

**PART 173—[CORRECTED]**

■ 2. On page 55116, in § 173.403, in the definition for “*Low Specific Activity (LSA) material*,” correct the introductory paragraph, and paragraphs (1)(iii), (3)(i) and (3)(ii) to read as follows:

**§ 173.403 Definitions.**

\* \* \* \* \*

*Low Specific Activity (LSA) material* means Class 7 (radioactive) material with limited specific activity which satisfies the descriptions and limits set forth below. Shielding material surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) \* \* \*

(iii) Radioactive material other than fissile material, for which the A<sub>2</sub> value is unlimited; or

\* \* \* \* \*

(3) \* \* \*

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of Class 7 (radioactive) material per package by leaching when placed in water for seven days would not exceed 0.1 A<sub>2</sub>; and

\* \* \* \* \*

■ 3. On page 55117, in the first column, in § 173.411, correct paragraph (b)(2)(ii) to read as follows:

**§ 173.411 Industrial packagings.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) A significant increase in the radiation levels recorded or calculated at the external surfaces for the condition before the test.

\* \* \* \* \*

■ 4. On page 55118, in the third column, in § 173.427, correct paragraph (b)(4) to read as follows:

**§ 173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).**

\* \* \* \* \*

(b) \* \* \*

(4) In a packaging which meets the requirements of §§ 173.24, 173.24a, and 173.410, but only for domestic transportation of an exclusive use

shipment that is less than an A<sub>2</sub> quantity.

\* \* \* \* \*

Issued in Washington, DC, on September 24, 2004 under authority delegated in 49 CFR Part 1.

**Samuel G. Bonasso,**

*Deputy Administrator, Research and Special Programs Administration.*

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2004–19209]

**RIN 2127–AJ18**

**Federal Motor Vehicle Safety Standards; Platform Lifts for Motor Vehicles, Platform Lift Installations in Motor Vehicles**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of the December 2002 final rule that established two new Federal motor vehicle safety standards, one for platform lifts and one for vehicles equipped with such lifts. The purpose of these standards is to prevent injuries and fatalities during lift operation. The agency received several petitions for reconsideration of the December 2002 final rule from platform lift manufacturers, vehicle manufacturers, and a transportation safety research organization. In response to these petitions, the agency is clarifying the applicability of the standards. This document also amends the definitions of certain operational functions, the requirements for lift lighting on public lifts, the interlock requirements, compliance procedures for lifts that manually deploy/stow, the environmental resistance requirements, the edge guard requirements, the wheelchair test device specifications, and the location requirements for public lift controls.

**DATES:** *Effective Dates:* The amendments in this rule are effective December 27, 2004.

*Petitions:* Petitions for reconsideration must be received by November 15, 2004, and should refer to this docket and the notice number of this document and be

submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact William Evans, Office of Crash Avoidance Standards, at (202) 366–2272.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax them at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

On December 27, 2002, the agency published in the **Federal Register** (67 FR 79416) a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform lift systems for motor vehicles*, and FMVSS No. 404, *Platform lift installation on motor vehicles* (final rule), effective December 27, 2004. These two new standards provide practicable, performance based requirements and compliance procedures for the regulations promulgated by the DOT under the American with Disabilities Act<sup>1</sup> (ADA). FMVSS Nos. 403 and 404 provide that only lift systems that comply with objective safety requirements may be placed in service.

FMVSS No. 403 establishes requirements for platform lifts that are

<sup>1</sup> Pub. L. 101–336, 42 U.S.C. 12101, *et seq.* The ADA directed the DOT to issue regulations to implement the transportation vehicle provisions that pertain to vehicles used by the public. Titles II and III of the ADA set specific requirements for vehicles purchased by municipalities for use in fixed route bus systems and vehicles purchased by private entities for use in public transportation to provide a level of accessibility and usability for individuals with disabilities. 42 U.S.C. 12204.

designed to carry passengers who rely on wheelchairs, scooters, canes, and other mobility aid devices in entering and exiting motor vehicles. The standard requires that these lifts meet minimum platform dimensions and maximum size limits for platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard also requires handrails, a threshold warning signal, and retaining barriers. Performance tests are specified for wheelchair retention on the platform, lift strength, and platform slip resistance requirements. A set of interlocks is prescribed to prevent accidental movement of a lift and the vehicle on which a lift is installed.

FMVSS No. 404 establishes requirements for vehicles equipped with platform lifts. The lifts must be certified as meeting FMVSS No. 403. The vehicle standard requires that the lifts be installed according to the lift manufacturer's instructions and must continue to meet all of the applicable requirements of FMVSS No. 403. The standard also required that specific information is made available to lift users.

Recognizing the different usage patterns of platform lifts on public transit versus that of platform lifts for individual use, the agency established separate requirements for public use lifts and private use lifts. S4.1.1 of FMVSS No. 404 requires that lift-equipped buses, school buses and multipurpose passenger vehicles other than motor homes with a gross vehicle weight rating greater than 4,536 kg (10,000 lb) must be equipped with a lift certified to all applicable public use lift requirements set forth in FMVSS No. 403. Since lifts on these vehicles will generally be subject to more stress and cyclic loads and will be used by more and varied populations, more requirements as to platform size, control, and handrails are appropriate.

As required by the ADA, FMVSS Nos. 403 and 404 are consistent with the Architectural and Transportation Barriers Compliance Board (ATBCB) guidelines published on September 6, 1991 (56 FR 45530). In order to provide manufacturers sufficient time to meet any new requirements established in FMVSS Nos. 403 and 404, the agency provided a two-year lead time. These standards will become effective December 27, 2004.

## II. Petitions for Reconsideration

In response to the final rule, the agency received six petitions for reconsideration from platform lift manufacturers, vehicle manufacturers, and a transportation safety research

organization. Specifically, petitions were received from: Lift-U, a platform lift manufacturer; Stewart & Stevenson, a platform lift manufacturer; Braun Industries Incorporated (Braun), an ambulance and "mobile intensive care and a neo-natal land vehicles" manufacturer; Braun Corporation (Braun Corp), a lift and vehicle manufacturer; Mac's Lift Gate, Inc. (Mac's Lift Gate), a manufacturer of special purpose lifts; Prevost Car, Inc. (Prevost), an over-the-road bus manufacturer; and the University of Pittsburgh Engineering Research Center on Wheelchair Transportation Safety (University of Pittsburgh), a transportation safety research organization.

The petitioners requested the agency establish an exclusion for special purpose lifts, and amend the definitions of "deploy" and "stow," the platform lift lighting requirements, the interlock requirements, the fatigue endurance requirement, the environmental resistance requirements, the platform deflection requirements, the edge guard requirements, control system requirements, the minimum load standard for private lifts, and the threshold warning requirements.

In response to these petitions, the agency is amending FMVSS Nos. 403 and 404 to clarify the applicability of these standards so that they do not apply to special purpose lifts and lifts installed on ambulances, redefine "deploy" and "stow" to be less design restrictive, establish the lighting requirements as a vehicle requirement; permit lift manufacturers to rely on existing vehicle components to comply with the interlock requirements, exclude lifts that manually deploy and stow from specified lift performance requirements, permit a wider range of platform lift designs to comply with environmental resistance requirements for internally stowed lifts, provide more flexibility in the degree of platform deflection between the unloaded platform and the vehicle floor, reduce the required extension of continuous edge guards to inner platform edge, establish a performance based alternative to the continuous edge guard requirement, establish further specifications for the wheelchair test device, clarify the term "control system," provide flexibility in the placement of the control system panel, and make several corrections to the regulatory text adopted by the final rule. The issues raised by the petitioners are addressed below.

### A. Special Purpose Lifts

Braun and Mac's Lift Gate petitioned the agency to exclude special purpose

lifts and vehicles equipped with special purpose lifts from the requirements of FMVSS Nos. 403 and 404, respectively. The petitioners argued that special purpose lifts and vehicles equipped with these lifts are used for medical transport only, such as the transport of individuals on cots, transport incubators, and isolet carriers. Braun and Mac's Lift Gate further argued that the size and configuration of special purpose lift systems are designed specifically to transport patients in cots or isolet carriers and prevent use by individuals using mobility aids such as wheel chairs, scooters, or canes. The petitioners stated that special purpose lifts are not intended to accommodate individuals in wheelchairs, mobility devices or individuals standing. In fact, the petitioners stated, the narrow width of most special purpose lifts makes it impossible to use for wheelchairs and mobility aids such as scooters. Therefore, the petitioners argued, because FMVSS Nos. 403 and 404 are intended to apply to lifts that accommodate individuals using canes, walkers, wheelchairs and mobility devices, it would be inappropriate to apply these regulations to lifts and vehicles equipped with lifts specifically designed to accommodate individuals for specialized medical transport.

