| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Ransom County, North Dakota, and Incorporated Areas** | | | | |
| Sheyenne River ..... | Approximately 1,064 feet upstream of Richland County boundary. | None | +990 | City of Fort Ransom, City of Lisbon, Unincorporated Areas of Ransom County. |
| | Approximately 7,465 feet downstream of State Highway 46. | None | +1,160 | |

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**City of Fort Ransom**
Maps are available for inspection at P.O. Box 17, Fort Ransom, ND 58033.

**City of Lisbon**
Maps are available for inspection at P.O. Box 1079, Lisbon, ND 58054.

**Unincorporated Areas of Ransom County**
Maps are available for inspection at 204 5th Avenue West, Lisbon, ND 58054–4115.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Sandra K. Knight,**
*Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010–2491 Filed 2–4–10; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 572

**[Docket No. NHTSA–2009–0194]**

**RIN 2127–AK64**

## Anthropomorphic Test Devices; Hybrid III Test Dummy, ES–2re Side Impact Crash Test Dummy

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes corrections or minor changes to some of the drawings incorporated by reference by a final rule, published on June 16, 2008, that responded to petitions for reconsideration of a December 2006 final rule that had adopted specifications and qualification requirements for a new crash test dummy called the "ES–2re" test dummy. The ES–2re is a 50th percentile adult male side impact crash test dummy that will be used in an upgraded Federal motor vehicle safety standard on side impact protection and in the agency's New Car Assessment Program. This NPRM responds to requests from test dummy manufacturers First Technology Safety Systems (FTSS) and Denton ATD (Denton) to correct or make minor adjustments to the drawings of the ES–2re. This NPRM would also correct dimensional errors in Figure 22 of 49 CFR part 572, subpart E, which depicts the pendulum used in the neck qualification tests of several of the crash test dummies, including the Hybrid III and ES–2re test dummies.

**DATES:** You should submit your comments early enough to ensure that they are received not later than April 6, 2010.

**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 Mr. Peter Martin, NHTSA Office of Crashworthiness Standards (telephone 202–366–5668) (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:**

## I. Background

NHTSA published a final rule on June 16, 2008 (73 FR 33903, Docket No. NHTSA–08–0111) that responded to various petitions for reconsideration of its previous rule [1] incorporating a new mid-size adult male crash test dummy, called the "ES–2re" test dummy, into 49 CFR part 572. The ES–2re will be used in an upgraded Federal Motor Vehicle Safety Standard No. 214, "Side impact protection," and in the agency's New Car Assessment Program beginning with vehicle model year 2010. The June 16, 2008 final rule incorporated by reference a drawing package, parts list, and user's manual, all dated February 2008.

After publication of the June 16, 2008 final rule, NHTSA received requests from dummy manufacturers FTSS and Denton to correct errors in and make minor changes to the ES–2re drawing package. Many of these requested changes were wholly corrective, while others, although minor, were more substantive and notice of such changes appeared beneficial. Rather than respond to the requested changes piecemeal, the agency has decided to address all the requested changes with this NPRM. Accordingly, we are issuing this NPRM to correct the ES–2re drawing package and to make corresponding changes to the parts list. In addition, we are also proposing to clarify the inclusion of load sensors and to correct dimensional errors we found in Figure 22 of 49 CFR part 572, which is a figure illustrating the pendulum used in the neck qualification test for the ES–2re and other adult crash test dummies (*e.g.*, the Hybrid III 50th percentile adult male).

## II. FTSS Requested Changes

FTSS requested the following 18 changes to the ES–2re drawing package. The petitioner's requests are set forth verbatim in the list below, and following each request is NHTSA's tentative decision on the request. Comments are requested on the agency's responses.

1. "Drawing 175–1011, Top Plate UNLC Blank. Fix typographical errors for dimensions, MØ5.0, MØ6.0, MØ6, and MØ2.5. Eliminate the Ø symbol." NHTSA agrees and would remove the Ø symbol from the dimensions listed by FTSS.

2. "Drawing 175–3502, Pivot Stop Plate, Left. Fix typographical error on Note #4. Replace RH with LH since this is a left hand part." NHTSA agrees with this correction.

