor heights use the same station platforms, complicating the provision of level entry boarding.

The Department assumes that the interior car floor will remain level with the car entrance for a sufficient distance to permit level entry to wheelchair positions in the car. The Department seeks comment on whether it is necessary to make this point part of the regulatory text.

Disability Law Coordinating Council

In addition to these two main topics, the proposal would codify an existing internal administrative mechanism used to coordinate DOT guidance and interpretations on disability-related matters. Under a March 2003 memorandum signed by Secretary of Transportation Norman Mineta, the Department uses an internal working group known as the Disability Law Coordinating Council (DLCC) to review written guidance and interpretations before they are issued by any of the Department's offices. The purpose of the DLCC is to ensure that guidance and interpretations are consistent among DOT offices and consistent with the Office of the Secretary regulations that carry out the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, and the Air Carrier Access Act (49 CFR part 37 and 38, 49 CFR part 27, and 14 CFR part 382, respectively). Under the Secretary's memorandum, written guidance and interpretations on these matters must be approved by the Department's General Counsel.

The DLCC mechanism is in place and functioning effectively. The proposed regulatory change will codify this procedure and provide better notice to the public and greater certainty over time about this feature of the Department's implementation of its disability nondiscrimination responsibilities. This codified provision would revise 49 CFR 37.15 to parallel existing provisions of other Department-wide regulations, namely the disadvantaged business enterprise regulation (49 CFR 26.9(b)) and drug testing procedures regulation (49 CFR 40.5). The proposed language would replace existing § 37.15, an obsolete provision concerning a now-lapsed suspension of certain requirements pertaining to detectable warnings.

Clarification of § 37.23

The NPRM would also clarify § 37.23. This section provides that when a public entity enters into a contract or other arrangement or relationship with a private entity to provide service, the public entity must ensure that the private entity meets the requirements that would apply if the public entity provided the service itself. The NPRM would add a parenthetical making explicit what the Department has always intended: That an ''arrangement or relationship'' other than a contract includes arrangements and relationships such as grants, subgrants, and cooperative agreements. The additional words, which are consistent with an interpretation of the existing language that the Department recently posted on its Web sites, ensures that a passenger with a disability will be provided the appropriate level of service, whether a private entity providing the service does so through a contract with a public entity or otherwise receives funding through the public entity.

Deletion of Obsolete Provisions

Finally, the NPRM would delete certain obsolete provisions, including §§ 37.71 (b)–(g), 37.77, 37.103 (b) and (c) (language referring to over-the-road buses), and 37.193 (a) (2) and (c). The first two deletions concern a waiver procedure for situations in which accessible buses were not available from manufacturers. This waiver provision was included in response to concerns that, when the ADA rule went into effect in 1991, there would be a shortage of accessible buses available to transit authorities. That is no longer a reasonable apprehension, and the waiver provision has never been used. The latter two provisions concern over-the-road bus service, and have been overtaken by events, notably the 1998 issuance of an over-the-road bus

regulation (codified at Part 37, Subpart H).

Request for Comment on Other Issues

We also seek comment on several issues that the current regulation does not explicitly address.

1. One of the current issues of interest to the transit community concerns ''bus rapid transit'' (BRT). FTA recently held a conference on accessibility of BRT systems. Generally, FTA has expressed the view that BRT vehicles should be treated as buses for ADA purposes and that ramp slopes (e.g., for a ramp or bridge plate between a vehicle and a platform) should be measured from the height of the surface of the boarding platform. Other issues that have been raised concern where, if at all, detectable warnings should be required; whether interior circulation requirements should differ from those for buses; what requirements should pertain to vehicles that are boarded from the left as well as the right side at some stations/stops; how to handle vehicle and stop accessible requirements in systems that have both platform and street-level boarding; and whether mobility aid securement systems are necessary. The Department seeks comment on these or other issues concerning BRT accessibility, and on what, if any, specific provisions should be added to parts 37 and 38 concerning BRT.

2. On occasion, the Department receives questions about rail stations that were not originally identified as key stations, because they did not meet the criteria for key stations. However, circumstances have changed (e.g., when a station becomes a major destination due to new development, such as a stadium, convention center, etc.), placing the station within one or more of the criteria. In this situation, should transit authorities have any responsibility for identifying the station as an addition to their list of key stations and making accessibility modifications? What, if any, procedures should the regulation provide in such instances?

