

**§ 563e.26 Small savings association performance standards.**

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.*

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Dated: December 5, 2007.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel.*

By order of the Board of Governors of the Federal Reserve System.

Dated: December 14, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of December, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: December 14, 2007.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 655**

[FHWA Docket No. FHWA-2003-15149]

RIN 2125-AE98

**National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this final rule is to revise standards, guidance, options, and supporting information relating to maintaining minimum levels of retroreflectivity for traffic signs on all roads open to public travel.

**EFFECTIVE DATE:** This final rule is effective January 22, 2008. The incorporation by reference of the publication listed in this regulation is

approved by the Director of the Office of the Federal Register as of January 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary McDonough, Office of Safety Design, (202) 366-2175, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This document, the notice of proposed amendments (NPA), the supplemental notice of proposed amendments (SNPA), and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

**Background**

On July 30, 2004, at 69 FR 45623, the FHWA published in the **Federal Register** a NPA proposing to amend the MUTCD to include methods to maintain traffic sign retroreflectivity. The NPA was issued in response to section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102-388; October 6, 1992). Section 406 of this Act directed the Secretary of Transportation to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs and pavement markings, which apply to all roads open to public travel. The FHWA is currently conducting research to develop a standard for minimum levels of pavement marking retroreflectivity. The FHWA expects to initiate the pavement marking retroreflectivity rulemaking process once the research is concluded and the results are analyzed and considered.

The FHWA has led a significant effort toward establishing minimum-maintained levels of sign retroreflectivity since the statute was issued in 1993. Three national workshops were held in 1995 to educate State and local highway agency personnel and solicit their input regarding an initial set of minimum

maintained sign retroreflectivity levels. In 1998, FHWA published revisions to initial research recommendations on minimum sign retroreflectivity levels<sup>1</sup> noting that additional work would be needed because the National Highway Traffic Safety Administration was also revising the Federal Motor Vehicle Safety Standard Number 108 Lamps, Reflective Devices, and Associated Equipment (FMVSS 108). The additional research was completed in 2003, at which time FHWA began preparing the NPA for traffic sign retroreflectivity for the MUTCD, which was published in 2004.

After considering and analyzing the comments on the NPA for minimum levels of retroreflectivity for traffic signs, FHWA decided to publish a supplemental notice of proposed amendments (SNPA). In particular, the SNPA was developed to address comments to the docket that: (1) Expressed concern that the NPA proposal did not meet the intent of the 1993 statute, (2) suggested that the table of minimum retroreflectivity levels should be placed in the MUTCD, (3) requested clarification of the compliance period, and (4) expressed concern about the resource requirements for complying with the rulemaking. The proposed MUTCD text in the SNPA included a STANDARD statement that required that a method be used to manage and maintain retroreflectivity and required that sign retroreflectivity be maintained at minimum levels. It also included the table of minimum retroreflectivity levels in the MUTCD. These changes were significant enough to warrant an SNPA to allow FHWA to obtain and assess additional public comments. The SNPA was published on May 8, 2006, at 71 FR 26711. The comment period for the SNPA ended on November 6, 2006.

Based on the comments received and its own experience, FHWA is issuing this final rule establishing the minimum levels of retroreflectivity that must be maintained for traffic signs. The FHWA is designating the MUTCD, with these changes incorporated, as Revision 2 of the 2003 Edition of the MUTCD.

The text of this Revision No. 2 and the text of the 2003 Edition of the MUTCD with Revision No. 2 final text incorporated are available for inspection and copying as prescribed in 49 CFR

<sup>1</sup> A copy of "An Implementation Guide For Minimum Retroreflectivity Requirements for Traffic Signs," dated April 1, 1998, can be found on the Docket Management System (FHWA-2003-15149-229) for this ruling at the following Web address: <http://dms.dot.gov/search/document.cfm?documentid=467771&docketid=15149>.

part 7 at the FHWA Office of Transportation Operations. Furthermore, final Revision No. 2 changes are available on the official MUTCD Web site at <http://mutcd.fhwa.dot.gov>. The entire MUTCD text with final Revision No. 2 text incorporated is also available on this Web site.

### Summary of Comments

The FHWA received 121 letters submitted to the docket in response to the SNPA containing approximately 550 individual comments. The FHWA received comments from the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Association of State Highway and Transportation Officials (AASHTO) and 20 State Departments of Transportation (DOT) members of AASHTO, the National Association of County Engineers (NACE) and seven county association members of NACE, city and county governmental agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA has considered all these comments. Docket comments and summaries of FHWA's analyses and determinations are discussed below. General comments are discussed first, followed by discussion of major issues and adopted changes, and finally, discussion of other comments.

#### Discussion of General Comments

Many respondents agreed with the intent and the concepts proposed in both the NPA and the SNPA. In analyzing the comments to the SNPA, FHWA decided that additional clarification should be provided in the MUTCD text and in the explanations provided in the final rule in order to address the following five major issues:

- (1) Clarification of compliance period;
- (2) Resource burdens on public agencies;
- (3) Statutory requirements;
- (4) Table of minimum retroreflectivity levels in the MUTCD; and
- (5) Impacts of sign retroreflectivity on safety.

