G. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

H. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we would assess the effects of any rule to ensure that it does not exclude imports that meet this objective. Accordingly, any proposals would be consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

I. Statutory/Legal Authority for This Rulemaking

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Harmonization serves to facilitate international transportation; at the same time, harmonization promotes the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to consider aligning the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as explained in the corresponding sections above, we may not propose harmonization with certain specific provisions of the UN Recommendations, the IMDG Code, and the ICAO TI. Moreover, when proposing amendments to the HMR, consideration is given to providing exceptions for domestic transportation that minimizes compliance burden on the regulated community.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This notice considers potential amendments to the HMR that would maintain alignment with international standards by incorporating various amendments. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent. The majority of amendments in any harmonization rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on October 15, 2009 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–25358 Filed 10–20–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–09–0166]

RIN 2127–AK34

Anthropomorphic Test Devices; Hybrid III 6-Year-Old Child Test Dummy

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's NPRM proposes two changes to the agency's specifications for the Hybrid III six-year-old child dummy. In Part 1 of this NPRM, to improve the durability of the dummy's femurs, we propose changes to the design of and material used for the femur assembly. In Part 2, the drawing for the abdomen insert would be corrected so that the abdominal insert dimensions on the drawing reflect the actual part. Part 2 of this rulemaking commenced in response to a petition for rulemaking submitted by Denton ATD (Denton) and First Technology Safety Systems (FTSS). This document declines the petitioners' suggestion to investigate tolerances for vinyl and rubber components of the dummy and to specify the expected time frame each part would meet the tolerances.

DATES: You should submit your comments early enough to ensure that they are received not later than December 21, 2009.

ADDRESSES: You may submit comments (identified by the Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted

without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Lori Summers, NHTSA Office of Crashworthiness Standards (telephone 202–366–1740) (fax 202–493–2990). For legal issues, you may call Ms. Deirdre Fujita, NHTSA Office of Chief Counsel (telephone 202–366–2992) (fax 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

This NPRM proposes two changes to the agency's specifications for the Hybrid III six-year-old child dummy (HIII–6C). In Part 1 of this NPRM, to improve the durability of the dummy's femurs, we propose changes to the design of and material used for the femur assembly. The primary modifications include the addition of a ¼-inch (6.35 millimeter (mm)) fillet between the femur clamp and the connecting segment (as defined in section II.b of this preamble) of the machined femur, removal of material from the connecting segment, and a material change from aluminum bronze to 4340 steel. These changes would be made by changing the drawings for the femur in the drawing package specified in 49 CFR Part 572, Subpart N (''Six-year-old child test dummy''), the parts list, and the ''Procedures for Assembly, Disassembly, and Inspection'' (''PADI'') document of the Hybrid III 6-year-old child crash test dummy (June 2002) incorporated by reference into that regulation. In Part 2, the drawing for the HIII–6C abdomen insert would be corrected so that the abdominal insert dimensions on the drawing reflect the actual part. We also propose to make conforming changes to the specifications and drawings of the HIII–6CW weighted child test dummy (49 CFR Part 572, Subpart S).

II. Part 1—Femur Improvements

a. Introduction

The HIII–6C is used to represent a six-year-old child in vehicle crash tests and equipment compliance tests. It is an enhanced, more biofidelic upgrade to its predecessor, the Hybrid II six-year-old dummy. The HIII–6C is used in multiple testing environments, including, but not limited to, out-of-position testing in FMVSS No. 208 (Occupant Crash Protection, 49 CFR 571.208), child restraint system (CRS) evaluation in FMVSS No. 213 (Child Restraint Systems, 49 CFR 571.213),[1] and for research purposes in the New Car Assessment Program (NCAP).

The HIII–6C can be used in its normal configuration or it can be weighted to simulate heavier children (see 49 CFR Part 572, Subpart S). The standard HIII–6C weighs 52 pounds (lb) (23.6 kilograms (kg)). The weighted version of the dummy (HIII–6CW) weighs ten pounds more at 62 lb (28.1 kg). The HIII–6CW was developed to represent larger children for purposes of testing booster seats to the requirements of FMVSS No. 213.[2]

NHTSA has become aware that femur failures, involving complete separation of the dummy leg(s) from the pelvis, have occurred in the test dummy in FMVSS No. 213 testing and in NCAP research testing.

To improve the durability of the femur, NHTSA's Vehicle Research and Test Center (VRTC), through an existing contract with dummy manufacturers First Technology Safety Systems (FTSS) and Denton ATD (Denton),[3] requested the manufacturers to consider new femur designs for the HIII–6C. NHTSA asked the dummy manufacturers to look into improving the femur design after learning of a femur failure. The agency began investigating the femur even though only a single failure had occurred because the same failure had been observed in a prototype version of the Hybrid III 10-year-old child dummy (HIII–10C) that had a femur design that was similar to the present HIII–6C femur.[4] NHTSA was concerned that the HIII–6C's femur was a vulnerable design and that more femur failures would occur as the dummy became more widely used in agency testing.

FTSS and Denton separately developed different redesigns of the HIII–6C's femur. NHTSA has assessed both approaches and has decided to propose design changes that are based on the approach developed by FTSS. NHTSA has prepared a technical report that discusses in detail the femur designs, the agency's analysis of data relating to the proposed redesign of the femur, and other technical information supporting this NPRM. A copy of the report has been placed in the docket.

b. Description of the Femur; Failures

The present design of the HIII–6C femur is specified in 49 CFR Part 572, Subpart N.[5] The machined femur, which is part of the femur assembly illustrated in Figure 1 below, consists of a large section that clamps onto the upper leg and a smaller section that contains the femur shaft. For ease of

[1] Mandatory use of the HIII–6C by NHTSA in compliance tests will begin in 2010. Currently, manufacturers have the option of certifying their child restraints to FMVSS No. 213 using the HIII–6C or the Hybrid II six-year-old dummy.

[2] As noted earlier, we propose changing the specifications and drawings of the HIII–6CW set forth in 49 CFR Part 572, Subpart S, consistent with the changes proposed for the HIII–6C dummy discussed in this preamble.

[3] These are the manufacturers that produce the HIII–6C dummy.