3. "Drawing 175–6006, Pubic Symphysis Structural Replacement. There is a Part Mark located at the center of the part. This Part Mark is not defined. FTSS recommends that the Part Mark be clarified or removed altogether from the drawing." NHTSA agrees that the part mark is unnecessary and should be removed from the drawing.

4. FTSS states:

> Drawing 175–6012, Hip Pivot Pin. FTSS believes that dimension "16.994 +0.000/−0.011" is a typographical error and should be dimensioned as "16.990 +0.000/−0.011". The Hip Pivot Pin mates to part number 5000110 (Ball Bearing)—which has an ID dimension of 17.000 +0.000/−0.008 (vendor specification). The bearing at a nominal dimension of 16.992 would not allow a Hip Pivot Pin at its maximum diameter of 16.994 to fit within the bearing.

NHTSA agrees that with the currently specified dimensions, the pin may not fit within the bearing as described by FTSS. Therefore, we agree with FTSS's request.

5. FTSS states:

> Drawing 175–6010, Iliac Wing Assembly, Left. Fix typographical error for drawing dimension "17.0556". This dimension should be "17" since it is not reasonable to control and measure this molded part to four decimal places and "17" also matches the same dimension as the Iliac Wing Assembly, Right (NHTSA Drawing 175–6002). FTSS also recommends that the drawing dimension "Ø20.03" be replaced with "Ø20.03 ± 0.10" since this dimension cannot be controlled to a tolerance of ± 0.05. We also recommend the addition of dimension "R0.5" to better define this location for easier machining of this particular section of the part and to prevent breakage due to concentrated stresses.

NHTSA agrees that dimensions on this drawing should be consistent with those on Drawing 175–6002, Iliac Wing Assembly, Right. Therefore, we have tentatively determined that the dimension 17.0556 should be changed to (17), a reference dimension. Also, the suggested R0.5 dimension appears to be acceptable and would eliminate any sharp corners in this area. However, we do not agree that the ±0.05 tolerance on the "Ø20.03" dimension is restrictive. The tolerance is necessary in order to avoid a potential interference problem with the mating part, 175–6001, Bushing. In the course of investigating this comment, we determined that the current "Ø20.03 ± 0.05" dimension could also lead to interference, so we have changed it to "Ø20.05 ± 0.05." Apart from FTSS's comments, we noticed that the material reference block was mistakenly left blank. We therefore propose to specify the material to be "PU Resin" (polyurethane) which matches the material callout on for the right iliac wing, drawing 175–6002.

6. FTSS states:

> Drawing 175–6063, Femur Bearing Plate, Left. Fix typographical errors for drawing dimensions "17.5000 ± 0.0001" and "48.3000 ± 0.0001". The tolerances are too tight to reasonably achieve at four decimal places and would add unnecessary expense when making the part. FTSS recommends that these dimensions should be specified as "17.5 ± 0.5" and "48.3". These recommended dimensions would also match the existing dimensions on the Femur Bearing Plate, Right (NHTSA Drawing 175–6068).

NHTSA agrees with FTSS and proposes to change the "48.3000 ± 0.0001" dimension to "48.3." The 17.5000 dimension for hole depth in zone C–2 has been changed to (17.5) to indicate a reference since the depth is already called out in the hole size dimension in zone D–2. Also, NHTSA has fixed a typo in zone D–1 by eliminating an extra "R" in the R23.5 dimension.

7. "Drawing 175–6068, Femur Bearing Plate, Right. Fix typographical errors by removing the parenthesis from around dimensions '(48.3)' and '(17.5 ± 0.5)'. This will maintain consistency between NHTSA Drawings 175–6068 and 175–6063."

NHTSA agrees with FTSS that the 48.3 dimension should not be a reference dimension, and the parentheses indicating this is a reference dimension should be removed. However, NHTSA does not agree that the parentheses should be removed from '(17.5 ± 0.5)'. This should remain a reference dimension since the depth is already called out in the hole size dimension in zone D–2.

8. FTSS states:

> Drawing 175–6002, Iliac Wing Assembly, Right. FTSS recommends that the drawing

[1] That final rule adopting the ES–2re into 49 CFR part 572 was published December 14, 2006 (71 FR 75303, Docket No. NHTSA–04–25441).

dimension "Ø20.03" be replaced with "Ø20.03 ± 0.10" since this dimension cannot be controlled to ± 0.05. We also recommend the addition of dimension "R0.5" to better define this location for easier machining of this particular section of the part and to prevent breakage due to concentrated stresses.