3. ''Heritage fleets'' are fleets of vintage streetcars acquired in the global marketplace for use in regular revenue service (the Market Street line in San Francisco is a well-known example). In some cases, an entire fleet used on a system or line will consist of restored ''vintage'' streetcars operated over newly-laid tracks. Many provisions of the Department's rules may not readily apply in such situations (e.g., the exception for historical systems, the ''one car per train'' rule, the ''good faith efforts'' provision for used vehicles). If the heritage streetcars cannot be made accessible without compromising their structural integrity, there might be no way of ensuring accessibility to such systems under the present rule. Is it acceptable to have completely inaccessible heritage trolley systems? If not, what, if any changes in the regulation should be made to address accessibility issues in these systems?

4. The existing intercity rail section of the ADA itself and DOT regulations speak specifically to Amtrak. The Department recognizes that other rail projects (e.g., for high-speed rail) or changes in the way that rail service between cities is provided could result in service not provided by Amtrak. What, if any, changes to the regulation should the Department contemplate in order to require appropriate accessibility in rail service between cities provided by someone other than Amtrak?

5. The Department seeks comment on an issue concerning vehicle acquisition by public entities operating demand responsive systems for the general public. Unlike public fixed route operators (see § 37.73), operators of demand responsive systems for the general public are not required, under § 37.77, to make good faith efforts to find accessible vehicles when acquiring used vehicles. We request comment on whether the absence of such a provision has been a problem, and on whether we should add a used vehicle provision of this kind to § 37.77.

6. From time to time, there are changes in mobility devices used by individuals with disabilities. For example, the Department recently issued guidance concerning the use of ''Segways'' on transit vehicles. Another example concerns wheelchairs that do not fit the Department's existing definition of a ''common wheelchair'' (a three-or four-wheeled mobility device that, together with its user, does not exceed 600 pounds and fits a specific dimensional envelope. Some newer wheelchair designs have six wheels, rather than three or four; others may be longer, wider, or heavier than contemplated by the current definition. The Department seeks comment on how best to accommodate such change, while still providing certainty to designers and manufacturers of vehicles.

7. 49 CFR part 38 contains requirements for the designation and signage of priority seating for individuals with disabilities in several modes: § 38.27 for buses, § 38.55 for light rail, § 38.75 for rapid rail, and, § 38.105 for commuter rail. There are no parallel requirements for intercity rail and over-the-road bus. We seek comment on whether it would be useful to add priority seating requirements in these other modes. We also seek comment on whether any provisions of § 37.167, concerning the implementation of priority seating provisions, should be modified.

8. Finally, the Department seeks comment on the matter of how providers of ADA paratransit should count trips. The Department's ADA implementing regulations prohibit ''substantial numbers of trip denials or missed trips'' for purposes of providing complementary paratransit service that is comparable to the fixed-route system. This issue concerns how missed or denied trips should be counted, in order to provide a consistently applied measure to all FTA-assisted transit systems.

The key objective of the ADA is to ensure the nondiscriminatory provision of transportation service to individuals with disabilities. Denied or missed trip statistics are a useful performance measure of the degree to which paratransit providers meet their passenger service obligations.[1] From this passenger service perspective, a missed or denied trip should be viewed as any trip that an eligible passenger seeks to take that, as a practical matter, he or she is unable to take because of the action of the transit provider.

In our view, the simplest and clearest approach is to think of each individual leg of a journey as a trip. If a passenger's journey goes from Point A to Point B, and then back from Point B to Point A, the passenger has taken two trips. If a passenger's journey goes from Point A to Point B, then from Point B to Point C, and finally from Point C back to Point A, the passenger has taken three trips.

For example, suppose an eligible passenger calls a paratransit operator in a timely manner and asks to schedule a trip the next day from Point A to Point B at 9 a.m. and a return trip from Point B to Point A at 1 p.m. The transit operator tells the individual that it can provide the return trip from B to A, but that a vehicle to provide the initial trip from A to B is unavailable. From the point of view of the passenger—which we believe to be the most relevant point of view in evaluating ADA-mandated services—the action of the paratransit

[1] A ''denied'' trip involves a situation where an eligible passenger attempts to schedule a trip in a timely fashion but is told by the transit provider that the trip cannot be scheduled as the Department's ADA rules require. A ''missed'' trip is one that has been scheduled, but then is not completed successfully because of an action of the transit provider (e.g., the vehicle does not show up). The discussion of counting trips applies equally to missed and denied trips.

provider in denying the initial trip has made it impossible for him or her to take the return trip as well. Because the paratransit provider will not take the passenger from Point A to Point B, the passenger will never arrive at Point B. The action of the provider precludes the passenger from traveling from Point B to Point A just as effectively as if the provider had told the passenger that no vehicle was available for the trip.[2]

If the passenger was successfully provided both the initial and return trips, it would be reasonable to count two trips made. Since the passenger in this hypothetical case was, by action of the paratransit provider, precluded from taking both trips, it is reasonable to count two trips denied. We do not believe it would be reasonable to treat as a ''refusal'' of a trip by a passenger a situation in which the passenger's journey is precluded by the paratransit provider's own actions. In this situation, there is not a real offer to the passenger of the transportation he or she has requested, and it is reasonable to count both legs of the trip as having been denied.

