

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K/A

Annual report pursuant to section 13 and 15(d) [amend]

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FILER

FOAMEX INTERNATIONAL INC

CIK: **912908** | IRS No.: **050473908** | State of Incorporation: **DE** | Fiscal Year End: **1229**
Type: **10-K/A** | Act: **34** | File No.: **000-22624** | Film No.: **05789697**
SIC: **3086** Plastics foam products

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-K/A
Amendment No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended January 2, 2005

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission file number: 0-22624

FOAMEX INTERNATIONAL INC.

(Exact Name of registrant as Specified in its Charter)

Delaware

05-0473908

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification Number)

1000 Columbia Avenue, Linwood, PA

19061

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (610) 859-3000

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g)
of the Act:

Common Stock, par value \$.01 per
share, which is traded through
the National Association of
Securities Dealers, Inc.
National Market System.

Indicate by check mark whether the registrant (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter periods that the

registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

YES X NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Annual Report on Form 10-K or any amendment to this Annual Report on Form 10-K. [X]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Act of 1934). YES X NO

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The aggregate market value of the voting stock held by nonaffiliates of the registrant as of June 27, 2004, was \$54.0 million.

The number of shares outstanding of the registrant's common stock as of March 31, 2005 was 24,509,728.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Company's definitive proxy statement to be filed within 120 days pursuant to Rule 12b-23 of the Securities and Exchange Act of 1934, as amended.

FOAMEX INTERNATIONAL INC.

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The Registrant will furnish a copy of any exhibit to this Annual Report on Form 10-K/A upon the payment of a fee equal to the Registrant's reasonable expense in furnishing such exhibit.

Explanatory Note

Foamex International Inc. (the "Company") is filing Amendment No. 1 to its Annual Report on Form 10-K for the fiscal year ended January 2, 2005 (the "Form 10-K") to include management's annual report on internal control over financial reporting and the related attestation report of KPMG LLP, the Company's independent registered public accounting firm. These disclosures were excluded from the Company's previously filed Form 10-K in reliance on the Commission's exemptive order in Release No. 34-50754, which provided certain issuers with a 45-day extension for filing management's report and the independent auditor's attestation report. In addition, the Company is filing certain required exhibits.

PART II

ITEM 9A. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. The Chief Executive Officer and Chief Financial Officer concluded that, due to the material weaknesses described below, our disclosure controls and procedures as of the end of the period covered by this report were not effective to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding disclosure.

(b) Management's Annual Report on Internal Control over Financial Reporting

We are responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that: pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the

assets of the company; provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that the receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We assessed the effectiveness of our internal control over financial reporting as of January 2, 2005. In making this assessment, management used the criteria set forth in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this assessment, management has concluded that, as of January 2, 2005, we did not maintain effective internal control over financial reporting, due to the material weaknesses described below.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. We identified the following two material weaknesses in our assessment of the effectiveness of internal control over financial reporting as of January 2, 2005:

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1. Accounting for Inventory: We identified a material weakness in internal control activities associated with the accounting for labor and overhead variances affecting amounts reported for work in process and finished goods inventories. Our policies and procedures did not provide for an effective review and analysis of a spreadsheet used to estimate the amount of labor and overhead variances to include in work in process and finished goods inventories. Specifically, the ineffective control did not prevent or detect an improper formula in this spreadsheet resulting in a misstatement of work in process and finished goods inventories which was corrected prior to the issuance of our consolidated financial statements as of January 2, 2005 and for the year then ended. This material weakness results in more than a remote likelihood that a material misstatement of the annual or interim financial statements would not be prevented or detected on a timely basis by employees during the normal course of performing their assigned functions.

2. Accounting for Income Taxes: We identified a material weakness in internal control over financial reporting in that our policies and procedures did not provide for an effective review of our accounting for income taxes. As a result of this deficiency, an error in accounting for a valuation allowance associated with recorded deferred income tax assets occurred at September 26, 2004 as follows: the tax effect of the valuation allowance related to the recorded minimum pension liability was charged directly to stockholders' deficiency and should have been included in the current period provision for income taxes. We have restated our interim financial information as of and for the periods ended September 26, 2004 to correct this error, and filed a Form 10-Q/A on April 4, 2005.

Our independent registered public accounting firm, KPMG LLP, has audited and issued their report on management's assessment of our internal control over financial reporting, which report appears in Item 9A(d) of this Form 10-K/A.

(c) Changes in Internal Control over Financial Reporting

During the quarter ended January 2, 2005, we strengthened our internal controls over the following areas.