[4] In particular, the machined femur of the HIII–10C had the same sharp corner, discussed in the next section of this preamble, between the ''femur clamp'' and the ''connecting segment'' regions. The machined femur of the HIII–10C that had been involved in the failures was redesigned before the initiation of the HIII–10C's incorporation into 49 CFR Part 572 and the redesigned HIII–10C femurs have not been failing. The redesign of the HIII–10C dummy femur added a ¼-inch (6.35 mm) fillet to reduce stress at the intersection of the femur clamp and connecting segment. Additionally, the material of the HIII–10C machined femur and shaft was modified to be 4140 Steel, which has a significantly higher yield strength (92,000 psi) than the aluminum bronze used in the HIII–6C femur (48,000 psi). The shaft angle of the HIII–10C (77°) is also larger than that of the HIII–6C (55°).

[5] Complete drawings for the HIII–6C femur can be found in Docket No. NHTSA–2002–12541.

discussion, these portions of the machined femur will be referred to as the ''femur clamp'' and the ''connecting segment,'' respectively, for the remainder of this preamble. The femur shaft, retaining flange, and femur ball connect the machined femur to the dummy's pelvis. Similar to a human hip joint, the ball in the HIII–6C femur assembly allows for rotation of the dummy hip joint. The flange is used to attach the femur assembly to the pelvis. The entire femur assembly is found within the lower torso, and the material specification for this assembly, including the machined femur, shaft, flange and ball is Aluminum Bronze C–624 AMC0–18. The line drawn in the illustration shows the approximate location of the femur failure. (The femur load cell, the response of which is discussed in the ''dynamic evaluation'' section below, is located in the distal portion of the upper leg (i.e., farther from the pelvis) and not in the area of the machined femur.)

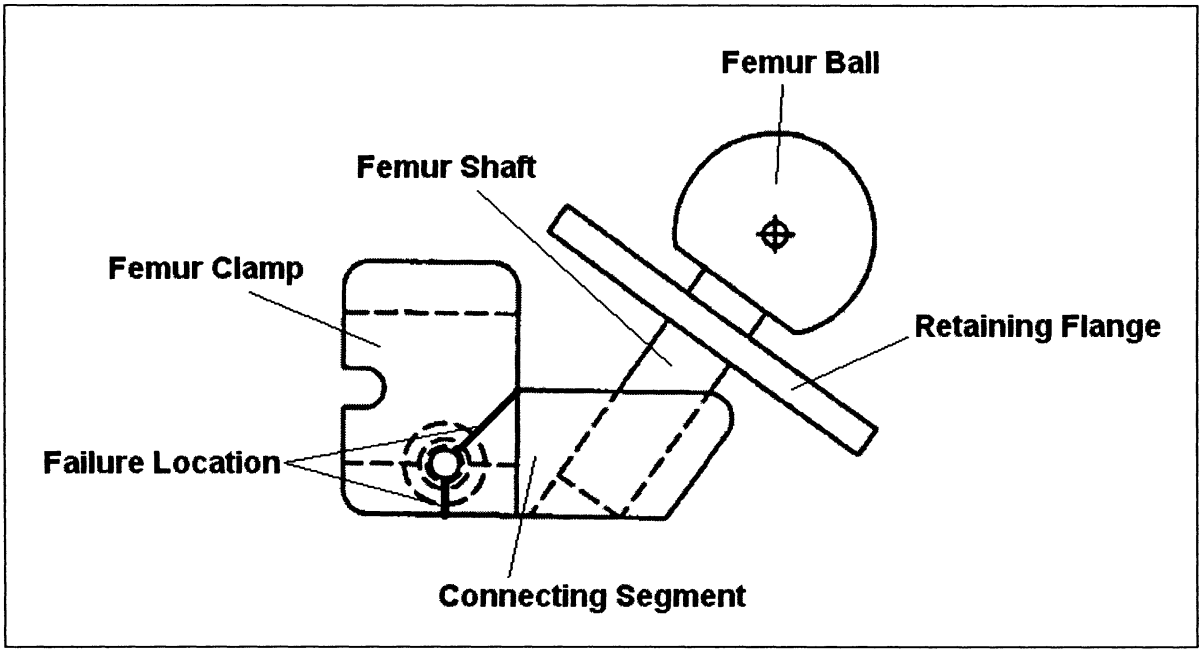

Figure 1: Illustration of femur assembly

Failures of the HIII–6C femur appear to have initiated at a sharp corner between the femur clamp and connecting segment sections of the machined femur. The fracture was observed from this corner to the bolt hole within the femur clamp, at an angle of approximately 45°. The failure continued through the thin section of material directly beneath the bolt hole, causing complete separation of the machined femur. Additionally, in one failed component, small indents on the inner diameter of the retaining flange were observed, indicating potential contact between the flange and shaft. The location of the fracture is depicted in the Figure 1 illustration. Pictures of a fractured part can be found in the technical report accompanying this NPRM.

c. Proposed Femur Design Changes

The proposed modification to improve the femur's durability is based on the approach developed by FTSS. The agency decided on that approach over Denton's because the FTSS design was more straightforward and simpler than that of Denton,[6] and a similar design change had demonstrated improvement in the HIII–10C. Rather than re-designing, FTSS increased the strength and durability of the femur assembly by fabricating the machined femur and shaft from 4340 steel, which has a higher yield strength than the original material, aluminum bronze C–624 AMC0–18, while keeping the ball and retaining flange as the original aluminum bronze material. A ¼-inch (6.35 mm) circular fillet was added between the femur clamp and the connecting segment to eliminate stress-risers that were present on the original femur, and a portion of the connecting segment material near the femur clamp was removed. The weight of the new FTSS femur is only 0.002 lb (0.001 kilograms (kg)) heavier than the original femur. Table 1 below compares the weights and material properties of the original femur, the FTSS-developed femur, and the Denton-developed femur.

[6] Both manufacturers recommended a material change to increase the strength of the femur. In terms of design, FTSS reduced the effects of a stress-riser in the area of the failure, while Denton completed more extensive design changes to also address the alleged issue of ''hip lock.'' Hip lock is a condition where flexion of the dummy's hip joint is mechanically limited due to contact between the femur and the retaining ring or other pelvis structure. Hip lock in the HIII-50th percentile male femur led to design modifications that prevented ''hard'' (i.e., metal-to-metal contact) hip lock from occurring (61 FR 67953, Dec. 26, 1996). In that adult dummy, hard hip lock was characterized by spikes in the unfiltered pelvis and chest accelerometer readings, high and sharply-pointed chest z acceleration traces, non-unimodal chest x and resultant accelerations, and a high tension component in the lumbar z force (Klinich et al., ''Evaluation of a Proposed Hybrid III Hip Modification,'' Stapp Paper No. 952730, 1995).