#### Discussion of Major Issues

This section provides a discussion of each of the five major issues raised by commenters in response to the SNPA, along with FHWA's analysis and resolution.

- (1) Clarification of the compliance period.

Several county associations and many county and local officials requested an extension from 2 to 4 years for the compliance period for the establishment

and implementation of a method to maintain sign retroreflectivity, in order to accommodate their programs within their 2-year budget cycles. There were also a few requests to extend the 7 and 10 year compliance periods for the signs themselves.

Considering the comments regarding budget cycles, particularly budget cycles for local agencies, FHWA has extended to 4 years the compliance period for establishing and implementing a sign assessment or management method to maintain minimum levels of sign retroreflectivity. This extended compliance period will allow transportation agencies to make allowances for budgets (including working with the States or regional organizations) to access funds and/or partnerships to achieve the minimum levels of sign retroreflectivity.

The 7 and 10 year compliance dates for minimum levels for sign retroreflectivity will remain 7 years for regulatory, warning, and ground-mounted guide signs and 10 years for street name and overhead guide signs, because these compliance target dates correspond to the normal expected service life of sign sheeting and will allow highway agencies to make the proper accommodations in their efforts to maintain minimum retroreflectivity levels. The 7 and 10 year compliance dates are counted from the effective date of this rule and are not in addition to the 4-year period for establishing the methods.

- (2) Resource burdens on public agencies.

While the Minnesota DOT (MNDOT) recognized that the proposed language would impose additional time and resource burdens on public agencies, it did not perceive this rule as an "unmanageable burden." Several sign manufacturers and some private citizens appreciated the FHWA's effort to point out that Federal funds are available for up to 100 percent funding of "replacement of signs in this program." In addition, the American Traffic Safety Services Association (ATSSA), the American Automobile Association (AAA), the American Association of Retired People (AARP), the American Highway Users Alliance (AHUA), and several private citizens agree that the benefits from this rulemaking will outweigh the costs that agencies may experience. However, AASHTO, NACE, and several State and local DOTs believe that the requirements, as proposed in the SNPA, are an unfunded mandate with serious financial implications to their agencies.

The FHWA conducted a study to determine if unfunded mandates, as

defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995), would be imposed by including requirements in the MUTCD for minimum maintained traffic sign retroreflectivity levels.<sup>2</sup> Based on the analysis, this rulemaking effort does not impose an unfunded mandate. Additionally, because Federal-aid highway dollars are often provided to States to use for these types of sign replacements, this requirement does not rise to the level of an unfunded mandate.

One commenter reviewed the FHWA's report "Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies (DRAFT)" (1994-15149-06), and suggested that perhaps there was a mathematical error in that report that would mean that the costs incurred by agencies when replacing signs would be above those that can be required from agencies without funding. The FHWA has updated the 1994 draft report with a 2007 version (see footnote # 2). The updated report now includes the costs of overhead and street name signs, which the 1994 version excluded. The updated report concludes that the national impact of including the minimum maintained traffic sign retroreflectivity levels in the MUTCD is approximately \$37.5 million over a 10-year implementation period, with a maximum annual impact of \$4.5 million in years 1 through 7. This is below the annual \$128.1 million unfunded mandate level.

The FHWA has also provided ample phase-in time for agencies to comply. Agencies are already required to have a highway safety program that includes provisions for the upgrading of substandard traffic control devices and installations to achieve conformity with the MUTCD, so this rulemaking does not create additional burdens.

While many counties believe that FHWA should consider a funding stream directly to local jurisdictions for rulemaking activities such as minimum retroreflectivity standards, such funding stream discussions are outside the scope of this rulemaking. Signing programs remain eligible for Federal-aid highway dollars.

- (3) Statutory requirements:

Several organizations representing highway users from a safety perspective agree that the language proposed in the SNPA satisfied the statutory requirements to establish a standard for the minimum levels of sign

<sup>2</sup> "Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies," Publication No. FHWA-HRT-07-042, dated April 2007, is available at the following Web address: <http://www.tfhrc.gov/safety/pubs/07042/index.htm>.

retroreflectivity; however, AASHTO, and several States, commented that Congress did not explicitly indicate that the minimum values for maintaining sign retroreflectivity had to be included in the MUTCD as a Standard.

Alternatively, the Advocates for Highway and Auto Safety (AHAS) believe that the language proposed in the SNPA still did not fully satisfy the statutory requirements, which AHAS interprets as requiring the establishment of specific and mandatory minimum levels of retroreflectivity for signs and pavement markings in the MUTCD and an obligation on State and local authorities to maintain those specific minimum values of retroreflectivity. AHAS stated that the intent can only be met by including such requirements in a "standard" statement in the MUTCD, which is defined as one of the "required, mandatory, or specifically prohibitive practice regarding a traffic control device."