As discussed in item 5 above, NHTSA agrees that defining a radius of 0.5 mm as suggested would be beneficial, but we do not agree that the tolerance of the Ø20.03 dimension should be increased to ±0.10. Furthermore, we have changed the dimension to "Ø20.05 ± 0.05" for the reasons cited in response to item 5.

9. FTSS states:

Drawing 175–2003, Plate, Neck Head & Torso Interface. FTSS recommends that NHTSA part number 5000049 Helicoil, M6 x 1 x 6, be replaced with part number 5000729 Helicoil M6 x 1 x 4.5 because the 5000049 Helicoil is too long and may not sit below the machined surface due to stack up tolerance of parts. FTSS also suggests the addition of dimension "4X R3.2 to the Surface" on Detail Z in order to clarify the dimension.

NHTSA concurs that, with regard to the Helicoil, Section C–C of the drawing shows that the thickness of the part in that section is 5 mm and thus the M6 x 1 x 6 helicoil (which is 6 mm in length) would be too long. We agree this part should be changed to "Helicoil, M6 x 1 x 4.5." In accordance with this change, part 5000729, Helicoil, M6 x 1 x 4.5, should replace part 5000049, Helicoil M6 x 1 x 6 on the parts/drawings list. With regard to the "4 x R3.2 to the Surface" note, we agree that this note is acceptable, as it defines a clearance space for the fastener.

10. FTSS states:

Drawing 175–3000, Shoulder Assembly. FTSS recommends that NHTSA part number 5000014 SHCS, M6 x 1 x 35, be replaced with part number 5000008 SHCS, M6 x 1 x 30 because the 5000014 SHCS is too long to properly secure the assembled parts. The M6 x 1 x 35 SHCS is supposed to secure the Shoulder Top Plate (175–3008) to the Shoulder Spacer Block (175–3002). However, the Shoulder Top Plate has a material thickness of 8 mm and the Shoulder Spacer Block has a material thickness of 25.5 mm. Together, the overall thickness of the combined parts is 33.5 mm—which is 1.5 mm shallower than the length of the 35 mm long SHCS. This will create a condition where the 35 mm SHCS will not clamp the parts properly. A M6 x 1 x 30 SHCS will provide a 3.5 mm clearance to the bottom of the threaded holes on the Shoulder Spacer Block and is therefore an appropriate fastener for this application.

NHTSA is denying this request. In determining that the 35 mm bolt specified in Item 17 is too long, FTSS apparently failed to recognize that the Neck Bracket (175–2501) also sits on top of the Shoulder Top Plate and the bolt in question passes through the flange of the Neck Bracket, which is 12 mm thick. Thus, the total stack height is 45.5 mm. This includes the Neck Bracket (12 mm), the Shoulder Top Plate (8 mm), and the Shoulder Spacer Block (25.5 mm). Thus, the 35 mm bolt is not too long, as FTSS suggests. We note that a 30 mm bolt, which FTSS recommends, would work for this application. However, the 35 mm bolt is a better choice because it provides more thread engagement with the Shoulder Spacer Block.

11. "Drawing 175–3011, CAM Buffer Pad. FTSS has noted that the current dimensions for this part have tolerances that are too tight to accurately control a molded part. We recommend that the NHTSA drawing dimensions: "Ø5.0", "90.0", "5.0", and "21.2 ± 0.2" be replaced with these dimensions: "Ø5", "90", "5", "21.2 ± 0.3"."

NHTSA agrees to the changes. Although this part is essentially a protection device for the shoulder cam clavicle, it does not need to be manufactured to exact tolerances. There are no critical fit issues with any of the dimensions listed in the request.

12. "Drawing 175–7058, Friction Plate Retaining Stud. FTSS believes that the Datum A tolerance of ".0003" for the perpendicular surfaces is unnecessarily tight at four decimal places. FTSS stated, "We recommend a tolerance of '.003' because the NHTSA tolerance is too tight to be reasonably measured and therefore accurately controlled. Furthermore, at tolerance of '.0003' would add unnecessary cost to the part."