*Agency response:* The agency is clarifying the applicability sections of FMVSS Nos. 403 and 404 to make it clear that these standards do not apply to lifts installed on medical transport vehicles for the purpose of loading and unloading cots and/or incubators, or to those vehicles themselves. NHTSA explained in the preamble to the final rule that its intent is to protect lift users aided by canes or walkers, as well as lift users seated in wheelchairs, scooters and other mobility devices in the course of ordinary transit.

FMVSS Nos. 403 and 404 are not intended to apply to systems involving specialized medical transport. Lifts used in specialized medical transport do not present the safety concerns addressed by these standards. The lifts described by the petitioners do not accommodate persons in wheelchairs, scooters, or other types of mobility devices as the platforms are generally far too narrow. Further, these specialized lifts transport individuals lying in cots and isolet carriers, and who generally have no control of their own mobility during transport.

Specialized medical lifts are not used in the ordinary transport of people with disabilities. Accordingly, this document amends the applicability sections of FMVSS Nos. 403 and 404 to clarify that special purpose lifts and the vehicles on

which they are installed are not regulated by these standards.

#### *B. Definitions of "Deploy" and "Stow"*

Lift-U petitioned the agency for reconsideration of the definitions of "deploy" and "stow." In its petition, Lift-U stated that the definition of "deploy" in the final rule specifies that a platform must deploy directly to one of the two loading positions. The petitioner explained that some lift models "deploy" from a stowed position to an extended position within the range of passenger operation instead of directly to one of the two loading positions. Lift-U stated that under this design, the raise or lower controls must be actuated to move the platform after it had been "deployed" to allow loading from either the vehicle or ground level loading position. Lift-U argued that the current definition of "deploy" would have the effect of prohibiting this design.

Lift-U also requested that the agency amend the definition of "stow." The petitioner explained that "stow" with respect to a lift typically means that the devices are put away or placed in a position maintained during normal vehicle travel. However, the "stowed" position of a wheelchair retention device, a bridging device, or an inner roll stop used to allow a passenger to embark or disembark the platform may be an intermediate or extended position beyond the deployed position. Lift-U requested that the definition be amended to reflect this design variation properly.

*Agency response:* The agency grants Lift-U's petition with respect to the definitions of "deploy" and "stow." While the definitions of "deploy" and "stow" in the final rule reflect a vast majority of platform lift designs, the agency recognizes there are a variety of active and passive lift designs in existence. For example, active wheelchair lifts require an additional entrance for wheelchair passengers, while passive wheelchair lifts use existing vehicle entrances. When stowed, a passive lift provides steps for passengers. When operational a passive lift forms a platform that lifts a wheelchair from the ground to the level of the vehicle floor. In recognition of existing design variations, the agency is amending these definitions to be less design restrictive.

In a typical lift design, the platform lift is mounted upright in the vehicle compartment. This type of lift will usually deploy directly to the vehicle loading position because the lift is close to this position when it deploys or unfolds. Some external lifts may deploy

directly to the ground level loading position as they are close to that position when they deploy or unfold. However, passive lifts may deploy to an extended position so that they may be raised or lowered to one of the two loading positions. We see no safety problem with the any of these deployment methods so long as the maximum deployment speed is sufficiently slow to permit bystanders to move out of the path of a deploying platform lift, as required under S6.2.2.2. Accordingly, we are amending the definition of "deploy" in S4 of FMVSS No. 403 to reflect lift designs that move to an intermediate position when deployed.

To maintain consistency throughout FMVSS No. 403, the agency is also amending the control system requirements in S6.7.2.2 to reflect that a platform lift may deploy to an intermediate position as opposed to deploying directly to one of the two loading positions.

The agency also agrees with Lift-U that the position of a wheelchair retention device, bridging device, or inner roll stop during normal vehicle travel may not be the same as the position during passenger access to and from the platform. To reflect this design variety, we are amending the definition of "stow" in S4 of FMVSS No. 403, with respect to wheelchair retention devices, bridging devices, and inner-roll stops, to refer to the positioning during normal vehicle travel.

#### *C. Platform Lift Lighting on Public Use Lifts*

Under the final rule, public use platform lift manufacturers must provide lighting hardware along with detailed installation instructions that address the mounting, powering, location and positioning of lighting, as well as operational test procedures. The lighting equipment and installation instructions must permit a vehicle manufacturer to verify that, when installed according to the instructions, the lighting will be operational and meet the lighting requirements of FMVSS No. 403. When a lift manufacturer certifies the lift as complying with FMVSS No. 403, it is certifying that when the lighting equipment is installed as instructed on a vehicle for which the lift is intended (a list of suitable vehicles appears in the installation instructions), the lift will meet the applicable lighting requirements.

In petitions for reconsideration, both Prevost and the Braun Corp raised concerns regarding the lighting

requirements for public use lifts.<sup>2</sup> Prevost specifically wanted to know if it is the responsibility of the lift manufacturer to incorporate lighting for the lift under FMVSS No. 403 or if it is the responsibility of the vehicle manufacturer to provide lighting under FMVSS No. 404.

The Braun Corp stated that identical lift products may be installed on a wide variety of vehicles. The Braun Corp claimed that although lift manufacturers can easily provide the method of interfacing platform lighting with the lift, they will have difficulty in determining the amount of lighting that will be required for each lift/vehicle application. Thus, the Braun Corp argued that the level of lighting intensity is application specific and should be determined at the time of lift installation. It further argued that public use vehicle manufacturers have already accepted responsibility for complying with the lighting requirements of 36 CFR 1192.31.<sup>3</sup> Therefore, the Braun Corp argued, compliance with the lighting standard should be the responsibility of the vehicle manufacturer.

*Agency response:* The agency structured the lighting requirements so that a platform lift system would be a complete, self-contained system ready for installation upon delivery to the vehicle manufacturer. While FMVSS No. 403 requires a lift manufacturer to provide the hardware and instructions necessary to install lighting in a manner that complies with the requirements of the standard, the agency explained that FMVSS No. 404 places the burden of complying with the lighting requirements on the vehicle manufacturer through compliance with the installation instructions (67 FR 79416, 79427).

The agency realizes that the vehicle manufacturers have traditionally provided lift lighting. Additionally, public use vehicle manufacturers already must comply with ADA lighting standards, which require lighting on doorways, step wells, lifts and ramps. In some cases, ADA required lighting in conjunction with other pre-existing vehicle lighting might already meet or exceed the lighting requirements of S6.4.11 in FMVSS No. 403. In these

<sup>2</sup> The final rule established stricter requirements for lifts designed to be installed on all buses and on multi-purpose passenger vehicles with a gross vehicle rate rating in excess of 4,536 kg to reflect differences in use patterns. These lifts are defined as public use lifts. We again note that the requirements of the ADA still apply to all lifts installed on vehicles used as public conveyances.

<sup>3</sup> Section 1192.31 of the ADA adopts the lighting standards sets forth in the ATBCB's Accessibility Guidelines for Transportation Vehicles.

instances, lighting provided by a lift manufacturer would be redundant with efforts already required of vehicle manufacturers. For these reasons, we are requiring that vehicle manufacturers comply with the lighting requirements through vehicle lighting systems as opposed to the installation of lighting systems provided by a lift manufacturer. Accordingly, the lighting requirements are moved to FMVSS No. 404.

Platform lift manufacturers will now be required to place a statement in the installation instructions stating that, "Public use vehicle manufacturers are responsible for complying with the lift lighting requirements in Federal Motor Vehicle Safety Standard No. 404, *Platform lift installations in motor vehicles* (49 CFR 571.404)." The platform lift lighting requirement formerly in S6.4.11 of FMVSS No. 403 is now a motor vehicle requirement in S4.1.5 of FMVSS No. 404. As they are already required to meet the applicable lighting requirements under the ADA, this will not be an additional burden for the vehicle manufacturers.