TABLE 1—WEIGHT AND MATERIAL PROPERTIES FOR THE ORIGINAL AND DEVELOPED HIII–6C FEMUR DESIGNS

Femur design	Measured weight	Material and yield strength	
Original	0.532 lb (0.241 kg)	Aluminum Bronze C–624 AMC0–18	48,000 psi.
FTSS	0.534 lb (0.242 kg)	4340 Steel	114,000 psi.
Denton	0.606 lb (0.275 kg)	4140 Steel	92,000 psi.

To implement this change in femur design and material, the following changes would be made to the materials describing the HIII–6C in 49 CFR Part 572. Drawings 127–3017–1&–2, ''6 YR H3—FEMUR MACHINED'' would be replaced with drawings 127–3017–1S&–2S, which show the proposed machined femur.[7] The femur assembly drawings (127–3016–1&–2) would also be changed due to the new femur design, with new part numbers 127–3016–1S&–2S. Higher assembly drawings including 127–3000, ''LOWER TORSO ASSEMBLY,'' and the complete assembly drawings (127–0000) would be amended to show the proposed part. These revisions would be noted on drawing SA572–127DRL–2. The PADI would also be updated so that it shows the proposed machined femur in figures and reports the proper lower torso assembly and total weight for the dummy. Finally, the part numbers for the machined femur and the femur assembly would be changed in the Parts/Drawings list, along with the revision letters for higher assembly drawings, as appropriate. Copies of the HIII–6C drawing package, PADI, and Parts/Drawings list that include the proposed change in femur design can be obtained online at *http://www.regulations.gov*, in the same docket as this NPRM.

d. Analysis of the New Femur Design

NHTSA has tentatively determined that the proposed changes to the femur would successfully prevent the femur from failing and would not compromise the utility of the test dummy. This determination is based on an analysis showing the stress is reduced by the addition of the fillet as proposed, and on an analysis of dynamic test results, as discussed below.

1. Stress Analysis of the Fillet Effect

In the current HIII–6C machined femur, the change in dimension between the femur clamp and the connecting segment is nearly instant. This abrupt change can lead to high stresses in that area when the femur is loaded. The addition of a fillet in that area reduces these stresses. We have estimated that the proposed addition of the fillet between the femur clamp and the connecting segment of the HIII–6C machined femur will result in stresses approximately 1.6 to two times less than those in the femur without a fillet. However, it is noted that this is only an estimate, as the loading conditions present in the femur during a FMVSS No. 213 type sled test were highly simplified in order to provide a rough estimate of the fillet benefit. Details about the stress reduction approximation can be found in the technical report. Because the fillet design results in substantially reducing stress in the femur of the dummy, we tentatively conclude that adding the fillet and using the 4340 steel material will make the dummy sufficiently durable to avoid femur failure.

2. Dynamic Evaluation

NHTSA evaluated the FTSS-developed femur in April 2006 at the MGA testing facility. To assess the effect of the component modification, a HIII–6C with new femurs (which we refer to as a ''modified HIII–6C'' or ''modified dummy'') was tested in the Britax Marathon, Britax Boulevard and Britax Decathlon to the FMVSS No. 213 test conditions, and the results were compared.[8] To obtain a greater understanding of the loading experienced by the femur assembly, instrumentation was added to the dummy to allow measurement of triaxial accelerations in the pelvis and forces and moments in the femurs. Additionally, to determine the effect of the new femur, we compared test results from a test in which the femur had failed to those of a test with a modified dummy, under conditions that had previously caused failure, i.e., the modified HIII–6C dummy was tested in the Britax Marathon to the FMVSS No. 213 sled pulse.

In all tests of the FTSS-developed femurs, there were no femur failures. In addition, test data relating to left and right femur maximum moments, measurement of FMVSS Nos. 208 and 213 injury mechanisms, dummy kinematics, and other factors concerning the performance of the dummy raised no concerns about the new femur design. We tentatively conclude that the testing indicated that use of the new femur would not affect the utility of the modified HIII–6C and HIII–6CW dummies in FMVSS No. 208, FMVSS No. 213, and NCAP research tests, except to make the dummies more durable and, therefore, more acceptable as anthropomorphic test instruments used in agency testing.

i. Comparing Test Results of the Modified HIII–6C Test in the Marathon, Boulevard, and Decathlon CRSs

NHTSA measured and compared maximum forces and moments measured in the femur load cells (over both legs) of the modified HIII–6C dummy in the Britax Marathon, Boulevard, and Decathlon. The Marathon and Boulevard showed similar maximum forces, while the Decathlon had a higher maximum femur force. All maximum forces occurred along the Z-axis, and all maximum moments were about the Y-axis.

[7] The material specification on drawing 127–3021, ''6 YR H3—FEMUR SHAFT,'' would be changed from ''Aluminum Bronze 3/8 Rnd C–624 AMC0–18'' to ''4340 Steel 3/8 Rnd.''

[8] The Boulevard and Decathlon models were each tested with a modified HIII–6C and with a HIII–6CW with the modified femur design. No femur failure occurred in any of the tests. For simplicity and because the test results of the HIII–6CW are not comparable to those of the HIII–6C, tests of the HIII–6CW dummy are not generally discussed in this preamble. However, results for all tests of the HIII–6CW are discussed in the technical report, including test numbers, maximum head, chest and pelvis accelerations and left and right femur maximum moments and forces.

TABLE 2—MAXIMUM FORCES AND MOMENTS MEASURED IN THE FEMUR LOAD CELLS OF MODIFIED HIII–6C DUMMIES IN AN FMVSS NO. 213 COMPLIANCE TESTING ENVIRONMENT

Femur measure	Britax Marathon*	Britax Decathlon*	Britax Boulevard
	6C	6C	6C
Max Force (N)	1492.9	2264.7	1578.4
Max Moment (N-m)	−78	−63.9	−70

*Marathon: Restraint changed from upright to reclined during test. Decathlon: Top tether webbing separated at the attachment clip and the restraint changed position from upright to reclined.