The agency agrees that the tolerance is unnecessarily restrictive and can be changed to 0.003 in for the reasons listed by FTSS.

13. "Drawing 175–7085–1, Knee Flesh, Left. There is a note on the drawing that states: ¼″ OVER WIDTH "A" FOR 180°. But, "A" is not defined on the drawing. However, "A" is defined on the corresponding drawing 175–7085–2, Knee Flesh, Right. FTSS recommends that drawing 175–7085–1 be corrected to add a definition for "A" to match drawing 175–7085–2—which specifies that "A = 1¾″."

NHTSA agrees that the Knee Flesh Left and Right drawings should be consistent and therefore "A" be defined on Drawing 175–7085–1 as it is on 175–7085–2.

14. "Drawing 175–7090–1, Thigh Molded, Left. Fix typographical errors for drawing dimensions "(2x ØØ24)" and "(2x Ø14)". These dimensions should be listed as "(2x Ø24)" and "(2x14)". Removal of extra or redundant Ø symbol is required. This would also make this part consistent with the Thigh Molded, Right drawing (NHTSA Drawing 175–7090–2)."

NHTSA agrees that the (2x ØØ24) dimension should be changed to (2x Ø24) and that (2x Ø14) should be changed to (2x14).

15. "Drawing 175–9013, Bearing. The drawing has a reference to Note #2 in the revision record (REV B), but the note is missing from the "NOTES" field. FTSS recommends that the note be added to the note field, or the note reference be eliminated from the revision record."

NHTSA believes that revision record B is incorrect, and should be corrected to read "ADDED REF. TO MATERIAL SPECIFICATION".

16. "Drawing 175–9014, Pin Machined. Correct typographical error for missing revision indicator for REV B on the Material Reference. The revision record states "ADDED REF. TO MATERIAL SPECIFICATION"; however no revision reference bubble was added."

NHTSA agrees that a reference indicator for revision "B" should be added next to the material specification.

17. FTSS states:

Drawing 175–9027, Lower Mounting Base. FTSS recommends that the following NHTSA dimensions "92.5 +0/− 0.2", "66.5 +0/−0.2", and "4 x 6 x 45°" be replaced with "91.4 +0/−0.2", "66.0 +0/−0.2", and "4 x 9.7 x 45°" respectively. We recommend these changes due to the wider tolerances associated with typical product dimensions specified for the 3″ x 4″ tubular steel beam that the Lower Mounting Base fits into. These tolerances are typically ± 0.030 for the tubular beam so our recommended dimensional changes for the Lower Mounting Base is necessary to guarantee that the Lower Mounting Base will fit into the wide variety of pendulums beams in the marketplace.

Our decision at this point is not to agree with the requested dimensional changes. The parts presently owned by NHTSA, which were purchased from FTSS, do not meet the requested dimensions. They do, however, fall within the tolerances of the dimensions currently specified on the drawing. We have tentatively decided not to make the suggested change to this drawing.

18. FTSS states:

Drawing SA572–S71–1, Lower Neck Load Cell Assembly. FTSS recommends that specification of the part weight be correct[ed] to include the weight of the two connector/cable assemblies. The weight currently specified for this part in the NHTSA drawing is "0.8 lb./0.36 kg MAX." However, this weight does not include the weight of the electrical connector/cable assemblies. Since the cables are hard wired to the load cell, they need to be included in the total weight. Therefore, we request that the assembly weight be listed as "0.93 lb./0.42 kg MAX" to include the two cable assemblies.

We have some concerns about this recommendation. We concur that the currently specified weight, 0.8 lb/0.36 kg, is the nominal weight of the lower neck load cell only. It does not include the mass of the cable assemblies or the bracket. However, the critical mass is that of the entire assembly—not the load cell alone—as it should match the corresponding mass of the structural replacement (drawing 175–2501). Drawing SA572–S71–1 is aimed to allow some amount of design flexibility to accommodate load cells from different manufacturers. As long as the entire bracket assembly duplicates the geometry of the structural replacement, slight variations among load cell models are acceptable. With this consideration in mind, we propose making the specification for load cell weight a reference. This will allow load cell manufacturers to know the target weight for the load cell, but will not require that the weight be measured and verified by end users. We also note that the drawing would indicate that the reference weight specification applies to item 1 (the lower neck load cell) only, and not the entire assembly.