Of course, if a passenger is able to compensate for the unavailable trip (e.g., by taking a taxi or getting a ride with a family member) and is then able to accept the return trip, one trip has been taken and only one trip has been denied.

This approach recognizes that a shortage of capacity at one time of the day can have a ripple effect that affects the true availability of passenger service at other times. In addition, treating paratransit trips in this way will enable all providers to count successes and failures in service provision in a consistent manner. It should also create greater comparability across transit systems and improve the Federal Transit Administration's ability to monitor grantees' program performance.

We recognize, however, that information on the actual availability of vehicles to make trips at particular times of day can be very helpful to transit properties for planning purposes (e.g., in determining future acquisition needs). The set of statistics discussed above, while very important for determining transit providers' success in meeting ADA passenger service requirements, may not be ideally suited to this separate purpose. Consequently, transit operators might want to keep a second, separate set of statistics on vehicle availability for their own planning purposes. The Department seeks comment on the Department's approach to this issue.

For all the issues discussed in this section, the Department seeks comment on whether it is advisable to add regulatory text language or whether it would be sufficient to provide guidance to recipients.

[2] This point applies equally if the transit provider was able to supply the initial trip from Point A to Point B, but not the return. In this case, the passenger would be precluded from taking the initial trip because he or she would be stranded at Point B.

Regulatory Analyses and Notices

This NPRM is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The NPRM clarifies the Department's existing requirements concerning new commuter and intercity rail platforms and the obligation of paratransit providers and other regulated entities to make reasonable modifications of policies and practices to accommodate the needs of persons with disabilities in individual cases. These proposals do not represent significant departures from existing regulations and policy and are not expected to have noteworthy cost impacts on regulated parties. As with all rulemakings, however, the Department will consider comments related to costs (e.g., with respect to operations) that could be involved. The NPRM also codifies existing internal administrative practices concerning disability law guidance. This proposal would have no cost impacts on regulated parties. The rule does not have Federalism impacts sufficient to warrant the preparation of a Federalism Assessment.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rule may affect actions of some small entities (e.g., small paratransit operations). The proposed amendment to § 37.23 is merely a clarification reflecting the Department's interpretation of its current language, and in any case is unlikely to affect a substantial number of operators (i.e., because the number of small subgrantees that operate fixed-route systems is not expected to be large). Since operators can provide service in a demand-responsive mode (e.g., route deviation) that does not require the provision of complementary paratransit, and because the undue burden waiver provision of § 37.151–37.155, significant financial impacts on any given operator are unlikely. As with all rulemakings, however, the Department will consider comments related to costs that could be involved. As a general matter, compared to the existing rule, the matters discussed in the NPRM should not have noticeable incremental economic effects on small entities.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them is relevant to this NPRM. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

List of Subjects

49 CFR Part 27

Administrative Practice and Procedure, Airports, Civil Rights, Handicapped, Individuals with Disabilities, Highways and Roads, Reporting and Recordkeeping Requirements, Transportation

49 CFR Part 37

Buildings, Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and Recordkeeping Requirements, Transportation

49 CFR Part 38

Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and Recordkeeping Requirements, Transportation

Issued this 15th Day of February, 2006, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR parts 27, 37, and 38 as follows:

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The authority citation for 49 CFR part 27 continues to read as follows:

Authority: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f)); sec. 165(b) of the Federal-aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

2. In 49 CFR part 27, amend § 27.7 by adding a new paragraph (e), to read as follows:

§ 27.7 Discrimination prohibited

* * * * *

(e) Recipients shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to its services, unless the recipient can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

3. The authority citation for part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.3 [Amended]

4. In § 37.3, add a definition of ''direct threat'' following the definition of ''designated public transportation,'' to read as follows:

''*Direct threat*'' means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.

5. Amend § 37.5 by redesignating paragraphs (g) and (h) as paragraphs (i) and (j), respectively, and adding new paragraphs (g) and (h), to read as follows:

§ 37.5 Nondiscrimination.