At the time of maximum moment there are visible differences in the degree of knee extension (test video pictures are provided in the technical report). These visual differences in response are consistent with the differences in force and moment magnitude seen in the tests.

Maximum left and right femur forces from the tests of the HIII–6C dummy are displayed in Figure 2, while Figure 3 shows the maximum moments measured in the left and right legs during each test. In general, force and moment measurements made in the left and right femurs were similar, though not identical. This may give some insight into why failures were observed in the left leg, right leg, or both legs in any given test. We believe that the failures were caused by stresses exceeding the material strength of the femur, so the occurrence of one femur failure, rather than both, may be due to the fact that the forces present during the test were unevenly distributed.

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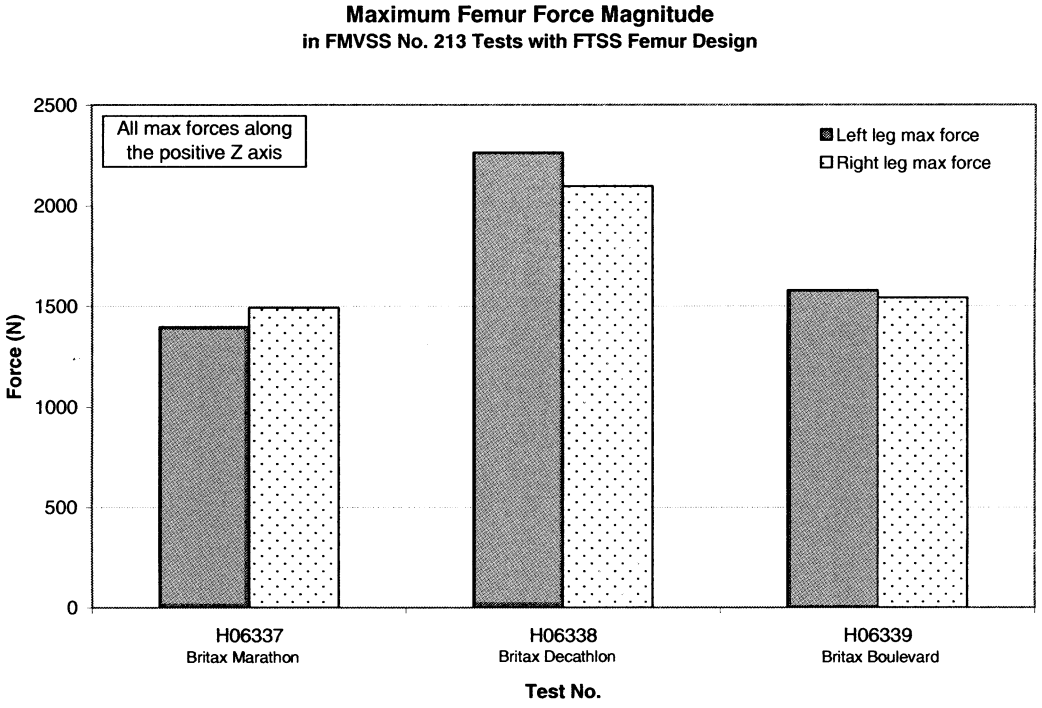

Figure 2: Maximum femur forces measured in modified HIII-6C dummies.

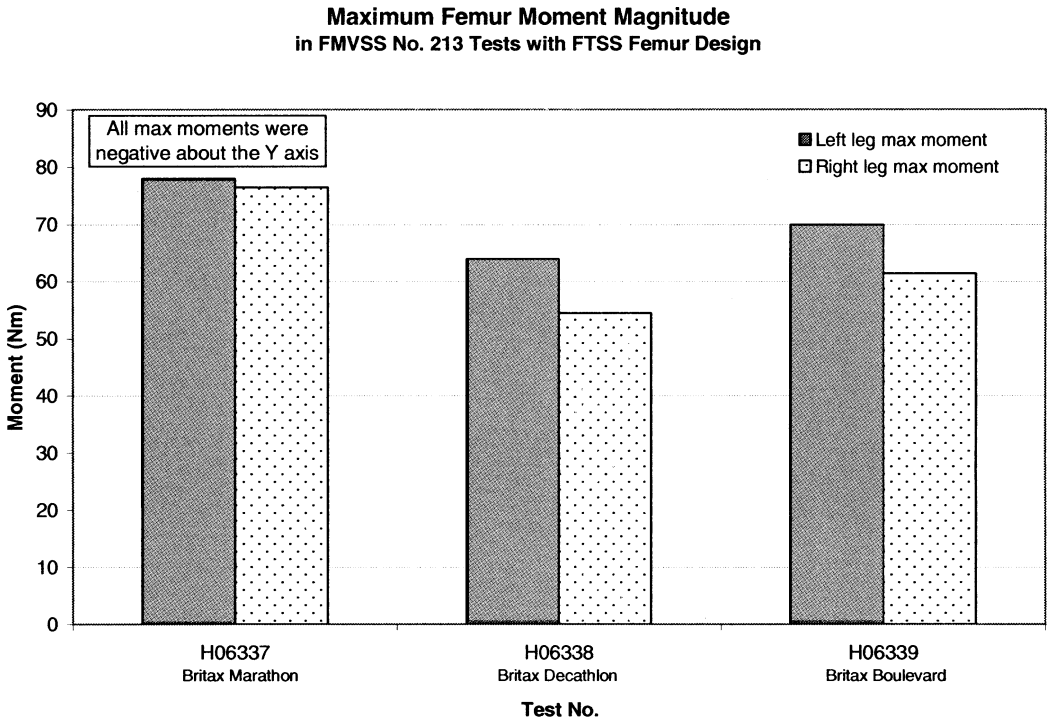

Figure 3: Maximum femur moments measured in modified HIII-6C dummies.

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ii. Comparing the Results of the Britax Marathon Test of the Modified HIII–6C (Test H06337) to Those of a Test of the Original HIII–6C Where Femur Failure Occurred (H06120)

Both tests were performed using the same dummy (S/N 158).[9] In test H06120 (with the original femurs), the left femur failed and detached completely. The right knee of this dummy was in a fully extended position, which could have resulted from the change in kinematics due to loss of one leg. In test H06337 (modified dummy), there were no femur failures and both legs remained attached to the dummy.[10]

A. Effect on FMVSS No. 213 Injury Metrics

In these two tests, we compared the maximum head and chest accelerations. As seen in Figure 4, these measures were similar for both tests, suggesting that the new femur does not affect the dummy head or chest response significantly. Specifically, peak chest resultant acceleration, an FMVSS No. 213 injury criterion, increased only 2.42 percent from 41.4 g with the current Part 572 femur to 42.4 g with the proposed femur. However, we note that the maximum head Z and resultant accelerations occurred after the time of femur failure in test H06120. Therefore, it is possible that the acceleration magnitude or response in time was affected by the loss of one limb.