The FHWA includes the reference to minimum levels for sign retroreflectivity in a Standard statement because the statute requires the Secretary to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs. Under the MUTCD's current organization, the best way to do this is by including it in a STANDARD statement, because Standards represent requirements.<sup>3</sup> In addition, the

<sup>3</sup>In the context of this final rule, the definitions of STANDARD and GUIDANCE are identical to the definitions provided in the Introduction of the MUTCD (<http://mutcd.fhwa.dot.gov>). Specifically, a STANDARD is a statement of required, mandatory or specifically prohibitive practice regarding a traffic control device, while a GUIDANCE is a statement of recommended, but not mandatory, practice in typical situations, with deviations

congressional reference to a standard did not exclude the use of GUIDANCE, OPTION, and SUPPORT statements to help clarify the STANDARD statement of required minimum levels of retroreflectivity that must be maintained, similar to the other sections of the MUTCD.

The FHWA also received comments from the city of Plano, Texas, and the Illinois County Engineers expressing a concern and/or confusion that the language proposed in the SNPA "imbedded" a GUIDANCE statement within a STANDARD, because the STANDARD statement referenced the GUIDANCE statement for minimum retroreflectivity levels.

Based on this concern, and to clarify FHWA's intent, FHWA revises the STANDARD statement to explicitly reference Table 2A-3 Minimum Maintained Retroreflectivity Levels, which contains minimum-maintained retroreflectivity levels for various sign color combinations and types of sign sheeting.

The National Association of Counties (NACo) and NACE suggested adding "recommended" before "minimum level" in describing the retroreflectivity levels shown in Table 2A-3. The FHWA retains the wording "minimum level" in describing the levels shown in Table 2A-3, because the word "recommended" is not appropriate when referencing a Standard.

(4) Table of minimum retroreflectivity levels in the MUTCD.

The ATSSA, AAA, AARP, AHUA, Minnesota and Virginia DOTs, the city of Plano, Texas, sign manufacturers, and many private citizens were in favor of

allowed if engineering judgment or engineering study indicates the deviation to be appropriate.

including the table of minimum retroreflectivity levels in the MUTCD. However, many organizations, such as AASHTO, NACo, NACE, and numerous State DOTs, as well as county and local agencies were opposed to the inclusion of the table. Those who opposed including the table in the MUTCD expressed concern over potential litigation that could be brought against public agencies if an individual sign within their jurisdiction was to fall below the minimum maintained levels in the table. The NCUTCD also commented that before any table is inserted into the MUTCD, FHWA should provide substantial clarification regarding the process and frequency for updating or changing the table of retroreflectivity values.

The FHWA believes that including this table in the MUTCD is necessary to satisfy the statutory requirement that the MUTCD be amended to include minimum retroreflectivity levels. Therefore, the FHWA includes Table 2A-3, titled "Minimum Maintained Retroreflectivity Levels" in the MUTCD. The FHWA also believes inclusion of the table will provide clarity and convenience to the users of the MUTCD. In response to the request by the NCUTCD that FHWA clarify the process for updating or changing values in the table, we note that updates or changes to the table would be subject to a public rulemaking process before FHWA could adopt changes to the values of the table in the MUTCD. This process will include notice and opportunity for comment by the public.

Table 2A-3 will be included in the MUTCD as follows (note that the values in this table have not changed during the rulemaking process):