#### D. Interlock Sensors

In its petition for reconsideration, the Braun Corp also raised issues regarding the interlock requirements in FMVSS No. 403. The final rule established interlock requirements to prevent the forward or rearward motion of a vehicle while a platform lift is deployed. The agency determined that the compliance responsibility for the interlock requirements should rest with the platform lift manufacturer, and that the lift manufacturer must provide information identifying the appropriate vehicle make/model/year for installation of a particular lift design. Under the final rule, the lift manufacturer must certify that the installation hardware is fully compatible with those vehicles.

In response to this requirement, the Braun Corp argued that it is unreasonable to require a lift manufacturer to design door, brake and transmission interlocks to fit and immobilize all makes and models of vehicles. The Braun Corp explained that under current practice, lift manufacturers provide generic circuitry to interface with vehicle systems, but the design of an interlock is more appropriately the responsibility of the vehicle manufacturer.

*Agency response:* We recognize that it may be difficult for lift manufacturers to provide the vehicle parts necessary for interlocks to work with the lift circuitry. In many cases, the vehicle sensors and switches needed by these interlocks may already be part of existing vehicle

systems. It may be possible for existing vehicle components to send and receive signals to and from the lift as part of the interlock system. We do not wish to discourage the use of interlock switches and sensors provided by vehicle manufacturers, which may provide better reliability than hardware supplied by the platform lift manufacturers.

Accordingly, the interlock requirements of FMVSS No. 403 are amended to permit lift manufacturers to rely on vehicle system components. The requirements established by this rule still require lift manufacturers to have prior knowledge of how a lift will interface with each particular vehicle model for which the lift is intended. However, S6.10.2 of FMVSS No. 403 is amended by this rule to relieve lift manufacturers from the responsibility of providing the entire interlock system. A platform lift manufacturer may provide less than a full interlock system intended to work in conjunction with a vehicle's existing components, as long as when the platform lift is installed according to the installation instructions, the interlock requirements of S6.10.2.1 through S6.10.2.7 are met.

#### E. Lifts that Manually Stow and Deploy

The final rule established several performance requirements in FMVSS No. 403 that involve the stowing and deploying of lifts, including: S6.2.2, *Maximum platform velocity*; S6.5.1, *Fatigue Endurance*; and S6.10.2.3, which requires an interlock to prevent the platform from stowing when occupied. Stewart & Stevenson requested clarification as to the application of these requirements to platform lifts that are stowed and deployed manually. With specific regard to the fatigue endurance test procedure, Stewart & Stevenson indicated that fatigue cycling test procedures under California Title 13, Department of California Highway Patrol, Commercial and Technical Services Section do not apply the stow/deploy functions if the platform lift is designed to stow and deploy manually. Regarding the interlock requirement, Stewart & Stevenson stated that platforms which are manually deployed and stowed cannot be stowed when the platform is occupied, and therefore an interlock is not necessary.

*Agency response:* The agency did not consider platform lifts designed to be stowed and deployed manually. When such lifts are in the process of stowing and deploying, the person who is manually performing the task is in control of the platform and the lift velocity during deployment or stowing. While being manually stowed or

deployed, the platform is supported by the operator. Further, a platform that is stowed manually cannot by its nature be stowed until vacant. Accordingly, the agency has decided to exclude platform lifts that manually deploy/stow from the requirements relating to the stow and deploy functions in S6.2.2, S6.5.1, S6.10.2.3, S6.7.2, S7.10.5, and S7.10.6 of FMVSS No. 403.

#### F. Environmental Resistance

S6.3 of FMVSS No. 403 requires platform lifts to comply with environmental resistance requirements that reflect conditions lifts may experience during actual use. Hardware on a lift that stows inside an occupant compartment and is protected by an electrodeposited coating of nickel, or copper and nickel in accordance with ASTM B456-95, does not need to meet the environmental testing requirement of S6.3. This hardware is not subject to the environmental conditions potentially experienced by hardware on a lift that is stowed external to the passenger compartment.

Stewart & Stevenson objected to the use of the phrase "occupant compartment" when identifying the stow location of lifts excluded from the environmental test requirements. It claimed that some lifts stow within other "sealed compartments" such as baggage compartments and are equally protected from the elements as lifts that stow within the occupant compartment.

Additionally, Lift-U argued that lifts and hardware made of stainless steel as described in S5.2 of FMVSS No. 209, *Seat belt assemblies*,<sup>4</sup> should also be excluded from the environmental resistance test requirements.

*Agency response:* The agency agrees with both Stewart & Stevenson and Lift-U. The purpose of the environmental resistance requirement is to test the endurance of lifts and lift components when exposed to the elements. Less stringent requirements should apply to a lift that is stowed either in the occupant compartment or some other equivalent compartment. In both instances, the lift is protected against the exposure experienced by a lift that is stowed externally. Accordingly, we are amending S6.3 of FMVSS No. 403 to include lifts that stow internal to a sealed compartment that provides protection from the environment in the category of "internal lifts." For internal lifts, only the attachment hardware is tested.

<sup>4</sup> S5.2(a) of FMVSS No. 209 states that, "The test for corrosion resistance shall not be required for attachment hardware made from corrosion-resistant steel containing at least 11.5 percent chromium[.]"

Further, NHTSA has concluded that stainless steel (containing at minimum 11.5 percent chromium by weight) should be added to the list of materials that exclude hardware for lifts mounted inside a sealed compartment from the environmental test requirements. The agency has recognized the corrosion resistant properties of stainless steel in FMVSS No. 209, which excludes hardware made of corrosion-resistant steel with a minimum of 11.5 percent chromium from the environmental test requirements. Given the corrosion resistance properties of stainless steel, if a lift manufacturer desires to incur the additional expense of making an external lift and all of its associated hardware and components completely out of stainless steel, we believe it is appropriate to exclude such a lift from the environmental resistance tests in S7.3 of the final rule. However, a manufacturer must select which option it will rely on for certification by the time it certifies a lift and may not thereafter select a different option.

#### *G. Platform Deflection*

Under the platform deflection requirements in S6.4.5 of FMVSS No. 403, the angle of a platform relative to the vehicle floor cannot be more than 1.8 degrees when no load is present. In addition, the loaded platform may not deflect so that the angle of the loaded platform is more than three degrees from the angle of the unloaded platform. This limit on deflection prevents the platform from becoming unstable when loaded. We note that in a supplemental notice of proposed rulemaking (SNPRM), the agency initially proposed an unloaded deflection angle of one degree with respect to the vehicle floor. (65 FR 46228; July 27, 2000). In response to the SNPRM, Lift-U commented that the one-degree maximum was too restrictive, and would prohibit lifts designed to conform to the crown of various road surfaces. Therefore, the agency adopted the 1.8 degree maximum permissible deflection angle relative to the vehicle floor.

In responding to the final rule, Lift-U agreed with the maximum deflection of three degrees between the loaded and unloaded conditions. However, Lift-U argued that the overall maximum deflection (consisting of the unloaded deflection with respect to the vehicle floor plus the deflection between the loaded and unloaded conditions) should be a maximum of 4.8 degrees with no further limit on the angle of deflection between the unloaded platform and the vehicle floor. Lift-U stated that an absolute angle requirement would allow for various combinations of unloaded

and loaded deflection angles that when summed together would be less than or equal to the maximum 4.8 degrees. The petitioner further argued that this flexibility would allow the lift to conform to the crown of various road surfaces when at the ground level loading positions. Lift-U also noted that the 4.8 degree maximum is in line with the ADA requirements for general access to buildings and therefore, persons relying on various mobility aids are familiar with slopes of this degree.

*Agency response:* The agency is granting Lift-U's petition to amend the platform deflection angle requirements. We are amending the platform deflection requirements to eliminate the 1.8 degree restriction for the angle of deflection between the unloaded platform and the vehicle floor. The overall deflection angle requirement of a maximum of 4.8 degrees will remain the same, assuring that a platform lift will not be at too great of a slope.

In cases in which there is no deflection upon loading, the unloaded deflection angle may be as high as 4.8 degrees with respect to the vehicle floor. The loaded deflection angle is still required to be less than or equal to 3 degrees with respect to the unloaded position. The 3-degree requirement will prevent a platform from suddenly tilting too much when a passenger moves onto the lift.

In all cases, the sum of the unloaded and loaded angles must not exceed 4.8 degrees. This permits flexibility of design and will eliminate the need to redesign of existing platform lifts. Additionally, the 4.8-degree maximum maintains consistency with the slope requirements for general building access under the ADA, a condition with which platform lift users will most likely be familiar.