[9] Both tests were performed using the same dummy (S/N 158). However, because FMVSS No. 213 does not require measurement of femoral loads, no femoral force data was available for test H06120 with the original femurs. Therefore, comparisons were made between pre- and post-test positioning, head and chest measurements, and dummy position throughout the test, as indicated by the test videos. This is discussed in detail in the technical report.

[10] We note that in test H06337 (modified dummy), the child seat had multiple cracks in its base following the test, and during the test the restraint position shifted from upright to reclined. However, these issues are not likely linked to the performance of the new femur.

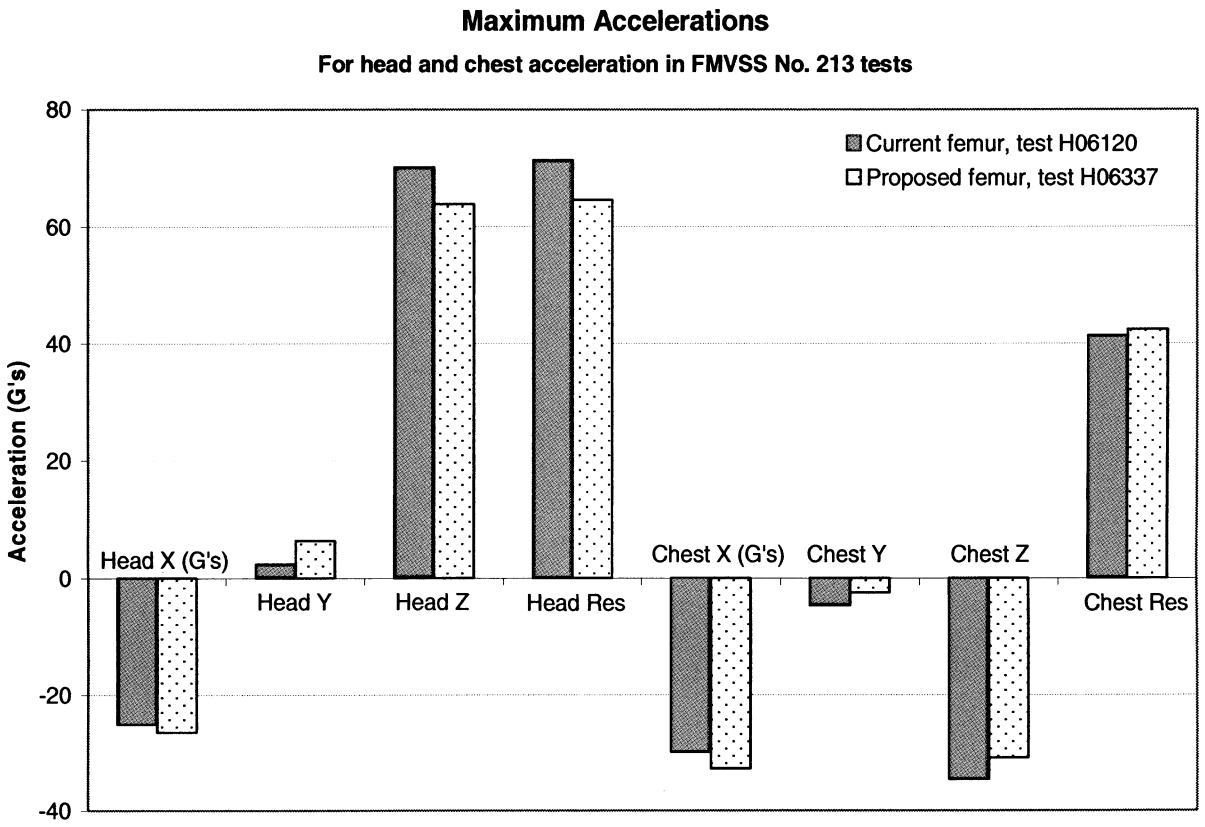

Figure 4: Maximum head and chest accelerations during FMVSS No. 213 tests using a Britax Marathon seat. See notes in the Technical Report for information on Head X and Y accelerations.

We also compared the 36 millisecond (ms) head injury criterion (HIC) values. These values are displayed in Table 3 and Figure 5, along with the previously-discussed peak chest accelerations (Figure 6). The response measured in the modified HIII–6C resulted in a 5.65 percent decrease in HIC over the response of the original HIII–6C. These relatively low changes in response suggest that HIC and chest g's are not significantly altered by the femur replacement.

TABLE 3—HIC 36 AND PEAK CHEST ACCELERATION VALUES FOR MATCHED FMVSS NO. 213 TESTS

[These results are presented in Figures 5 and 6, below]

Measure	H06120: Femur failure w/current part 572 design	H06337: Proposed femur
HIC 36	723.3	682.4
Peak Chest Acceleration (g)	41.4	42.4

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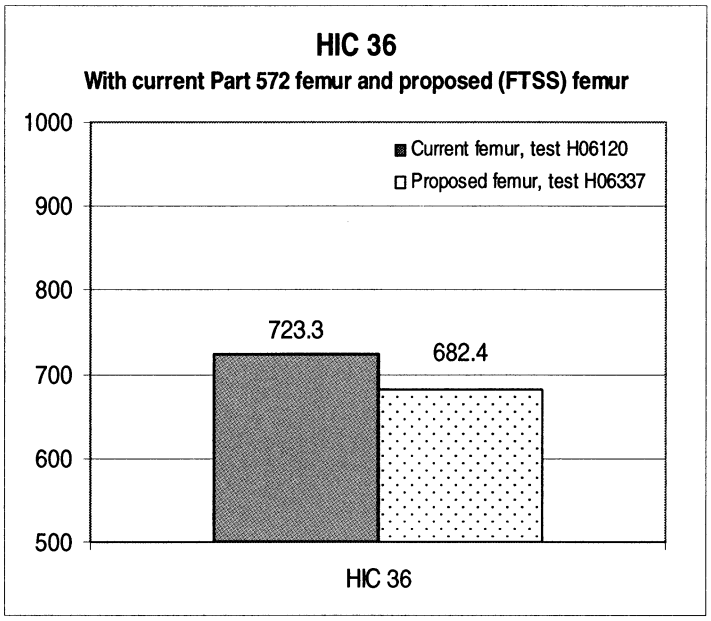

Figure 5: HIC 36 values for tests of the Britax Marathon child seat where the original femur failed (H06120) and for a new femur which did not fail (H06337).