**Table 2A-3. Minimum Maintained Retroreflectivity Levels<sup>①</sup>**

Sign Color	Sheeting Type (ASTM D4956-04)				Additional Criteria
	Beaded Sheeting		Prismatic Sheeting		
	I	II	III	III, IV, VI, VII, VIII, IX, X	
White on Green	W*; G ≥ 7	W*; G ≥ 15	W*; G ≥ 25	W ≥ 250; G ≥ 25	Overhead
	W*; G ≥ 7	W ≥ 120; G ≥ 15			Ground-mounted
Black on Yellow or Black on Orange	Y*; O*	Y ≥ 50; O ≥ 50			②
	Y*; O*	Y ≥ 75; O ≥ 75			③
White on Red	W ≥ 35; R ≥ 7				④
Black on White	W ≥ 50				—
<p>① The minimum maintained retroreflectivity levels shown in this table are in units of cd/lx/m<sup>2</sup> measured at an observation angle of 0.2° and an entrance angle of -4.0°.</p> <p>② For text and fine symbol signs measuring at least 1200 mm (48 in) and for all sizes of bold symbol signs</p> <p>③ For text and fine symbol signs measuring less than 1200 mm (48 in)</p> <p>④ Minimum Sign Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity)</p> <p>* This sheeting type should not be used for this color for this application.</p>					
<b>Bold Symbol Signs</b>					
<ul style="list-style-type: none"> <li>• W1-1, -2 – Turn and Curve</li> <li>• W1-3, -4 – Reverse Turn and Curve</li> <li>• W1-5 – Winding Road</li> <li>• W1-6, -7 – Large Arrow</li> <li>• W1-8 – Chevron</li> <li>• W1-10 – Intersection in Curve</li> <li>• W1-11 – Hairpin Curve</li> <li>• W1-15 – 270 Degree Loop</li> <li>• W2-1 – Cross Road</li> <li>• W2-2, -3 – Side Road</li> <li>• W2-4, -5 – T and Y Intersection</li> <li>• W2-6 – Circular Intersection</li> <li>• W3-1 – Stop Ahead</li> <li>• W3-2 – Yield Ahead</li> <li>• W3-3 – Signal Ahead</li> <li>• W4-1 – Merge</li> <li>• W4-2 – Lane Ends</li> <li>• W4-3 – Added Lane</li> <li>• W4-5 – Entering Roadway Merge</li> <li>• W4-6 – Entering Roadway Added Lane</li> <li>• W6-1, -2 – Divided Highway Begins and Ends</li> <li>• W6-3 – Two-Way Traffic</li> <li>• W10-1, -2, -3, -4, -11, -12 – Highway-Railroad Advance Warning</li> <li>• W11-2 – Pedestrian Crossing</li> <li>• W11-3 – Deer Crossing</li> <li>• W11-4 – Cattle Crossing</li> <li>• W11-5 – Farm Equipment</li> <li>• W11-6 – Snowmobile Crossing</li> <li>• W11-7 – Equestrian Crossing</li> <li>• W11-8 – Fire Station</li> <li>• W11-10 – Truck Crossing</li> <li>• W12-1 – Double Arrow</li> <li>• W16-5p, -6p, -7p – Pointing Arrow Plaques</li> <li>• W20-7a – Flagger</li> <li>• W21-1a – Worker</li> </ul>					
<b>Fine Symbol Signs – Symbol signs not listed as Bold Symbol Signs.</b>					
<b>Special Cases</b>					
<ul style="list-style-type: none"> <li>• W3-1 – Stop Ahead: Red retroreflectivity ≥ 7</li> <li>• W3-2 – Yield Ahead: Red retroreflectivity ≥ 7; White retroreflectivity ≥ 35</li> <li>• W3-3 – Signal Ahead: Red retroreflectivity ≥ 7; Green retroreflectivity ≥ 7</li> <li>• W3-5 – Speed Reduction: White retroreflectivity ≥ 50</li> <li>• For non-diamond shaped signs such W14-3 (No Passing Zone), W4-4p (Cross Traffic Does Not Stop), or W13-1, -2, -3, -5 (Speed Advisory Plaques), use largest sign dimension to determine proper minimum retroreflectivity level.</li> </ul>					

The FHWA received comments from NACo, NACE and several local agencies that suggested adding a statement clarifying that all signs need not meet the minimum retroreflectivity values at every point in time.

Considering these comments in conjunction with FHWA's understanding that there will be cases where vandalism, weather, or damage due to a crash influences the visibility of a sign, the FHWA clarified the SUPPORT statement in Section 2A.09. The revised statement clarifies that an agency or an official having jurisdiction would be in compliance with the Standard even if there are some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time, provided that an assessment or management method implemented in accordance with Section 2A.09 of the MUTCD is being used.

The FHWA also received comments from NACo, NACE and several local agencies stating specific concerns that the establishment of specific retroreflectivity values within Table 2A-3 will become "the de-facto standard" that will be used against highway agencies in tort claims and lawsuits.

The FHWA believes that the selection of a reasonable method for maintaining sign retroreflectivity and strict adherence to the same might serve to defend highway agencies in tort liability claims and litigation. Public agencies and officials that implement and follow a reasonable method in conformance with the national MUTCD would appear to be in a better position to successfully defend tort litigation involving claims of improper sign retroreflectivity than jurisdictions that lack any method. In addition, as a result of adding clarifying language to the Support statement indicating that once an assessment or management method is used by an agency or official having jurisdiction, agencies would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a point in time.

Including Table 2A-3 in the MUTCD does not imply that an agency needs to measure the retroreflectivity of every sign in its jurisdiction. Instead, agencies must implement methods designed to provide options on how to maintain the minimum retroreflectivity levels, using the criteria in Table 2A-3.

(5) Impacts of sign retroreflectivity on safety.

The ATSSA and several sign manufacturers believe there is a proven link between maintained sign retroreflectivity and safety, especially as

it relates to older drivers. In addition, several citizens believe that improved retroreflectivity will lead to safer roads. One citizen who worked for several years in the field of nighttime visibility stated that his research with actual drivers on the road showed conclusive results that greater levels of retroreflectivity increase a driver's ability to be warned well in advance of a traffic situation or pedestrian encounter. The North Carolina DOT (NCDOT) and the AHAS, however, recommend that further FHWA studies be done to demonstrate that retroreflective improvements translate into safety improvements.

The FHWA believes that improving sign retroreflectivity will be a benefit to all drivers, including older drivers. All drivers need legible signs in order to make important decisions at key locations, such as intersections and exit ramps on high speed facilities. This is particularly true for regulatory and warning signs. This is fundamental to safe driving, and the lack of uniform retroreflectivity standards has led to wide variations in maintenance levels of these critical signs. As discussed in the SNPA, there have been some investigations that demonstrate potential safety benefits of upgrading sign materials.<sup>4</sup> More importantly, maintaining sign retroreflectivity is consistent with one of FHWA's primary goals, which is to improve safety on the Nation's streets and highways. Improvements in sign visibility will also support FHWA's efforts to be responsive to the needs of older drivers, which is important because the number of older drivers is expected to increase significantly in the next 30 years.