* * * * *

(g) Public entities providing designated public transportation services shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to its services, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

(h) In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified public transportation services, public and private entities shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting that is reasonably achievable.

6. Revise § 37.15 to read as follows:

§ 37.15 Interpretations and Guidance

The Secretary of Transportation, Office of the Secretary of Transportation, and Operating Administrations may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance shall be developed through the Department's coordinating mechanism for disability matters, the Disability Law Coordinating Council. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR parts 27, 37, 38 and 14 CFR part 382, as applicable.

§ 37.23 [Amended]

7. In § 37.23, in paragraphs (a), (c), and (d), add the words ''(including, but not limited to, a grant, subgrant, or cooperative agreement)'' after the word ''arrangement.''

8. Revise § 37.41 to read as follows:

§ 37.41 Construction of transportation facilities by public entities

(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility (including a station) is ''new'' if its construction began (*i.e.*, issuance of a notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.

(b)(1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(c) Except as otherwise provided in this section, new commuter and intercity rail stations shall provide level-entry boarding to all accessible cars in each train using the station. In order to permit level-entry boarding over the full length of the platform, stations and cars shall be designed to minimize the vertical difference between (1) the distance from top of rail to platform surface and (2) the distance between top of rail and car entrance.

(d) Where it is feasible to coordinate the floor height of rail vehicles with the platform height such that the horizontal gap is no more than 3 inches and the vertical gap is no more than 5/8 inch, measured when the vehicle is at rest, the station shall provide level-entry boarding meeting these specifications to all accessible cars on each train using the platform. In stations meeting these specifications, no additional method of assisting boarding (*e.g.*, use of bridge plates) is necessary.

(e) In stations where it is not feasible to meet the 3 inch horizontal gap and 5/8 inch vertical gap specifications of paragraph (c) of this section, the platform design shall be coordinated with rail cars so that the horizontal gap between the floor of a car at rest and the platform shall be no greater than 10 inches on tangent track and 13 inches on curves. The vertical gap between the car floor and the boarding platform must be able to be mitigated by a bridge plate or ramp with a 1:8 slope or less, under 50% passenger load consistent with 49 CFR 38.95(c). In such a station, level entry boarding shall be provided to all accessible cars on each train using the platform by using a bridge plate connecting each car and the platform.

(f) Where necessary to allow for freight movements (including overdimensional loads) while still providing level-entry boarding as required by paragraphs (c) through (e) of this section, commuter and intercity stations shall use such means as gauntlet tracks, bypass tracks, and retractable edges.

(g) Only if it is technically or operationally infeasible to provide level-entry boarding as required by paragraphs (c) through (e) of this section may the commuter or intercity rail

operator use a different means to provide accessibility. To demonstrate infeasibility, a commuter or intercity railroad operator would have to demonstrate that providing level entry boarding is physically impossible or would impose an undue burden.

(1) Any such means must serve all accessible cars of the train (*e.g.*, if mini-high platforms are used, there must be a platform that serves each accessible car; if car-borne or station-based lifts are used; a lift must serve each accessible car). Such a means shall also ensure that accessible means of entry to each car align with the stopping point of the train.

(2) In any situation using a combination of high and low platforms, a commuter or intercity rail operator shall not employ a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform. Any obstructions on a platform (stairwells, elevator shafts, seats, etc.) shall be set at least 6 feet back from the edge of a platform.

(3) Any determination of the infeasibility of level entry boarding under this paragraph, as well as the means chosen to provide accessibility in the absence of level-entry boarding, must be approved by the Federal Transit Administration (for commuter rail systems) or the Federal Railroad Administration (for intercity rail systems). The Federal Transit Administration and Federal Railroad Administration shall make this determination jointly in any situation in which both a commuter rail system and an intercity or freight railroad use the tracks serving the platform.

(h) In the event of any inconsistency between this section and Appendix A to this part or provisions of 49 CFR part 38, this section shall prevail with respect to new intercity and commuter rail stations and systems.

§ 37.71 [Amended]

9. In § 37.71, remove paragraphs (b) through (g).

§ 37.77 [Amended]

10. In § 37.77, remove paragraph (e).

11. Amend § 37.85 by designating the existing language as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 37.85 Purchase or lease of new commuter rail cars.

* * * * *

(b) A new commuter rail system, in ordering cars for the system, shall ensure that the floor height of the cars is the same as that used in intercity rail in the part of the country in which the commuter system is located (*e.g.*, 48 inches above of top of rail in eastern systems; 15–17 inches above top of rail in western systems).