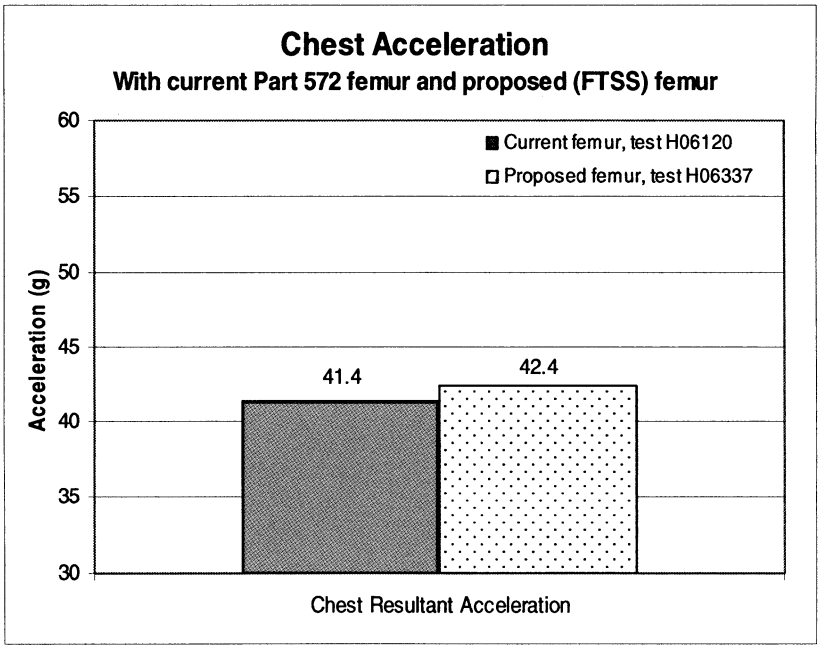

Figure 6: Peak chest acceleration values for tests of the Britax Marathon child seat where the original femur failed (H06120) and for a new femur which did not fail (H06337).

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B. Effect on Dummy Kinematics

Because the FTSS-developed femur design only involves a material change, removal of material, and the addition of a fillet at a high-stress location, we do not expect that use of the new femur would change the dummy's kinematic response. This expectation is borne out by an analysis of test video comparing the kinematics of the dummy in tests H06337 (modified dummy) and H06120 (femur failure). (Photographs from the video are presented in the technical report.) Until the time of maximum femur force, in the test with new femurs, the position of the dummy in each test is fairly similar. At maximum force, the dummy's knees in H06337 (modified dummy) are slightly more extended and lower than the knees in H06120 (femur failure). At the approximate time of femur failure in test H06120, the positions of the two dummies are noticeably different. The fully extended left knee of the dummy in test H06120 (femur failure) and the additional excursion of the leg (as noted by the position of the knee marker) may be indicative of the failing femur component. After femur failure at 100 ms, slight differences in dummy position could be attributable to the loss of one leg in the test H06120. Since the dummies' positions before femur failure were very similar, and because the new femur design is so similar to the current design, we believe that the new femur would not significantly alter dummy response.

C. Dummy Response Biofidelity

Since the FTSS-developed femur has the same geometry as the original femurs where it interfaces with the pelvis, the new femur is not expected to behave any differently than the original femur. As discussed in the previous sections, little difference in head and chest measurements and dummy kinematics was observed in the dummy with the new versus the current Part 572 femur. Therefore, the slight modification in femur design and material is not expected to have an effect on dummy biofidelity.

D. Hip Lock

Because the Denton-developed femur was designed specifically to address the potential issue of hip lock, after being tested, the FTSS-developed femur was inspected for indications of susceptibility to this condition. There was no evidence of excessive wear near the retaining ring/ball joint of the new FTSS-developed femurs. Some wear was noticed on the upper leg of dummy S/N 155 where the femur clamp is fastened to the upper leg weldment. However, because this wear is located at a fastening site, metal-to-metal contact is inevitable and is not indicative of hip lock.

III. Part 2—Abdominal Insert

FTSS and Denton petitioned NHTSA to change Drawing No. 127–8210 of the HIII–6C drawing package, which specifies the abdominal insert for the dummy. The petitioners stated that FTSS owns the original mold for the abdominal insert that was part of the dummies used by NHTSA to develop the 49 CFR Part 572 specifications for the dummy, and that the mold is still being used to manufacture the HIII–6C dummies. The petitioners stated that they have measured the mold to compare its dimensions to those of the drawing and have ''a number of discrepancies between the mold and the drawing.'' The petitioners stated that Denton has also measured its abdominal insert mold, and has found it to match the FTSS mold dimensions. Both manufacturers stated their belief that Drawing No. 127–8210 is in error because of these discrepancies, and have asked NHTSA to revise the abdomen insert drawing to match the part mold dimensions. The petitioners submitted a revised drawing as part of their petition for rulemaking which provided new dimensions for the ledge height, depth, and taper angle of cone.

Agency Response:

NHTSA is granting this request, with slight modification.

During 2006 and in early 2007, the agency investigated the subject dimensional discrepancies of the abdominal insert at NHTSA's VRTC. Five abdominal inserts were measured to obtain the dimensions listed in Table 4; four of these were manufactured by FTSS and ranged in age from 5–12 years old. The fifth abdominal insert was new and purchased from Denton, ATD. The results of this investigation showed (see Table 4 and Figure 7) that the abdominal insert as manufactured did not always meet the ledge height (items 2&3 in Figure 7), depth (items 4&5), notch half width (item 8), notch depth (item 9) and taper of cone specifications (items 6&7).

We note that we measured the actual manufactured part, and not the mold. Because the drawing package specifies dimensions for the part, not the mold, it is logical to correct drawing dimensions based on the measured dimensions of parts. Thus, while we considered the petitioners' recommendations from measurements of the mold, we have developed a revised set of specifications for the abdomen using the set of measured dimensions from available parts as the base. We believe that the dimensions derived from this set of measurements will represent a wide range of parts.