- o Information Technology: Segregation of Duties and Information System Users. In the fourth quarter of 2004, we conducted a review of roles and responsibilities and user access within our information technology systems and identified certain users with inappropriate access. As a result, we implemented changes to tie user access to our information systems to user needs based on the roles and responsibilities of the user. This implementation has continued into the first quarter of 2005. During the fourth quarter, we also established a formal change management process to ensure that when employees change responsibilities or status their system access requirements are also appropriately and promptly changed accordingly.
- o Controls over Fixed Assets. We did not have adequate policies to address the process for taking fixed assets inventories. During the fourth quarter of fiscal 2004, we implemented a policy with respect to the identification of potentially idle assets and the communication of the need to assess the recoverability of such assets to the appropriate company personnel for resolution or disposition.
- o Non-Routine Transactions and Significant Agreements. During our review, it was determined that we did not have adequate controls in place to ensure the proper accounting for certain non-routine events and significant agreements. This issue is being addressed, as we have begun implementing comprehensive review processes and procedures for non-routine events and significant agreements to ensure more robust reviews and proper accounting.

Other than as described above, no change in our internal control over

financial reporting occurred during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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(d) Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of
Foamex International Inc.:

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting (Item 9A(b)), that Foamex International Inc. (the "Company") did not maintain effective internal control over financial reporting as of January 2, 2005, because of the material weaknesses in internal control over financial reporting identified in management's assessment, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's

assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following two material weaknesses have been identified and included in management's assessment as of January 2, 2005:

The Company identified a material weakness in internal control activities associated with the accounting for labor and overhead variances affecting amounts reported for work in process and finished goods inventories. The Company's policies and procedures did not provide for an effective review and analysis of a spreadsheet used to estimate the amount of labor and overhead variances to include in work in process and finished goods inventories. Specifically, the ineffective control did not prevent or detect an improper formula in this spreadsheet, resulting in a misstatement of work in process and finished goods inventories. This material weakness results in more than a remote likelihood that a material misstatement of the annual

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or interim financial statements would not be prevented or detected on a timely basis by employees during the normal course of performing their assigned functions.

The Company identified a material weakness in internal control over financial reporting in that their policies and procedures did not provide for an effective review of their accounting for income taxes. As a result of this deficiency, an error in accounting for a valuation allowance associated with recorded deferred income tax assets occurred as of an interim period. Specifically, the tax effect of the valuation allowance related to the recorded minimum pension liability was charged directly to stockholders' deficiency and should have been included in the current period provision for income taxes. The Company has restated its interim financial information as of and for the periods ended September 26, 2004 to correct this error.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of the Company as of January 2, 2005 and for the fiscal year then ended. The aforementioned material weaknesses were considered in determining the

nature, timing, and extent of audit tests applied in our audit of the fiscal 2004 consolidated financial statements, and this report does not affect our report dated April 4, 2005, which expressed an unqualified opinion on those consolidated financial statements.

In our opinion, management's assessment that the Company did not maintain effective internal control over financial reporting as of January 2, 2005, is fairly stated, in all material respects, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Also, in our opinion, because of the effect of the material weaknesses described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of January 2, 2005, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

/s/ KPMG LLP

Philadelphia, Pennsylvania
April 29, 2005

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

Exhibits.

- 23.2* - Consent of Independent Registered Public Accounting Firm, KPMG LLP.
- 31.1* - Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2* - Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1* - Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2* - Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURES

Pursuant to the requirements of Section 13 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized as of the 29th day of April 2005.

FOAMEX INTERNATIONAL INC.

By: /s/ Thomas E. Chorman

Name: Thomas E. Chorman
Title: President and Chief Executive Officer

By: /s/ K. Douglas Ralph

Name: K. Douglas Ralph
Title: Executive Vice President and
Chief Financial Officer

Consent of Independent Registered Public Accounting Firm

The Board of Directors of
Foamex International Inc.:

We consent to the incorporation by reference in the registration statements (No. 33-74264, 33-94154, and 333-90020) on Form S-8 of Foamex International Inc. of our report dated April 29, 2005, with respect to management's assessment of the effectiveness of internal control over financial reporting as of January 2, 2005, and the effectiveness of internal control over financial reporting as of January 2, 2005, which report appears in the January 2, 2005 annual report on Form 10-K/A of Foamex International Inc.

/s/ KPMG LLP

Philadelphia, Pennsylvania
April 29, 2005

CERTIFICATION

I, Thomas E. Chorman, certify that:

1. I have reviewed this report on Form 10-K/A of Foamex International Inc. for the period ended January 2, 2005;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's

most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:

- a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2005

/s/ Thomas E. Chorman

Thomas E. Chorman
President and Chief Executive Officer

CERTIFICATION

I, K. Douglas Ralph, certify that:

1. I have reviewed this report on Form 10-K/A of Foamex International Inc. for the period ended January 2, 2005;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's

most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
- a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2005

/s/ K. Douglas Ralph

K. Douglas Ralph
Executive Vice President and
Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Foamex International Inc. on Form 10-K/A for the period ended January 2, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Thomas E. Chorman, President and Chief Executive Officer of Foamex International Inc., certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Foamex International Inc.

/s/ Thomas E. Chorman

Thomas E. Chorman
President and Chief Executive Officer
April 29, 2005

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Foamex International Inc. on Form 10-K/A for the period ended January 2, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, K. Douglas Ralph, Executive Vice President and Chief Financial Officer of Foamex International Inc., certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Foamex International Inc.

/s/ K Douglas Ralph

K. Douglas Ralph
Executive Vice President and
Chief Financial Officer
April 29, 2005