#### *H. Edge Guards*

In response to a supplemental notice of proposed rulemaking, Lift-U had requested that the agency amend the requirement for continuous edge guards and allow them to be present and continuous along the sides of the platform to within three inches from the outer platform edge. The three-inch allowance at the outer edge was established to facilitate the loading and unloading of a lift passenger when space is limited. Reducing the length of the edge guard allows a lift occupant to turn his or her mobility device when the space directly in front of the platform is restricted. The December 2002 final rule addressed Lift-U's request.

In its petition for reconsideration, Lift-U stated that for passive lifts, edge guards that extend below the lowest

step riser when the platform is stowed interfere with vehicle doors when closed. The petitioner further argued that edge guards within three inches of the inner edge of a platform may become a tripping hazard inside the bus, and recommended a three-inch allowance from the inner edge. It also stated that it may be unnecessary for edge guards to be continuous along the sides of a lift platform when there are obstacles such as handrails, retention devices and roll-stops that box the wheelchair in and keep it from going off the sides of the platform. It suggested having a performance test requirement for edge guards as an alternative to requiring continuous edge guards.

*Agency response:* NHTSA recognizes the problems that continuous edge guards cause on some passive lifts, particularly with edge guards located within three inches of the inner edge (vehicle side) of the platform. The ADA and the FTA both require that edge guards must not interfere with maneuvering into or out of a vehicle aisle. At the same time, barriers should prevent any of the wheels of a wheelchair or mobility aid from rolling off of the platform during its operation. For passive lifts, edge guards that extend below the lowest step riser when the lift is stowed could potentially interfere with bus door operation, as well as present a tripping hazard to passengers. Edge guards that extend past a point three inches from the inner edge of the platform may also become a tripping hazard in the aisle of a vehicle when the lift is stowed. The existence of such an obstacle on the inner edge of the platform when stowed would be in violation of ADA if it interferes with maneuvering into or out of the aisle.

The three-inch allowance for the outside edge of the platform does not diminish safety, as the remaining edge guards and the outer barrier/wheelchair retention device box a wheelchair into the area of the platform and prevent the wheels of a mobility device from rolling off of the edge of the platform. For these same reasons, we see no safety reason for not allowing edge guards to stop within three inches of the inner edge of the platform. The edge guards that remain are adequate to prevent wheels of a mobility device from rolling off the edge of the platform. Accordingly, we are amending S6.4.6.1 of FMVSS No. 403 to require edge guards that extend continuously along each side of the platform lift to within three inches of the edges of the platform at both the ground and vehicle floor level loading positions.

In addition, the agency agrees that permitting compliance with a

performance test requirement as an alternative to continuous guards would be less design restrictive. Therefore, the agency is establishing a performance test as an alternative means to comply with the edge guard requirements.

The agency is amending S7.7, *Wheelchair retention device impact test*, of FMVSS No. 403 to include an edge guard performance test as an alternative to the continuous edge guard requirement. The test consists of operating a wheelchair test device from side-to-side and corner-to-corner on the platform. At the end of each test, all wheels of the wheelchair test device must be in contact with the platform surface. During the test, the footrests are removed from the wheelchair test device to test for the worse case scenario. A lift with sufficient edge guards, handrails, wheelchair retention devices and roll-stops to box a mobility aid onto the platform to prevent its wheels from rolling off the edge of the platform will comply with the edge guard requirements.

#### I. Test Device

To improve the repeatability of the newly established edge guard test, as well as other tests that use the wheelchair test device, the agency is amending S7.1.2, *Wheelchair test device*, to further specify the operating conditions. The specifications are amended to include a minimum level of battery charge and level of tire inflation. The agency is specifying that the charge on a battery be a minimum of 75 percent of rated nominal capacity.<sup>5</sup> Because repeatability can also depend on proper tire inflation, the pneumatic tires of the wheelchair test device are to be inflated to the wheelchair manufacturer's recommended pressure or, if no recommendation exists, to the maximum pressure that appears on the sidewalls of the tires.

#### J. Control Systems

Lift-U requested that the agency clarify the term "control system" as used in S6.7.1 through S6.7.5 in FMVSS No. 403, stating that as currently used, the term may be interpreted too broadly. Lift-U cited S6.7.5, which states, "Any single point failure in the control system may not prevent the operation of any of the interlocks as specified in S6.10." Lift-U expressed concern that in this context the phrase "control system" may be interpreted as requiring lifts to have redundant or back-up control systems with functional checks on start up.

Lift-U also requested that the lift control location requirements for public use lifts in S6.7.7 be amended. As adopted in the final rule, S6.7.7 requires that lift controls for public use lifts, other than those used for backup operation, be positioned together and in a location such that a person facing the controls has a direct, unobstructed view of the platform lift passenger and the passenger's mobility aid, if applicable. Lift-U contends that many passive lifts are installed in the front doorway of buses. This installation allows ambulatory passengers to use steps when the lift is stowed and persons with disabilities to use the lift when it is deployed. Lift-U explained that the controls for these front door lifts are located on the vehicle dash. Therefore, Lift-U argued, the driver has an unobstructed view of the lift passenger and the passenger's mobility aid but must momentarily look at the dash to see the controls. The petitioner further argued that the requirement as written would eliminate this configuration, which is currently a prevalent design and does not present a safety problem.

*Agency response:* While the control system requirements in the final rule were derived from ADA requirements and FTA guidelines, we agree that as currently used in the standard, the phrase "control system" may be interpreted in an overly broad manner. For purposes of clarity, the agency is replacing the phrase "control system" with "control panel switches" in S6.7 of FMVSS No. 403.

Under the discussion of "control systems" in the final rule, the agency explained that "each system would need to have a 'power' switch, a 'deploy' or 'unfold' switch, an 'up' switch and a 'down' switch[.]" This was intended to clarify that "control system" refers to the switches on the operator control panel. Replacing the phrase "control system" with the phrase "control panel switches" more accurately reflects intent of the final rule.

NHTSA also recognizes the restriction resulting from the positioning requirements for control panel switches. FTA guidelines indicate that the control console should be located in a position where the lift operator (driver) has a direct unobstructed view of the platform during lift operation.<sup>6</sup> This does not require the operator to have an unobstructed view of the platform while facing the controls. NHTSA believes that there is no significant reduction in

the level of safety by simply requiring that the lift operator have an unobstructed view of the lift passenger and passenger's mobility aid. Accordingly, we are amending S6.7.7 to be consistent with FTA guidelines.

#### K. Minimum Load Requirements for Private Use Lifts

S4 of FMVSS No. 403 requires private use lifts to comply with a minimum standard load rating of 400 lb (181 kg) and public use lifts to comply with a minimum standard load rating of 600 lb (272 kg). The difference in standard load rating reflects the difference in use patterns between a private use lift and a public use lift.

The University of Pittsburgh petitioned to have both public and private use lifts comply with the 600 lb (272 kg) standard load rating. It indicated that the average weight of 26 commonly used wheelchairs is 199 pounds and the weight is often increased as a result of add-on devices such as a tilt-in-space seat. The University of Pittsburgh argued that when combined with the weight of a 250-pound occupant (the maximum occupant weight capacity of most power wheelchairs), a 400-pound minimum load rating is likely to be inadequate. The petitioner further argued that the lower load capacity requirement for private use lifts will place an unnecessary burden on users by requiring them to have knowledge of their combined wheelchair-user weight in order to determine appropriate lift capacity. It argued that the 400-pound minimum does not take into account later changes in a user's mobility device or subsequent users that may result in the lift capacity becoming exceeded. The University of Pittsburgh added that the required "DOT-Private Use Lift" labeling does not convey the load capacity associated with the lift, making it unnecessarily difficult to ascertain appropriate load capacity.

*Agency response:* The agency is denying the University of Pittsburgh's request to increase the load capacity of private-use lifts. We note that the SNPRM for the final rule proposed a 600-pound standard load for testing all lifts, both private and public. This single standard was based on harmonization with voluntary standards and guidelines, as well as the fact that it was possible for the weight of many power wheelchair/occupant combinations to approach 491 lbs. (weight of a 99th percentile male and a 250 lb. powered wheelchair).

In response to the SNPRM, several commenters requested that the standard be amended to permit a lower load

<sup>5</sup> This level is consistent with ANSI/RESNA WC/ Volume 1-1998, Section 22: Set Up Procedures.