#### *Discussion of Other Comments*

In addition to the five major issues discussed in the previous section, FHWA also received comments that can be grouped into the following three topics:

- (6) Assessment methods;
- (7) Blue and brown signs; and
- (8) Minimum retroreflectivity levels.

This section contains a discussion of each of these topics.

- (6) Assessment methods:

The FHWA received comments from the AASHTO, NCUTCD, ATSSA, AHAS, AAA, AARP, AHUA, ARTBA, Maryland and Wisconsin DOTs, and several counties in Illinois regarding the

<sup>4</sup>Supplemental Notice of Proposed Amendments, page 26717. The SNPA was published on May 8, 2006, at 71 FR 26711. This notice can be found at: <http://www.gpoaccess.gov/fr/retrieve.html> and on the Docket Management System (FHWA-2003-15149-229) for this ruling at the following Internet Web site: <http://dms.dot.gov>.

assessment and management methods for maintaining sign retroreflectivity as proposed in the GUIDANCE statement of the SNPA. The AASHTO and several State DOTs did not support actual measurement of signs as one of the methods, but supported visual nighttime inspections, blanket replacement, control signs, and expected sign life methods.

The city of Plano, Texas and a private citizen suggested that the numerical values in Table 2A-3 should only apply to Method B: Measured Sign Retroreflectivity. Those commenters suggested that for all other methods where subjective judgment is used, such as visual nighttime inspection, the table should serve as guidance for local offices to reject and accept signs.

Finally, the NCUTCD, the Illinois Association of County Engineers, and the DeWitt County, Illinois Highway Department suggested adding additional language to the GUIDANCE statement to explicitly, rather than implicitly, state that other assessment methods based on engineering study can be used to assess sign retroreflectivity.

The FHWA believes that the final rule provides several assessment or management methods that agencies can choose from, based on the method that best fits the agencies' resources and needs. An agency can choose to use either assessment methods or management methods, or a combination; however, agencies should develop a method in such a way that it corresponds to the values in Table 2A-3. The methods have been developed to provide flexibility for agencies for addressing their local conditions. To address the comments received regarding the types of assessment methods that should be used, FHWA clarifies the GUIDANCE statement by adding a sixth method to the list of assessment or management methods titled "Other Methods," which explicitly states that other methods developed based on engineering studies can be used.<sup>5</sup>

- (7) Blue and brown signs:

In the SNPA, FHWA asked for comments on the need for retroreflectivity levels to be developed for signs with blue and brown

<sup>5</sup> As defined in the MUTCD, an engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented. In accordance with the text heading GUIDANCE in the MUTCD, deviations to a recommended practice are allowed if engineering study indicates the deviation to be appropriate.

backgrounds.<sup>6</sup> The Maryland State Highway Administration suggested that recommended minimum retroreflectivity levels be established for blue-background signs and that those levels apply to certain signs such as Hospital, EMS, Ambulance Station, and Emergency Medical Care signs, whose nighttime readability can be important. The combined letter from a representative of AAA, AARP, and AHUA, and one comment letter from a sign manufacturer stated that blue and brown signs are intended for use both day and night, and that motorist safety, particularly for older drivers, would be enhanced by including minimum retroreflectivity levels for blue and brown signs. The commenters acknowledged that if blue and brown signs are being excluded because there is a lack of data on which to base a requirement, a "placeholder" could be included in the MUTCD until more data is available and the table of minimum levels can be updated.

The FHWA is currently studying blue and brown minimum sign retroreflectivity levels. Because the study has not been finalized and FHWA did not analyze the costs associated with the sign retroreflectivity of blue and brown signs in the economic impacts study, minimum retroreflectivity levels for blue and brown signs are not included in the MUTCD at this time. At the conclusion of FHWA's study on this topic, the results may indicate a need to pursue such a requirement. If so, updates or changes to Table 2A-3 would be subject to the public rulemaking process before FHWA could add blue and brown minimum retroreflectivity levels.

(8) Minimum retroreflectivity levels:

Several of the commenters, including AASHTO, NACE, the Illinois and Indiana Associations of County Engineers, DeWitt County, Illinois Highway Department, the North Carolina DOT and the Maryland State Highway Administration suggested that the data within the table were not precise, and reflected data that were developed based on assumptions and varying characteristics.

The FHWA acknowledges that the data are based on some assumptions and varying characteristics; however, they are based on the latest science and empirical-based research emphasizing

older drivers.<sup>7</sup> The supporting research reflects the best information at this time. One of the key aspects to the research supporting the minimum retroreflectivity levels is that it was based on field studies under conditions on a closed course facility that represented real roadway scenarios to the maximum extent possible without jeopardizing safety. Research subjects were recruited and participated in the research, which ultimately developed cumulative distribution profiles for luminance levels needed to accommodate the legibility of older drivers. These luminance levels were then used in conjunction with computer modeling to determine the retroreflectivity needed under a variety of roadway conditions. The computer modeling allows analyses of an infinite set of roadway scenarios, but is based on the luminance levels derived through the human factors research supported by FHWA.