**III. Denton Requested Changes**

Denton requested the following 6 changes to the ES–2re drawing package. The petitioner's requests are set forth verbatim in the list below, and following each request is NHTSA's tentative decision on the request.

1. Denton states:

Drawing No. 175–1001: NHTSA drawing specifies the distance between the upper 2 holes to be 71.2 mm apart. The ES–2re skull dimensions are derived from the Hybrid III 50th dimensions. This dimension in the Hybrid III 50th drawing package is 2.800 inches, which converts to 71.1 mm. Additionally, the distance between the holes on the mating part (175–1003) is 71.12. Therefore, we would like to request that the dimension on the above referenced drawing be changed to 71.1.

NHTSA agrees that 71.1 mm is the correct dimension. Given the tolerances of the hole sizes, this will allow the skull and skull cap to match each other in assembly.

2. "Drawing No. 175–3017: NHTSA drawing specifies the material for this part to be "Moulded Ureol 100". This is a material manufactured by a single supplier. We would like to request that the specification for the material be more generic or add "Or Equivalent" to the specification."

We are denying the request as redundant. Because the drawing already indicates that this material is a reference for material selection and thus another equivalent material can be used, it is unnecessary to add "or equivalent."

3. "Drawing No. 175–4006: NHTSA drawing specifies 'Screw, SHCS M3 x .5 x 8' for item no. 18. We would like to request that the specification be changed to 'Screw, BHCS M3 x .5 x 8[']as a button head screw has more surface area under the head thus providing better clamping force and less distortion to part no. 175–4031."

NHTSA believes that the current socket head cap screw (SHCS) will work sufficiently, but agrees that a button head cap screw (BHCS) would also be acceptable. Therefore, we are keeping the part as a SHCS, but are adding an option to the drawing that allows use of the BHCS M3 x .5 x 8.

4. "Drawing No. 175–4012: NHTSA drawing calls out 4X M3 x .5 ISO—H Tap x 6.0 Deep. We would like to request that these tapped holes be made optional as they serve no purpose in the assembly of the dummy."

NHTSA agrees that these holes are not required for any functional purpose and should be specified as optional.

5. "Drawing Nos. 175–4040, 175–4041 & 175–4042: NHTSA drawing specifies that the free length tolerance should be +/− 1 mm. According to the Spring Manufacturers Institute (SMI), the normal commercial tolerance for the length should be +/− 3 mm when the spring index, length and number of coils are considered for these specific springs. Therefore, we would like to request that the free length tolerance be changed to +/− 3 mm."

NHTSA does not agree with this request. Increasing the tolerance of the free spring length could create problems with variation in dummy thoracic response, since these springs are part of the ES–2re rib modules. For example, if the free spring length is too long, this could lead to a large preload in the spring and greater resistance to compression. Conversely, if the free spring length is too short, the spring will offer less resistance to compression. Therefore, we are denying the request and are maintaining a spring length tolerance of +/− 1 mm.

6. Denton states:

Drawing Nos. 175–7053–1, 175–7053–3 & 175–7055: NHTSA drawing specifies [a] through hole diameter of .373 +.0005/ −.0000. We believe the hole diameter is too small and the tolerance is unnecessarily tight. At minimum diameter condition of the hole, a ⅜ diameter shoulder bolt may not go through. At the maximum diameter condition of the hole, assembly of the knee is still very difficult as there still may only be .0005 in. clearance. Therefore, we would like to request the hole diameter tolerance be changed to +.005/ − .000 on these three drawings.

NHTSA is denying this request. The ES–2re knee design is a carry-over from the Hybrid II dummy, Part 572 Subpart B. The design is also incorporated into the knee of the SID dummy, Subpart F. The knee plates are designed to provide a very tight fit, and careful selection of the bolt will allow the knee assembly to function properly. The SID has had many years of use, and we know of no reports of problems assembling the knee. Furthermore, Denton has not provided evidence that its request to allow a loose fit will not result in any performance degradation.