<sup>6</sup> FTA, "Guideline Specifications for Passive Lifts, Active Lifts, Wheelchair Ramps, and Securement Devices," September 1992.

capacity for private use lifts, as private use lifts are not required to conform with ADA requirements or harmonize with the ADA Accessibility Guidelines for Buildings and Facilities.

Commenters indicated that there are lifts in existence designed for smaller vehicles (some minivans) and lighter wheelchair/occupant loads (e.g., a child in a manual wheelchair) that would be forced from the market if they had to be tested with a 600-pound load.

The agency has already recognized the different use patterns between public and private use lifts. Public use lifts are more heavily used and must accommodate many different types of mobility aids while private use lifts are used less frequently and are usually purchased for a specific individual and mobility aid. The lower load capacity for private use lifts gives manufacturers the flexibility to produce lifts for individuals with smaller vehicles or smaller load requirements. When an individual purchases or is prescribed a new vehicle equipped with a platform lift, the user must rely on present and anticipated needs in order to obtain a lift that best suits that individual. Further, S6.7.8.4 of FMVSS No. 403 requires that a lift's rated load must appear near the lift controls in addition to the statement "DOT—Private Use Lift." This information must also appear in the vehicle owner's manual insert.

The load rating requirements established under the final rule provide more flexibility to lift manufacturers and more options to private lift users. At the same time, the standard ensures that users are aware of the load limitations of each lift. Therefore, the agency is maintaining a minimum 400-pound load capacity requirement for private use lifts. However, the 400-pound minimum load capacity does not prevent an individual from installing a lift with a higher load capacity. An individual could even install a lift certified to the public lift requirements.

#### *L. Threshold Warning Signal*

Under the final rule, private use lifts are required to have either an audible or visual threshold warning, while public use lifts are required to have both an audible and visual threshold warning. A threshold warning signal warns a lift user exiting a vehicle that the lift platform is more than one inch below the vehicle's floor reference plane and the platform threshold area is occupied by a portion of the lift user's body or mobility aid. The warning is to prevent users from exiting a vehicle when the platform is not in position.

Prevost petitioned the agency to eliminate the requirement for public use

lifts to be equipped with both audio and visual threshold alarms. It indicated that trained drivers are always present while a lift is in operation and maintained that there are no dangers that justify a warning signal. Prevost argued that on their vehicles, the lift control panel is located just beside the lift and as soon as the lift user is inside the coach, the driver lowers the platform and shuts the door. It stated that because of this procedure, there is no danger that would warrant the need for threshold alarms.

*Agency response:* The basic threshold warning requirement in FMVSS No. 403 was derived from the SAE lift standard.<sup>7</sup> In private use applications, the specific lift user and his or her mobility aid are known quantities and the lift is usually purchased for that person's particular needs. In public use applications, lift users and their mobility aids are unknown quantities. The lift system is used by a wide variety of persons with various disabilities, impairments and mobility aids. Thus, the requirement of both visual and audible threshold warnings signals on public use vehicles equipped with lifts, is intended to provide a threshold warning system that will benefit the majority of public lift users.

As explained in the preamble of the final rule, NHTSA does not have the authority to regulate drivers or driver training. We can only regulate vehicles and vehicle equipment. Requirements and performance tests are written to further safety whether there is a trained driver/assistant present or not. In the public use environment, when lift users are positioned on the vehicle threshold area and are preparing to move onto the lift platform, it is important that they be warned when the platform is more than one inch below the vehicle floor level. Considering the wide variety of persons with various disabilities that a public use lift must accommodate and the height of the vehicle threshold above the ground, particularly on motor coaches, it is reasonable to require both audible and visual threshold-warning alarms. Therefore, the agency is denying Prevost's petition with regard to this issue.

#### *M. Wheelchair Restraint Standards*

In its petition for reconsideration of the Final Rule, Prevost also expressed concern with the lack of wheelchair restraint requirements in FMVSS No. 404 to address wheelchair securement once a wheelchair is inside a vehicle.

<sup>7</sup> Society of Automotive Engineers (SAE) J2093, issued May 1995.

*Agency response:* The ADA and DOT regulations regarding securement of a mobility device remain in effect and are not altered by FMVSS Nos. 403 and 404. The ATBCB published guidelines for DOT to follow in implementing the ADA and stated, "NHTSA was the appropriate agency to define safety tests for *platform lifts*." (Emphasis added). The DOT regulations contain requirements for platform lifts, as well as, securement devices for wheelchairs and other mobility aids (49 CFR, Part 38, Subpart B). FMVSS Nos. 403 and 404 apply only to platform lifts designed to carry persons aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility devices into and out of motor vehicles. Relative to mobility aid securement devices, the ADA requirements are applicable and require at least two mobility aid securement locations on vehicles in excess of 22 feet in length and at least one mobility aid securement location on vehicles less than or equal to 22 feet in length. In addition, the ADA provides requirements for mobility aid securement devices relative to design load, location/size, types of mobility aids accommodated, orientation, movement, stowage, and seat belts/shoulder harnesses. Aside from FMVSS No. 222, *School bus passenger seating and crash protection*, which provides performance tests for mobility aid securement devices in school buses, there are no other NHTSA mobility aid securement device requirements for other vehicles.

#### *N. Cost of Testing*

Several petitioners raised concern over the cost of various testing requirements and the cost of the platform lift regulations over all. Prevost stated that the time, cost and space necessary to perform the fatigue endurance testing required by S7.10 of FMVSS No. 403 would be excessive. Prevost indicated that a simple static test with a high enough safety factor could replace the endurance testing, while still assuring the robustness of the lift/vehicle attachment point. Further, Prevost expressed confusion as to whether it was the lift manufacturer or the vehicle manufacturer that is responsible for certifying to endurance requirements.

Stewart & Stevenson stated that permitting the fatigue endurance testing and the proof load testing (S7.11 of FMVSS No. 403) to be performed on a jig, as opposed to testing on a vehicle, would reduce the compliance costs. Stewart & Stevenson estimated that the cost of fatigue testing a platform lift on



an over-the-road coach would cost \$450,000 per test as compared to a cost of \$35,000 per test using a jig. As such, Stewart & Stevenson requested that the standard be amended to clarify that certification testing can be performed through use of a jig, as opposed to testing performed on a vehicle.

Generally, the Braun Corporation disagreed with the agency's cost estimate of \$300 per lift to comply with FMVSS No. 403 and 404. The Braun Corporation estimated that the cost for complying with the electrical portions of the standard would alone be \$300 and that compliance with the mechanical aspects would be an additional \$300. The Braun Corporation argued that this increase would translate to a retail cost of four to six times higher than that estimated by NHTSA and was concerned that higher consumer costs would reduce the options available to the end users.

**Agency response:** The agency maintains that the compliance costs estimated in the Final Rule are an accurate estimate, given the incorporation of industry and ADA guidelines into the standards, given that most commercial lifts already comply with the industry standards, and given that manufacturers must already comply with the ADA guidelines for public use lifts.

For clarification, FMVSS No. 403 is an equipment standard. All of the requirements contained therein apply to platform lifts and platform lift manufacturers. FMVSS No. 404 is a vehicle standard. All of the requirements therein apply to manufacturers of vehicles equipped with platform lifts. The lift manufacturer must certify that a lift complies with the fatigue endurance requirements specified in S6.5.1 of FMVSS No. 403 on all vehicles for which the lift is intended.<sup>8</sup>

The fatigue requirements in S6.5.1 and the related performance test in S7.10 not only verify the integrity of the lift, but also verify the integrity of the lift's attachment to the vehicle. Although lift attachment points usually do not move, some flexion may occur as the lift is cycled, which may eventually result in fracture and/or separation. Fatigue or life cycle testing is generally the best way to reveal such problems.

However, the self-certification process established by the National Traffic and

Motor Vehicle Safety Act permits manufacturers to certify compliance with requirements in ways other than performing actual tests on all lift/vehicle combinations. Each FMVSS specifies performance requirements for the vehicle or equipment to which the standard applies. While manufacturers are not required to conduct certification tests in any particular manner, any manufacturer that wishes to base its certification of compliance on a test procedure that is different from that included in the standard must necessarily assess whether the results of the alternative test procedure are good predictors of the results of the test procedure specified in the standard.