TABLE 4—HIII–6C KEY ABDOMEN DIMENSIONS

[Fig. Ref numbers in the table refer to Figure 7. For full table, including individual dummy responses and matching pelvis opening measurements, see the Technical Report]

Description	Fig. ref	Dim spec. (in.)	Min/Max (in.)	Mean (in.)	SD (in.)	M+/−2SD (in.)	Petition (in.)	Proposed spec. (in.)
Overall height	1	3.81+/.20	3.73/3.79	3.77	0.03	3.82/3.71	3.81	3.81+/.20
Ledge height	2lt	2.10+/.20	1.46/1.63	1.55	0.07	1.69/1.41	1.53	1.53+/.20
	3rt	2.10+/.20	1.48/1.66	1.61	0.08	1.77/1.46	1.53	1.53+/.20
Depth excl. plug	4	2.50+/.20	2.60/2.82	2.72	0.08	2.88/2.56	2.80	2.80+/.20
Depth incl. plug	5	2.50+/.20	2.86/3.03	2.94	.07	3.08/2.80	2.80	2.80+/.20
Taper angle of cone	6lt	123.4 +/−0.5	123/128	125.4	2.41	130/121	122.4	121/129
	7rt	123.4 +/−0.5	123/128	124.6	1.95	128/121	122.4	121/129
Notch Half Width	8	1.45+/.20	1.56/1.69	1.62	0.05	1.72/1.52	1.45	1.50+/−.20
Notch Depth	9	1.40+/−.20	1.16/1.34	1.24	0.07	1.38/1.11	1.40	1.40+/−.20
Width Bottom of Cone	10	5.40+/−.40						5.40+/−.40

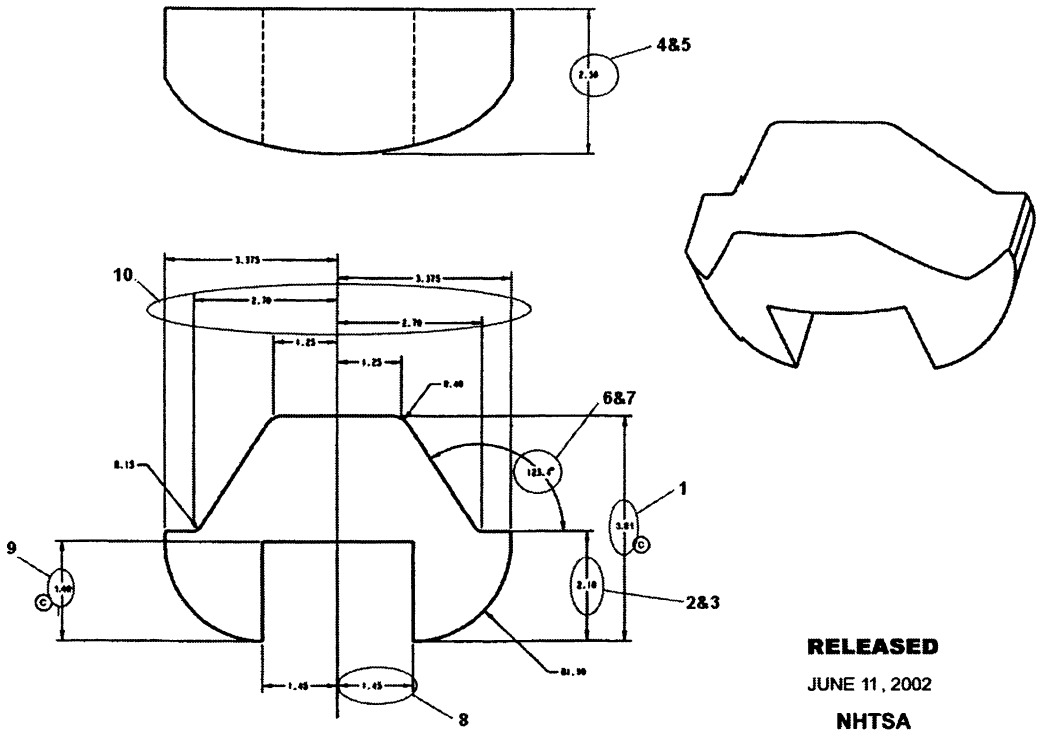

Figure 7: Portions of the HIII-6C Abdomen Insert drawing

We tentatively agree with the petitioners that several dimensions of the abdomen should be revised. Although the recommended dimensional changes are mostly based on agency measurements of physical parts, nearly all changes are in agreement with the petitioners' mold-based dimensions. The recommended action would incorporate the petitioner-recommended changes in dimension to the ledge height and overall depth. The taper angle of the cone dimension would also be changed to include the range of angle requested by the petitioner, but have a nominal value of 125° rather than 122.4°, and an increased tolerance of ±4° to account for the range of angles measured in the available parts.

However, there are two small dimensional discrepancies between the part and drawing that were not addressed in the petition: The notch half width and notch depth dimensions. We are adjusting the notch half width dimension based on measurements of abdominal inserts at VRTC. The notch half width measurements were all larger than the specified nominal dimension of 1.45 inches, and one measurement fell outside the allowed tolerance. Therefore, a slight increase in this dimension to 1.50 inches is proposed. The suggested changes to the abdominal insert drawing are reflected in Table 4 under ''Proposed Spec.'' We have decided not to adjust the notch depth dimension based on part measurements, because only one out of five measurements did not meet the specification, and the age of this part may have affected this dimension. This decision is discussed more fully in the technical report.

IV. Proposed Effective Date

We propose that the changes to the femur design of the HIII–6C and HIII–6CW be effective 180 days after publication of a final rule. With regard to the changes proposed in Part 2, because the changes are more corrective in nature, we propose that the changes to the drawing for the abdomen be effective 45 days after publication of a final rule.

V. Other Issues—Rubber and Foam Parts

FTSS and Denton also suggested that NHTSA undertake a project to investigate tolerances for vinyl and rubber components, develop a detailed procedure on how to measure the dimensions used to define vinyl flesh parts, and work with the manufacturers to ''determine proper values and the expected time frame each part would normally comply with the tolerances, given that these parts can change dimensionally over time.''