After the research was completed, FHWA held national workshops, which included nighttime inspections of signs at various retroreflectivity levels. The participants of the workshops evaluated the signs at night using a visual inspection technique. The results of this effort helped confirm that the minimum retroreflectivity levels in Table 2A-3 are appropriate.

The NCDOT suggested that a tiered system be applied to the retroreflectivity levels, similar to the tiered system used for letter heights and sign sizes based on roadway classification.<sup>8</sup> The NCDOT commented that retroreflective sign applications for lower speed, lower volume roads should be coordinated with lower retroreflectivity values.

The FHWA believes that the values shown in the table are applicable to all classifications of roads, including lower volume and slower speed roadways. The retroreflectivity levels are based on the legibility design threshold level as specified in Section 2A.14 of the MUTCD (40 feet of legibility per inch of letter height). Therefore, the size of the sign, and the message on the sign, play a key role in the retroreflectivity levels. Smaller signs have smaller messages, which mean drivers need to be closer to

the signs to read them. As the distance between the sign and the vehicle decreases, the efficiency of retroreflectivity materials generally decreases, meaning that more retroreflectivity is needed. This often outweighs the increased illumination available from the vehicle headlamps. The minimum retroreflectivity levels were designed to be easy to implement, without added complexities such as a tiered system based on letter heights and sign sizes. However, with the proper support (i.e., an engineering study), and using the values in Table 2A-3 as minimum maintained retroreflectivity levels, there is flexibility in this final rule and the associated MUTCD language that allows for an agency to develop a more complex set of minimum retroreflectivity levels, if it chooses to do so. Such levels cannot be below the minimums in Table 2A-3.

As mentioned in item 3 under Major Issues, a few commenters such as NACE, the NCUTCD and others, believed that Table 2A-3 and its title should be referred to as "Recommended." The FHWA believes that it is inappropriate to include "Recommended" in the title of a table that is referenced in a STANDARD statement of the MUTCD. In addition, the word "Recommended" implies guidance, rather than a standard, and would therefore be confusing.

ATSSA, the AHAS and the MNDOT agreed with eliminating Type I material for ground-mounted signs, and they also agreed with eliminating Types I, II, and III for overhead guide sign legends. These commenters felt that prohibiting the use of these less efficient retroreflective materials would substantially improve the nighttime driving environments, especially for older drivers with a variety of visual impairments. ATSSA also supported including Type X materials so that all currently defined American Society of Testing Materials (ASTM) Type designations that are used for traffic signs will be included in the MUTCD.

The NCDOT disagrees with any retroreflective requirement for illuminated signs. Their reasoning is that the assessment and management methods used to maintain retroreflectivity do not address signs with illumination and that Section 2A.08 does not require retroreflectivity for illuminated signs.

Illuminated signs do need to meet the minimum retroreflectivity requirements because there are times that the signs may not be illuminated due to power failure. Previous research has shown that overhead signs can be effective

<sup>6</sup> Blue signs are generally described as informational signs, and include evacuation route and road user signs. Examples include hospital, specific service signs (food, gas, lodging, camping, and attraction) and tourist-oriented directional signs. Brown signs, which are also informational signs, are primarily recreational and cultural interest area signs.

<sup>7</sup> Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA-RD-03-082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: <http://www.tfhrc.gov/safety/pubs/03082/index.htm>.

<sup>8</sup> Part 2 of the MUTCD includes a table titled, "Table 2B-1 Regulatory Sign Sizes" that includes sign sizes for conventional roads, expressways, freeways, and oversized as well as minimum sign sizes. Generally, sign sizes for conventional roads are smaller than those for expressways or freeways.

without lighting, as long as the appropriate retroreflective sheeting materials are used to fabricate the sign.<sup>9</sup> With this knowledge, many agencies have elected to use more efficient retroreflective sheeting on overhead guide signs without sign lighting, citing adequate visibility and concerns about energy use and light pollution (although sign lighting may continue to be used in areas of complex surroundings and/or roadway geometries). The minimum retroreflectivity levels in Table 2A-3 in the MUTCD prohibit the use of less efficient reflective materials for overhead signs so that agencies do not use them. As a result, agencies are more likely to select appropriate materials to meet nighttime driving requirements.

One supplier of overhead sign lighting systems and 22 citizens suggested that lighting of overhead signs should be mandatory. This final rule does not change the existing MUTCD language recommending lighting for overhead signs. Mandating lighting for overhead signs is outside the scope of this rulemaking.