Additionally, no lift manufacturers provided data that would demonstrate costs to manufacturers greater than those determined by the agency in the final rule. The agency expects the costs to decrease with regards to the electrical interlock requirements given that an amendment in this notice permits lift manufacturers to rely on interlock components already in companion vehicles. This will reduce the design and material costs for these systems.

### III. Corrections

This document corrects several errors in the Final Rule. Lift-U noted that the final rule erroneously listed the threshold warning test in S7.4 of FMVSS No. 403 as a test that can be performed on a test jig when in fact, the procedure in S7.4 is performed on a lift/vehicle combination. Therefore, the regulatory text has been appropriately amended.

Further, the wheelchair retention device impact test, S7.7.1, to which the edge guard test was added, may be performed on a jig. The added edge guard test adopted by this document, S7.7.4, specifies testing on a lift/vehicle combination. The regulatory language has been amended in S7 to reflect these additions.

Lift-U also brought to our attention an error in S6.2.1 of FMVSS No. 403. The first sentence of S6.2.1 states, "Throughout the range of passenger operation and during the lift operations specified in S7.6, the platform lift must meet the requirements of S6.2.2 through S6.2.4." S7.6 is the test for occupancy of the inner-roll stop and interlock function. S6.2.1 was intended to reference operations in S7.9, Static load test I—working load. S6.2.1 is amended accordingly. Additionally, S7.1.1 is amended to properly reference the appropriate load test provisions.

S7.9 is referenced throughout FMVSS No. 403. The interlock requirements in S6.10.2.3 references the operations in

S7.9.7 and S7.9.8 as a test procedure. S6.10.2.3 requires that a platform not stow when the test block specified in S7.1.4 is placed with its narrow side down on any portion of the useable surface of the platform. However, the procedure in S7.9.7 that is referenced requires centering the load on the platform. The procedures in S6.10.2.3 and S7.9.7 are conflicting. To eliminate confusion, the references to S7.9.7 and S7.9.8 are removed from S6.10.2.3. S6.10.2.3 continues to reference the test device in S7.1.4, but the platform positioning procedures have been placed directly in S6.10.2.3, instead of relying on cross-referenced procedures.

Additionally, this document corrects several other minor errors. S6.2.4, *Maximum noise level of public use lifts*, erroneously refers to S6.4.2.2, which describes the operating volume for private use lifts. S7.7.2.2 is intended to set the lowest point of the footrests to a height of 50 mm, not 501 mm. S7.14.1 is intended to reference S7.14.2 through S14.4.4. Each of these sections has been amended accordingly. S6.4.9.3, S6.4.9.9, S7.7.4.1, and S7.13.2 are amended to provide consistency in the conversion of measurements to metric through out the standard.

### IV. Effective Date

The amendments made in this rule are effective December 27, 2004, the same date the FMVSS Nos. 403 and 404 become effective. The final rule, which was published December 27, 2002, provided a two-year lead time in order to allow manufacturers sufficient time to comply with the requirements of FMVSS Nos. 403 and 404. The amendments made to FMVSS Nos. 403 and 404 in this document provide manufacturers more flexibility in complying with these standards. As such, manufacturers should be able to comply with the amended standard at the same time they are required to comply with FMVSS No. 403 and 404.

### V. Rulemaking Analyses and Notices

#### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

<sup>8</sup> Under S6.13.1 of FMVSS No. 403 a list of suitable vehicles must appear in the installation instructions. Vehicles may be identified by listing the make, model and year of the vehicles for which the lift is suitable, or by specifying the design elements that would make a vehicle an appropriate host for the particular lift.



adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The December 2002 final rule was classified as significant because of the public policy consideration involved, as opposed to the economic implications. This document does not affect the public policy implications of the final rule. This document clarifies the application of FMVSS Nos. 403 and 404 as well as provides further flexibility in compliance.

The agency has concluded that the impacts of today's amendments are so minimal that a full regulatory evaluation is not required. Readers who are interested in the overall costs and benefits of the platform lift requirements are referred to the agency's Final Economic Assessment for the December 2002 final rule (Docket No. NHTSA-2002-13917-3). NHTSA has determined that today's rule does not change the costs and benefits estimated in the Final Economic Assessment.

#### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the costs of the December 2002 final rule. This action clarifies the requirements and test procedures of FMVSS Nos. 403 and 404, in part, through removing requirements not appropriate for certain platform lift designs. Additionally, this action provides additional flexibility for manufacturers by allowing lift manufacturers to rely on existing vehicle components to comply with the interlock requirements and through the adoption of a compliance alternative to the edge guard requirement.

#### *C. National Environmental Policy Act*

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

#### *D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This action will not increase the cost of compliance with FMVSS Nos. 403 and 404 as adopted in the December 2002 Final Rule.

#### *F. Executive Order 12778 (Civil Justice Reform)*

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### *G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the

collection displays a valid OMB control number. The information disclosure requirements of FMVSS No. 403 and FMVSS No. 404 were granted OMB clearance; OMB No. 2127-0621. The amendments made to those standards do not result in any new information or information disclosure requirements.

#### *H. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### *I. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Today's rule has been written with that directive in mind. We note that many of the requirements of today's rule are technical in nature. As such, they may require some understanding of technical terminology. We expect those parties directly affected by today's rule, *i.e.*, platform lift manufacturers and vehicle manufacturers to be familiar with such terminology.

#### *J. Executive Order 13045*

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not directly involve health risks that disproportionately affect children.

#### *K. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards<sup>9</sup> in its regulatory

<sup>9</sup> Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They

activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This document adds a performance based compliance option for edge guards. The agency searched for, but did not find any voluntary or industry standards to incorporate for this requirement.

#### L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, the final rules for 49 CFR part 571, published at 67 FR 79416 (December 27, 2002), effective beginning December 27, 2004, are amended as follows:

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.403 is amended as follows:

■ A. By revising S3, the definitions of “deploy” and “stow” in S4, S6.2.1, S6.2.2.2, S6.2.4, S6.3.1, S6.3.2, S6.4.5,

S6.4.6.1, S6.4.9.3, S6.4.9.9, S6.4.11, S6.5.1.1, S6.5.1.2, S6.7 through S6.7.2.2, S6.7.4, S6.7.5, S6.7.7, S6.10.2, S6.10.2.3, S7, S7.1.1, S7.1.2, S7.1.2.5, S7.1.2.6, S7.3.3, S7.7, S7.7.2.2, S7.10.5, S7.10.6, S7.13.2 and S7.14.1;

■ B. By adding S6.13.4.1, S7.1.2.11, S7.7.4 through S7.7.4.6; and

■ C. By removing S6.4.12.

The revisions and additions to § 571.403 read as follows:

#### § 571.403 Standard No. 403; Platform lift systems for motor vehicles.

\* \* \* \* \*

**S3. Application.** This standard applies to platform lifts designed to carry standing passengers, who may be aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility aids, into and out of motor vehicles.

#### S4. Definitions.

\* \* \* \* \*

**Deploy** means with respect to a platform, its movement from a stowed position to an extended position or, one of the two loading positions. With respect to a wheelchair retention device or inner roll stop, the term means the movement of the device or stop to a fully functional position intended to prevent a passenger from disembarking the platform or being pinched between the platform and vehicle.

\* \* \* \* \*

**Stow** means with respect to a platform, its movement from a position within the range of passenger operation to the position maintained during normal vehicle travel; and, with respect to a wheelchair retention device, bridging device, or inner-roll stop, its movement from a fully functional position to a position maintained during normal vehicle travel.

\* \* \* \* \*

**S6.2.1 General.** Throughout the range of passenger operation and during the lift operations specified in S7.9.3 through S7.9.8, the platform lift must meet the requirements of S6.2.2 through S6.2.4. These requirements must be satisfied both with and without a standard load on the lift platform, except for S6.2.2.2, which must be satisfied without any load.

\* \* \* \* \*

**S6.2.2.2** Except for platform lifts that manually stow (fold) and deploy (unfold), during the stow and deploy operations specified in S7.9.3 through S7.9.8, both the vertical and horizontal velocity of any portion of the platform must be less than or equal to 305 mm (12 inches) per second.