Agency Response: We decline this request. The lifetime of foam parts will be highly dependent on the part's age, the test situations the dummy is exposed to (i.e., FMVSS No. 213 compliance tests, vehicle compliance tests, research and development tests, etc.), as well as the conditions in which it is stored, the frequency of use, etc. We encourage the dummy manufacturers to investigate part lifetimes to provide replacement time frames for their customers; the agency lacks the resources to investigate this type of part specification. Moreover, the agency does not have reason to conclude the lifetime of foam parts raises problems that NHTSA needs to address, and the petitioners did not provide data to sufficiently quantify the extent to which this may be a problem.

VI. Rulemaking Analyses and Notices

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. This proposed rulemaking action was not considered a significant regulatory action under Executive Order 12866.

This proposed rulemaking action was also determined not to be significant under the Department of Transportation's (DOT's) regulatory policies and procedures (44 FR 11034, February 26, 1979).

We stated in the final rule [11] that adopted the HIII–6C into 49 CFR Part 572 that the cost of an uninstrumented HIII–6C dummy is approximately $30,000 and that instrumentation will add approximately $25,000 to $40,000 to the cost, depending on the number of data channels the user chooses to collect. This proposed rule would only affect the test dummy by adding a ¼-inch fillet between the femur clamp and the connecting segment of the machined femur, removing material from the connecting segment, and changing the material from aluminum bronze C–624 AMC0–18 to 4340 steel. We do not expect these changes to significantly affect the cost of the dummy. Further, if this proposed Part 572 rule becomes final, it would not impose any requirements on anyone. Businesses would be affected only if they choose to manufacture or test with the dummy. This proposed rule would indirectly impose requirements on only those businesses which choose to manufacture or test with the dummy, in that the agency will only use dummies for compliance testing that meet all of the criteria specified in this proposed rule. Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions), unless the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)).

We have considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that the proposed rulemaking action would not have a significant economic impact on a substantial number of small entities. This action would not have a significant economic impact on a substantial number of small entities because changing the femur design would not impose any requirements on anyone. NHTSA would not require anyone to manufacture or redesign the dummy or to test vehicles or CRSs with it.

National Environmental Policy Act

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

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposed rule does not have federalism implications because the proposed rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule would not impose any requirements on anyone. Businesses would be affected only if they choose to manufacture or test with the dummy.

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. NHTSA's safety standards can have preemptive effect in at least two ways. This proposed rule would amend 49 CFR Part 572 and is not a safety standard.[12] If this proposed Part 572 rule becomes final, it would not impose any requirements on anyone.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 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.

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 control number from the Office of Management and Budget (OMB). This proposed rule would not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards relevant to this proposed rule.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, Federal 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

[11] 65 FR 2059; January 13, 2000; Docket NHTSA–99–6714.

[12] With respect to the safety standards, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. This proposed rule would not impose any unfunded mandates under the UMRA. This proposed rule would not meet the definition of a Federal mandate because it would not impose requirements on anyone. It would amend 49 CFR Part 572 by changing an aspect of a test dummy that the agency uses. If this proposed rule becomes final, it would affect only those businesses that choose to manufacture or test with the dummy. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?
—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Regulation Identifier Number

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.

VII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the methods provided above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments.

Further, note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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 (65 FR 19477–78).

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket using any of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that the Docket receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the Docket receives after that date. If the Docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the Docket at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA is proposing to amend 49 CFR Part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 continues to read as follows:

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

Subpart N—Six-Year-Old Child Test Dummy, Beta Version

2. Section 572.120 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(vii), (a)(2), (b), and (c)(1) to read as follows:

§ 572.120 Incorporation by reference.

(a) * * *

(1) A drawings and inspection package entitled, ''Parts List and Drawings, Part 572 Subpart N, Hybrid III Six-Year Old Child Crash Test Dummy (HIII6C, Beta Version), June 2009,'' consisting of:

* * * * *

(vii) The Hybrid III Six-Year-Old Child Parts/Drawing List, dated June 1, 2009.

(2) A procedures manual entitled, ''Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 6-Year-Old Child Crash Test Dummy (H–III6C), Beta Version, June 1, 2009'';

* * * * *

(b) The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at the Department of Transportation, Docket Operations, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366–9826, and at the National Archives and Records Administration (NARA), and in electronic format through Regulations.gov. For information on the availability and inspection 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*. For information on the availability and inspection of this material at Regulations.gov, call 1–877–378–5457, or go to: *http://www.regulations.gov*.

(c) * * *

(1) The drawings and specifications package, the parts list, and the PADI document referred to in paragraphs (a)(1), and (a)(2) of this section, are available in electronic format through www.Regulations.gov and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, (301) 670–0090.

* * * * *

3. Section 572.121 is amended by revising paragraph (a)(2) introductory text (the table is not amended) to read as follows:

§ 572.121 General description.

(a) * * *

(2) Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 6-year-old test dummy, Alpha version, dated June 1, 2009.

Issued: October 15, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–25241 Filed 10–20–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2009-0062; 92210–1117–0000–B4]

[RIN 1018–AW85]

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Buena Vista Lake shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise our designation of critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) under the Endangered Species Act of 1973, as amended (Act). Our proposal is the same as the proposed critical habitat we published on August 19, 2004 (69 FR 51417). In total, approximately 4,649 acres (ac) (1,881 hectares (ha)) occur within the boundaries of the proposed revised critical habitat designation. The proposed revised critical habitat is located in the Central Valley floor of Kern County, California.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 21, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 7, 2009.

ADDRESSES: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2009-0062.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket no. FWS-R8-ES-2009-0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Daniel Russell, Acting Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825; telephone (916) 414–6600; facsimile (916) 414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal to revise critical habitat will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

• Areas that provide habitat for the Buena Vista Lake shrew (herein after referred to as the shrew) that we did not discuss in our August 19, 2004 (69 FR 51417) proposed critical habitat rule,

• Areas containing the features essential to the conservation of the shrew that we should include in the revised designation and why,

• Areas proposed that do not contain features essential for the conservation of the species and why, and

• Areas not occupied at the time of listing that are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the areas proposed as revised critical habitat, as well as their possible effects on proposed revised critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the physical and biological features.

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as containing the features essential to the species' conservation.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Whether any specific areas being proposed as revised critical habitat should be excluded under section