One sign manufacturer suggested that retroreflectivity levels measured at 0.5 degree observation angle be included. As discussed in item #12 of the SNPA, research has been completed that supports moving toward the 0.5-degree concept and the ASTM has started working toward a revision to its specifications to describe 0.5-degree measurements.<sup>10</sup> The FHWA believes that it is not practical to implement minimum retroreflectivity levels based on an observation angle of 0.5 degrees until measuring devices become more readily available, and the ASTM completes its work developing a standard measurement specification. At that time there may be a need for an alternative table and a transition period established while the 0.2-degree measurement geometries and devices are phased out. If so, these changes will be introduced through public rulemaking procedures described earlier for MUTCD changes or additions.

<sup>9</sup> Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA-RD-03-082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: <http://www.tfhrc.gov/safety/pubs/03082/index.htm>.

<sup>10</sup> The ASTM E12 committee is working to develop a standard measurement specification for 0.5 degree instruments. The committee is using ASTM E1709 as a template (ASTM E1709 is the standard measurement specification for 0.2 degree instruments). More information is available at <http://www.astm.org>.

## Conclusion

To address the comments to the docket, the FHWA adopts the following key changes to Section 2A.09 Maintaining Minimum Retroreflectivity in the MUTCD from what was proposed in the SNPA:

(A) In the STANDARD statement, a reference to Table 2A-3 was added to clarify that the levels contained in Table 2A-3 are the minimum levels that are to be used by public agencies or officials having jurisdiction when they develop an assessment or management method that is designed to maintain sign retroreflectivity.

(B) The 2nd SUPPORT statement was clarified to indicate that once an assessment or management method is used, an agency or official having jurisdiction would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a particular point in time.

(C) The GUIDANCE statement was modified by adding a sixth method to the list of assessment or management methods that should be used to maintain sign retroreflectivity titled "Other Methods," which explicitly states that other methods developed based on engineering studies can be used.

In addition, FHWA adopts a 4-year compliance date (instead of the proposed 2-year compliance date) for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels.

The final rule meets statutory requirements, provides clarity where needed, and provides flexibility for compliance.

## Rulemaking Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or under the regulatory policies and procedures of the U.S. Department of Transportation. While the FHWA had preliminarily designated this rulemaking as significant during the NPRM and SNPRM stages, the FHWA has determined that this rulemaking does not meet the criteria for a "significant regulatory action" under Executive Order 12866. This rule will not adversely affect, in a material way, any sector of the economy. Additionally, this rulemaking will not interfere with any action taken or

planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs.

It is anticipated that the economic impact of this rulemaking would cause minimal additional expenses to public agencies. In 2007, FHWA updated its analysis of the cost impacts to State and local agencies to reflect higher material costs due to inflation, an increase in the proportion of signs that would be replaced with higher-level sign sheeting material, and changes in the overall mileage of State and local roads.<sup>11</sup> The findings of the 2007 analysis show that the costs of the proposed action to State and local agencies would be less than \$128.1 million per year.<sup>12</sup> The 7-year implementation period for ground-mounted signs will allow State and local agencies to delay replacement of recently installed Type I signs until they have reached their commonly accepted 7-year service life. The 10-year compliance period for overhead signs would allow an extended period of time because of the longer service life typically used for those signs. The final rule does not affect the impacts assessments described above.

Currently, the MUTCD requires that traffic signs be illuminated or retroreflective to enhance nighttime visibility. In 1993, Congress mandated that the MUTCD contain standards for maintaining minimum traffic sign and pavement marking retroreflectivity.<sup>13</sup> The final rule provides additional guidance, clarification, and flexibility in maintaining traffic sign retroreflectivity that is already required by the MUTCD. The minimum retroreflectivity levels and maintenance methods consider changes in the composition of the vehicle population, vehicle headlamp design, and the demographics of drivers. The FHWA expects that the levels and maintenance methods will help to promote safety and mobility on the Nation's streets and highways.

This rulemaking addresses comments received in response to the Office of Management and Budget's (OMB's) request for regulatory reform nominations from the public. The OMB is required to submit an annual report to Congress on the costs and benefits of Federal regulations. The 2002 report included recommendations for

<sup>11</sup> "Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies," Publication No. FHWA-HRT-07-042, dated April 2007, is available at the following Web address: <http://www.tfhrc.gov/safety/pubs/07042/index.htm>.

<sup>12</sup> Ibid.

<sup>13</sup> United States Department of Transportation and Related Agencies Act of 1993, Public Law 102-388, 106 Stat. 1520, Section 406.



regulatory reform that OMB requested from the public.<sup>14</sup> One recommendation was that the FHWA should establish standards for minimum levels of brightness of traffic signs.<sup>15</sup> The FHWA has identified this rulemaking as responsive to that recommendation.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This rule would apply to State Departments of Transportation in the execution of their highway programs, specifically with respect to the retroreflectivity of traffic signs. Additionally, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). The implementation of this final rule would not affect the economic viability or sustenance of small entities, as States are not included in the definition of a small entity that is set forth in 5 U.S.C. 601.