\* \* \* \* \*

**S6.2.4 Maximum noise level of public use lifts.** Except as provided in S6.1.5, throughout the range of passenger operation specified in S7.9.4 through S7.9.7, the noise level of a public use lift may not exceed 80 dBA as measured at any lift operator's position designated by the platform lift manufacturer for the intended vehicle and in the area on the lift defined in S6.4.2.1. Lift operator position measurements are taken at the vertical centerline of the control panel 30.5 cm (12 in) out from the face of the control panel. In the case of a lift with a pendant control (*i.e.*, a control tethered to the vehicle by connective wiring), measurement is taken at the vertical centerline of the control panel 30.5 cm (12 in) out from the face of the control panel while the control panel is in its stowed or stored position. For the lift operator positions outside of the vehicle, measurements are taken at the intersection of a horizontal plane 157 cm (62 in) above the ground and the vertical centerline of the face of the control panel after it has been extended 30.5 cm (12 in) out from the face of the control panel.

\* \* \* \* \*

**S6.3.1 Internally mounted platform lifts.** On platform lifts and their components internal to the occupant compartment of the vehicle or internal to other compartments that provide protection from the elements when stowed, attachment hardware must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges or edges of holes on under-floor reinforcing plates and washers after being subjected to the conditions specified in S7.3. Alternatively, such hardware must be made from corrosion-resistant steel containing at least 11.5 percent chromium per FMVSS 571.209, S5.2(a) or must be protected against corrosion by an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware must be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with ASTM B456–95, but such hardware may not be racked for electroplating in locations subjected to maximum stress. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift. The lift must be accompanied by all attachment hardware necessary for its installation on a vehicle.

pertain to “products and processes, such as size, strength, or technical performance of a product, process or material.”

**S6.3.2 Externally mounted platform lifts.** On platform lifts and their components external to the occupant compartment of the vehicle and external to other compartments that provide protection from the elements when stowed, the lift and its components must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges and edges of holes and continue to function properly after being subjected to the conditions specified in S7.3. Alternatively, such lifts and all associated hardware and components must be completely made from corrosion-resistant steel containing at least 11.5 percent chromium per FMVSS 571.209, S5.2(a). The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift. The lift must be accompanied by all attachment hardware necessary for its installation on a vehicle.

\* \* \* \* \*

**S6.4.5 Platform deflection.** The angle of the deployed platform, when stationary, and loaded with a standard load, must not exceed 4.8 degrees with respect to the vehicle floor and must not exceed 3 degrees with respect to the platform's unloaded position. The angles are measured between a vertical axis from the vehicle floor and an axis normal to the platform center as shown in Figure 1.

\* \* \* \* \*

**S6.4.6.1** The platform lift must have edge guards that extend continuously along each side of the lift platform to within 75 mm (3 inches) of the edges of the platform that are traversed while entering and exiting the platform at both the ground and vehicle floor level loading positions. The edge guards must be parallel to the direction of wheelchair movement during loading and unloading. Alternatively, when tested in accordance with S7.7.4, all portions of the wheels of the wheelchair test device must remain above the platform surface and after the control is released to Neutral, at the end of each attempt to steer the test device off the platform, all wheels of the wheelchair test device must be in contact with the platform surface. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift.

\* \* \* \* \*

**S6.4.9.3** The graspable portion of each handrail may not be less than 760 mm (30 inches) and more than 965 mm

(38 inches) above the platform surface, measured vertically.

\* \* \* \* \*

**S6.4.9.9** When tested in accordance with S7.12.2, each handrail must withstand 1,112 N (250 lb/f) applied at any point and in any direction on the handrail without sustaining any failure, such as cracking, separation, fracture, or more than 100 mm (4 inches) of displacement of any point on the handrails relative to the platform surface.

\* \* \* \* \*

**S6.4.11 Platform slip resistance.** When tested in accordance with S7.2, the coefficient of friction, in any direction, of any part of a wet platform surface may not be less than 0.65.

\* \* \* \* \*

**S6.5.1.1 Public use lifts.** Except for lifts that manually stow (fold) and deploy (unfold), public use lifts must remain operable when operated through a total of 15,600 cycles: 7,800 unloaded Raise/Lower and Stow/Deploy operations and 7,800 loaded Raise/Lower operations as specified in S7.10. Public use lifts that manually stow (fold) and deploy (unfold) must remain operable when operated through a total of 15,600 cycles: 7,800 unloaded Raise/Lower operations and 7,800 loaded Raise/Lower operations. No separation, fracture, or breakage of any vehicle or lift component may occur as a result of conducting the fatigue test in S7.10.

**S6.5.1.2 Private use lifts.** Except for lifts that manually stow (fold) and deploy (unfold), private use lifts must remain operable when operated through a total of 4,400 cycles: 2,200 unloaded Raise/Lower and Stow/Deploy operations and 2,200 loaded Raise/Lower operations as specified in S7.10. Private use lifts that manually stow (fold) and deploy (unfold) must remain operable when operated through a total of 4,400 cycles: 2,200 unloaded Raise/Lower operations and 2,200 loaded Raise/Lower operations. No separation, fracture, or breakage of any vehicle or lift component may occur as a result of conducting the fatigue test in S7.10.

\* \* \* \* \*

#### **S6.7 Control panel switches.**

**S6.7.1** The platform lift must meet the requirements of S6.7.2 through S6.7.8 and, when operated by means of the control panel switches specified in S6.7.2, must perform the lift operations specified in S7.9.

**S6.7.2** The platform lift system must have control panel switches that perform not less than the following functions: (platform lifts that manually stow (fold) and deploy (unfold) are exempt from S6.7.2.2 and S6.7.2.5).

**S6.7.2.1** Enables and disables the lift control panel switches. This function must be identified as "POWER" if located on the control. The POWER function must have two states: "ON" and "OFF". The "ON" state must allow platform lift operation. When the POWER function is in the "ON" state, an indicator light on the controls must illuminate. The "OFF" state must prevent lift operation and must turn off the indicator light. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

**S6.7.2.2** Moves the lift from a stowed position to an extended position or, to one of the two loading positions. This function must be identified as "DEPLOY" or "UNFOLD" on the control.

\* \* \* \* \*

**S6.7.4** Except for the POWER function described in S6.7.2.1, the control panel switches specified in S6.7.2 must prevent the simultaneous performance of more than one function. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

**S6.7.5** Any single-point failure in the control panel switches may not prevent the operation of any of the interlocks as specified in S6.10.

\* \* \* \* \*

**S6.7.7** Control location for public use lifts: In public use lifts, except for the backup operation specified in S6.9, all control panel switches must be positioned together and in a location such that the lift operator has a direct, unobstructed view of the platform lift passenger and the passenger's mobility aid, if applicable. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8. Additional controls may be positioned in other locations.

\* \* \* \* \*

**S6.10.2** The platform lift system must have interlocks or operate in such a manner when installed according to the installation instructions, as to prevent:

\* \* \* \* \*

**S6.10.2.3** Stowing of the platform lift when occupied by portions of a passenger's body, and/or a mobility aid. Platform lifts designed to be occupied while stowed and platform lifts that manually stow (fold) are excluded from this requirement. Verification with this requirement is made using the test device specified in S7.1.4. Move the deployed platform lift to a position within the range of passenger operation where it will stow if the control specified in S6.7.2.5 is actuated. Place

the test device specified in S7.1.4 on its narrowest side on any portion of the platform surface that coincides with the unobstructed platform operating volume described in S6.4.2. Using the operator control specified in S7.7.2.5, attempt to stow the lift. The interlock must prevent the lift from stowing.

\* \* \* \* \*

S6.13.4.1 Installation instructions for public use lifts must contain the statement "Public use vehicle manufacturers are responsible for complying with the lift lighting requirements in Federal Motor Vehicle Safety Standard No. 404, Platform Lift Installations in Motor Vehicles (49 CFR 571.404)."

\* \* \* \* \*

**S7. Test conditions and procedures.** Each platform lift must be capable of meeting all of the tests specified in this standard, both separately, and in the sequence specified in this section. The tests specified in S7.4, S7.7.4 and S7.8 through S7.11 are performed on a single lift and vehicle combination. The tests specified in S7.2, S7.3, S7.5, S7.6, S7.7.1 and S7.12 through S7.14 may be performed with the lift installed on a test jig rather than on a vehicle. Tests of requirements in S6.1 through S6.11 may be performed on a single lift and vehicle combination, except for the requirements of S6.5.3. Attachment hardware may be replaced if damaged by removal and reinstallation of the lift between a test jig and vehicle.