§ 37.103 [Amended]

12. In § 37.103 (b) and (c), remove the words ''or an over-the-road bus,''.

13. Revise § 37.169 to read as follows:

§ 37.169 Program accessibility obligation of public entities providing designated public transportation.

(a) A public entity providing designated public transportation shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This obligation includes making reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to the entity's services.

(b) Paragraph (a) of this section does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or undue financial or administrative burdens. In circumstances where personnel of the public entity believe that an action necessary to comply with paragraph (a) of this section would fundamentally alter the service, program, or activity or would result in undue financial or administrative burdens, the entity has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(c) In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting that is reasonably achievable.

§ 37.193 [Amended]

14. Remove and reserve § 37.193(a)(2) and (c).

PART 38—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES

15. The authority citation for 49 CFR part 38 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322

§ 38.91 [Amended]

16. Amend § 38.91(c)(1) by removing the words ''wherever structurally and operationally practicable'' and adding in their place the words ''unless structurally or operationally infeasible.''

17. Amend § 38.91(c)(2) by removing the words ''not structurally or operationally practicable'' and adding, in their place, the words ''is structurally or operationally infeasible''.

18. Revise § 38.93(d) to read as follows:

§ 38.93 Doorways.

* * * * *

(d) *Coordination with boarding platform.* Cars shall be coordinated with platforms to provide level-entry boarding as provided in 49 CFR 37.41 (c) through (h).

* * * * *

§ 38.95 [Amended]

19. Amend § 38.95(a)(2) by removing the words ''If portable or platform lifts, ramps, or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with § 38.93(d) are provided,'' and adding, in their place, the words ''If level-entry boarding is provided, consistent with 49 CFR 37.41 (c) through (h),''.

§ 38.111 [Amended]

20. Amend § 38.111(b)(1) by removing the words ''If physically and operationally practicable'' and adding, in their place, the words ''Unless technically or operationally infeasible.''

21. Amend § 38.111(b)(2) by removing the words ''not structurally or operationally practicable'' and adding, in their place, the words ''is technically or operationally infeasible''.

22. Revise § 38.113(d) to read as follows:

§ 38.113 Doorways.

* * * * *

(d) Coordination with boarding platform. Cars shall be coordinated with platforms to provide level-entry

boarding as provided in 49 CFR 37.41 (c) through (h).

* * * * *

§ 38.125 [Amended]

23. Amend § 38.125(a)(2) by removing the words ''If portable or platform lifts, ramps, or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with § 38.113(d) are provided,'' and adding, in their place, the words ''If level-entry boarding is provided, consistent with 49 CFR 37.41 (c) through (h),''.

[FR Doc. 06–1658 Filed 2–22–06; 11:30 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. I.D. 021606B]

RIN 0648–AU06

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea And Aleutian Islands King and Tanner Crab Fishery Resources

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Program was implemented by Amendments 18 and 19 to the Fishery Management Plan for BSAI King and Tanner Crabs (FMP). Amendment 20 would modify the FMP and the Program to increase resource conservation and improve economic efficiency in the Chionoecetes bairdi crab (Tanner crab) fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before April 28, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Facsimile: 907–586–7557.
- E-mail: *0648–AU06–KTC20–NOA@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648–AU06. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendment 20 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. A final rule implementing these amendments was published on March 2, 2005 (70 FR 10174). NMFS also published three corrections to the final rule (70 FR 13097; March 18, 2005), (70 FR 33390; June 8, 2005), and (70 FR 75419; December 20, 2005).

The Council submitted Amendment 20 to the FMP for Secretarial review, which would make minor changes to the FMP necessary for the management of the Tanner crab fisheries under the Program. If approved, Amendment 20 to the FMP would modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab. Under authority deferred to the State of Alaska (State) by the FMP, the State has determined that the Bering Sea District Tanner crabs are in two geographically separate stocks, and should be managed as two separate stocks; one east of 166° W longitude, the other west of 166° W longitude. Currently, under the Program, harvester quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) are issued for one Tanner crab fishery. Amendment 20 would modify the FMP to allocate QS and PQS and the resulting IFQ and IPQ for two Tanner crab fisheries one east of 166° W longitude, the other west of 166° W longitude.

The current allocations are not consistent with management of the species as two stocks. Revision of the QS and PQS allocations would resolve this inconsistency, reduce administrative costs for managers and reduce potential operational costs and increase flexibility for harvesters and processors.