#### *Unfunded Mandates Reform Act of 1995*

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The impacts analysis shows that State and local agencies would be likely to incur impacts of roughly \$37.5 million. Using a 7-year implementation period for regulatory, warning, and guide signs and a 10-year implementation period for street name and overhead guide signs, the annual impacts are estimated to be approximately \$4.5 million for years 1 through 7, and \$2.1 million for years 8 through 10. The estimates are based upon the added cost of more efficient performance sign materials. The labor, equipment, and mileage costs for sign replacement were excluded under the assumption that the proposed implementation period was long enough to allow replacement of non-compliant

signs under currently planned maintenance cycles. Therefore, this final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year. In addition, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). Further, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

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

The FHWA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FHWA has determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy-making discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR Part 655, subpart F. This final rule is in keeping with the Secretary of Transportation’s authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the Nation’s streets and highways.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant

adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

#### *Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

#### *Executive Order 13045 (Protection of Children)*

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

#### *Executive Order 12630 (Taking of Private Property)*

This action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *National Environmental Policy Act*

The agency has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory

<sup>14</sup> A copy of the OMB report “Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulation and Unfunded Mandates on State, Local, and Tribal Entities” is available at the following Web address: [http://www.whitehouse.gov/omb/inforeg/summaries\\_nominations\\_final.pdf](http://www.whitehouse.gov/omb/inforeg/summaries_nominations_final.pdf).

<sup>15</sup> A complete compilation of comments received by OMB is available at the following Web address: [http://www.whitehouse.gov/omb/inforeg/key\\_comments.html](http://www.whitehouse.gov/omb/inforeg/key_comments.html). Comment 93 includes the recommendation concerning the retroreflectivity of traffic signs.



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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: December 13, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

#### PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

**Authority:** 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

#### Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]

■ 2. Revise § 655.601(a), to read as follows:

##### § 655.601 Purpose.

\* \* \* \* \*

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, including Revision No. 1, FHWA, dated November 2004, and revision No. 2, FHWA, dated January 2008. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). It is available for inspection at the Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at <http://mutcd.fhwa.dot.gov>.

\* \* \* \* \*

[FR Doc. E7-24683 Filed 12-20-07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9368]

RIN 1545-BG55

#### Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary Income Tax Regulations regarding the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code (Code). Section 404 of the American Jobs Creation Act of 2004 (AJCA) reduced the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006. These temporary regulations affect taxpayers claiming foreign tax credits and provide guidance needed to comply with the statutory changes made by the AJCA. The text of these temporary regulations also serves as the text of the proposed regulations (REG-114126-07) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on December 21, 2007.

*Applicability Dates:* For dates of applicability, see §§ 1.904-2T(i)(3), 1.904-4T(n), 1.904-5T(o)(3), 1.904-7T(g)(6), and 1.904(f)-12T(h)(6). These regulations apply to taxable years of United States taxpayers beginning after December 31, 2006, and ending on or after December 21, 2007, and to taxable years of foreign corporations which end with or within taxable years of their domestic corporate shareholders beginning after December 31, 2006, and ending on or after December 21, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Parry (202) 622-3850 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the regulations under section 904 relating to the application of separate foreign tax credit limitations to certain categories of income under section 904(d), as amended by the AJCA. Prior to the effective date of the AJCA amendments (that is, for taxable years

beginning before January 1, 2007 (“pre-2007 taxable years”), the foreign tax credit limitation applied separately to the following categories of income: passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, certain distributions from a FSC or former FSC, and any other income not described in this sentence (“general limitation income”). Other provisions of the Code that subject other categories of income to separate foreign tax credit limitations were not amended by the AJCA. See, for example, sections 56(g)(4)(C)(iii)(IV), 245(a)(10), 865(h), 901(j), and 904(h)(10); see also H.R. Rep. No. 108-755, at 383 (October 7, 2004).

Effective for taxable years beginning after December 31, 2006 (“post-2006 taxable years”), the AJCA reduced the number of section 904(d) separate categories to two categories for “passive category income” and “general category income.” New section 904(d)(2)(A) defines passive category income as passive income and specified passive category income, and general category income as income other than passive category income. In addition, new section 904(d)(2)(C) and (D) provides rules concerning the treatment of financial services income and companies.

These temporary regulations modify the regulations under section 904 to reflect the new separate categories for passive category income and general category income, and provide transition rules for the treatment of earnings and profits and foreign income taxes of controlled foreign corporations and noncontrolled section 902 corporations accumulated in pre-2007 taxable years, overall foreign losses and separate limitation losses under section 904(f), and the carryover and carryback of excess foreign taxes under section 904(c).

#### Explanation of Provisions

##### I. Carryovers and Carrybacks of Excess Foreign Taxes Under Section 904(c)

Section 904(d)(2)(K)(i), as added by the AJCA, provides that excess taxes carried from a pre-2007 taxable year to a post-2006 taxable year shall be assigned to the post-2006 separate categories based on where the related income would have been assigned had such taxes been paid or accrued in a post-2006 taxable year.

Consistent with this statutory amendment, § 1.904-2T(i)(1)(i) provides that if a taxpayer carries over to a post-2006 taxable year any excess taxes that