\* \* \* \* \*

**S7.1.1 Test pallet and load.** The surface of the test pallet that rests on the platform used for the tests specified in S7.9 through S7.11 and S7.14 has sides that measure between 660 mm (26 in) and 686 mm (27 in). For the tests specified in S7.9 and S7.10, the test pallet is made of a rectangular steel plate of uniform thickness and the load that rests on the test pallet is made of rectangular steel plate(s) of uniform thickness and sides that measure between 533 mm (21 in) and 686 mm (27 in). The standard test load that rests on the pallet is defined in S4.

**S7.1.2 Wheelchair test device.** The test device is an unloaded power wheelchair whose size is appropriate for a 95th percentile male and that has the dimensions, configuration and components described in S7.1.2.1 through S7.1.2.11. If the dimension in S7.1.2.9 is measured for a particular wheelchair by determining its tipping angle, the batteries are prevented from moving from their original position.

\* \* \* \* \*

**S7.1.2.5** Two pneumatic rear tires with a diameter not less than 495 mm

(19.5 in) and not more than 521 mm (20.5 in) inflated to the wheelchair manufacturer's recommended pressure or if no recommendation exists, to the maximum pressure that appears on the sidewall of the tire;

**S7.1.2.6** Two pneumatic front tires with a diameter not less than 190 mm (7.5 in) and not more than 216 mm (8.5 in) inflated to the wheelchair manufacturer's recommended pressure or if no recommendation exists, to the maximum pressure that appears on the sidewall of the tire;

\* \* \* \* \*

**S7.1.2.11** Batteries with a charge not less than 75 percent of their rated nominal capacity (for tests that require use of the wheelchair's propulsion system).

\* \* \* \* \*

**S7.3.3** For attachment hardware located within the occupant compartment of the motor vehicle or internal to other compartments that provide protection from the elements and not at or near the floor of the compartment, the period of the test is 25 hours, consisting of one period of 24 hours exposure to salt spray followed by one hour drying.

\* \* \* \* \*

**S7.7 Wheelchair retention device impact test and edge guard test.**

\* \* \* \* \*

**S7.7.2.2** If the wheelchair retention device is an outer barrier, the footrests are adjusted such that at their lowest point they have a height 25 mm  $\pm$  2 mm (1 in  $\pm$  0.08 in) less than the outer barrier. If the wheelchair retention device is not an outer barrier, the footrests are adjusted such that at their lowest point they have a height 50 mm  $\pm$  2 mm (2 in  $\pm$  0.08 in) above the platform.

\* \* \* \* \*

**S7.7.4 Edge Guard Test.** Determine compliance with S6.4.6 using the test device specified in S7.1.2 by performing the test procedure specified in S7.7.4.1 through S7.7.4.6. During the edge guard tests, remove the footrests from the wheelchair test device.

**S7.7.4.1** Position the platform surface 90 mm  $\pm$  10 mm (3.5 in  $\pm$  0.4 in) above the ground level loading position.

**S7.7.4.2** Place the test device on the platform surface with its plane of symmetry coincident with the lift reference plane within  $\pm$  10 mm ( $\pm$  0.4 in), its forward direction of travel inboard toward the vehicle, and its position on the platform as far rearward as the wheelchair retention device or outer barrier will allow it to be placed.

**S7.7.4.3** Adjust the control of the test device to a setting that provides

maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform.

After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is greater than 90 mm  $\pm$  10 mm (3.5 in  $\pm$  0.4 in) above the ground level loading position and less than 38 mm  $\pm$  10 mm (1.5 in  $\pm$  0.4 in) below the vehicle floor level loading position. Repeat this sequence at 38 mm  $\pm$  10 mm (1.5 in  $\pm$  0.4 in) below the vehicle floor level loading position.

**S7.7.4.4** Next position the platform surface 38 mm  $\pm$  10 mm (1.5 in  $\pm$  0.4 in) below the vehicle floor level loading position.

**S7.7.4.5** Reposition the test device on the platform surface with its plane of symmetry coincident with the lift reference plane within  $\pm$  10 mm ( $\pm$  0.4 in), its forward direction of travel outboard away from the vehicle, and its position on the platform as far rearward as the wheelchair inner roll-stop or vehicle body will allow it to be placed.

**S7.7.4.6** Adjust the control of the test device to a setting that provides maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform.

After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is greater than 90 mm  $\pm$  10 mm (3.5 in  $\pm$  0.4 in) above the ground level loading position and less than 38 mm  $\pm$  10 mm (1.5 in  $\pm$  0.4 in) below the vehicle floor level loading position. Repeat this sequence at 38 mm  $\pm$  10 mm (1.5 in  $\pm$  0.4 in) below the vehicle floor level loading position.

\* \* \* \* \*

**S7.10.5** Public use lifts: Using the lift controls specified in S6.7.2, perform the operations specified in S7.10.5.1 through S7.10.5.3 in the order they are given. Public use lifts that manually stow (fold) and deploy (unfold) are not required to perform the stow and deploy portions of the tests.

\* \* \* \* \*

**S7.10.6** Private use lifts: Using the lift controls specified in S6.7.2, perform the operation specified in S7.10.6.1 through S7.10.6.3 in the order they are given. Private use lifts that manually stow (fold) and deploy (unfold) are not

required to perform the stow and deploy portions of the tests.

\* \* \* \* \*

S7.13.2 Position the platform surface 90 mm  $\pm$  10 mm (3.5 in  $\pm$  0.4 in) above the ground level loading position. Apply 7,117 N (1,600 lbf) to the wheelchair retention device in a direction parallel to both the platform lift and platform reference planes. Attain the force within 1 minute after beginning to apply it.

\* \* \* \* \*

S7.14.1 Perform the test procedures as specified in S7.14.2 through S7.14.4 to determine compliance with S6.5.3.

\* \* \* \* \*

■ 3. Amend § 571.404 by revising S3 and S4.3 and adding S4.1.5 to read as follows:

**§ 571.404 Standard No. 404; Platform lift installations in motor vehicles.**

\* \* \* \* \*

S3. *Application.* This standard applies to motor vehicles equipped with a platform lift designed to carry standing passengers who may be aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility aids, into and out of the vehicle.

\* \* \* \* \*

S4.1.5 *Platform lighting on public use lifts.* Public use lifts must have a light or a set of lights that provide at least 54 lm/m<sup>2</sup> (5 lm/sqft) of luminance on all portions of the surface of the platform, throughout the range of passenger operation. The luminance on all portions of the surface of the passenger-unloading ramp at ground level must be at least 11 lm/m<sup>2</sup> (1 lm/sqft).

\* \* \* \* \*

S4.3 *Control panel switches.*

\* \* \* \* \*

Issued: September 24, 2004.

Jeffrey W. Runge,  
Administrator.

[FR Doc. 04-21976 Filed 9-30-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 11)]

#### Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2004 Update

AGENCY: Surface Transportation Board, DOT.

**ACTION:** Final rules.

**SUMMARY:** The Board adopts its 2004 User Fee Update and revises its fee schedule to recover the costs associated with the January 2004 Government salary increases and to reflect changes in overhead costs to the Board.

**EFFECTIVE DATE:** These rules are effective October 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** David T. Groves, (202) 565-1551, or Anne Quinlan, (202) 565-1727. [TDD for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 4.42% in January 2004, the Board is updating its user fees to recover the increased personnel costs. With certain exceptions, all fees, including those recently adopted or amended in *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—2002 New Fees*, STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update*, 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds that notice and comment are unnecessary for this proceeding. See *Regulations Governing Fees For Services—1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services—1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services—1993 Update*, 9 I.C.C.2d 855 (1993).

The Board concludes that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at <http://www.stb.dot.gov> or call the Board's Information Officer at (202) 565-1500. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103 Lanham, Maryland 20706, (301) 577-2600, [asapdc@verizon.net](mailto:asapdc@verizon.net). [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877-8339.]

#### List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey and Commissioner Buttrey.

Vernon A. Williams,  
Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

#### PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (a) through (d) and (f)(1); the table in paragraph (g)(6); and paragraph (g)(7) to read as follows:

#### § 1002.1 Fees for record search, review, copying, certification, and related services.

\* \* \* \* \*

(a) Certificate of the Secretary, \$13.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$33.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of \$23.00 per hour.

(d) Photocopies of tariffs, reports, and other public documents, at the rate of \$1.10 per letter or legal size exposure. A minimum charge of \$5.50 will be made for this service.

\* \* \* \* \*

(f) \* \* \*

(1) A fee of \$58.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

\* \* \* \* \*