**IV. Corrections to Figure 22**

NHTSA observed that Figure 22, "Pendulum Specifications," of 49 CFR part 572 has several dimensional errors that need correction. This pendulum is used in neck qualification tests for the ES–2re as well as other adult crash test dummies, including the Hybrid III 50th percentile male and 5th percentile female frontal crash test dummies, the SID–IIsD 5th percentile female side impact dummy, and the SID and SID/HIII side impact crash test dummies. The dimensional corrections that should be made to this figure are listed below and shown in Figure 1 of this preamble, below:

- The 8.28 millimeter (mm) (32.6 inch (in)) dimension should be 828 mm (32.6 in);
- The 4.8 mm (188 in) dimension should be 4.8 mm (0.188 in);
- The 198.6 mm (7.75 in) dimension should be 196.8 mm (7.75 in).

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FIGURE 22

PENDULUM SPECIFICATIONS

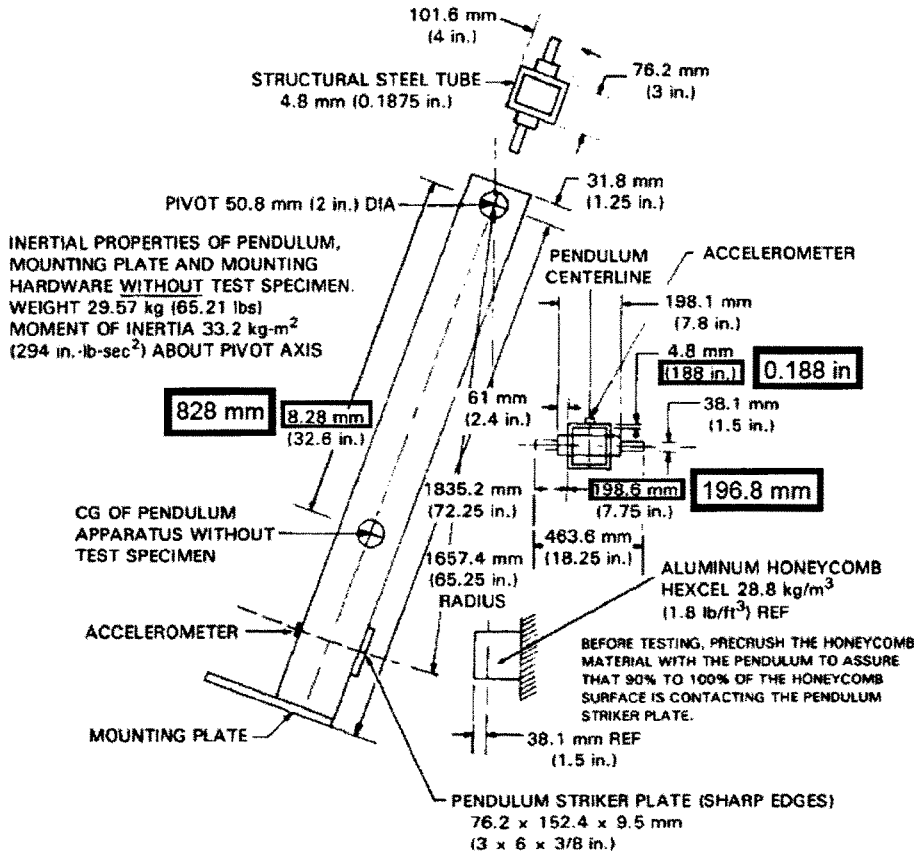


**Figure 1: Corrections to pendulum dimensions in Figure 22 of Section 572.33(c)(3)**

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## V. 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). This proposed rule would only correct or make slight changes to some of the drawings of the ES–2re test dummy. These changes would not affect the cost of the dummy. 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 correcting or making minor changes to the drawings would not impose any

requirements on anyone. NHTSA would not require anyone to manufacture or redesign the dummy.

*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.[2] 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 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 an 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 correcting or making minor changes to some of the drawings for a test dummy that the agency uses. If this proposed rule becomes final, it would affect, in a small manner, 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.

## VI. Public Participation

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your

[2] 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 an 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).

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 DEVICES

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 E—Hybrid III Test Dummy

2. In § 572.33, revise Figure 22 following paragraph (c)(3) to read as follows:

**§ 572.33 Neck.**

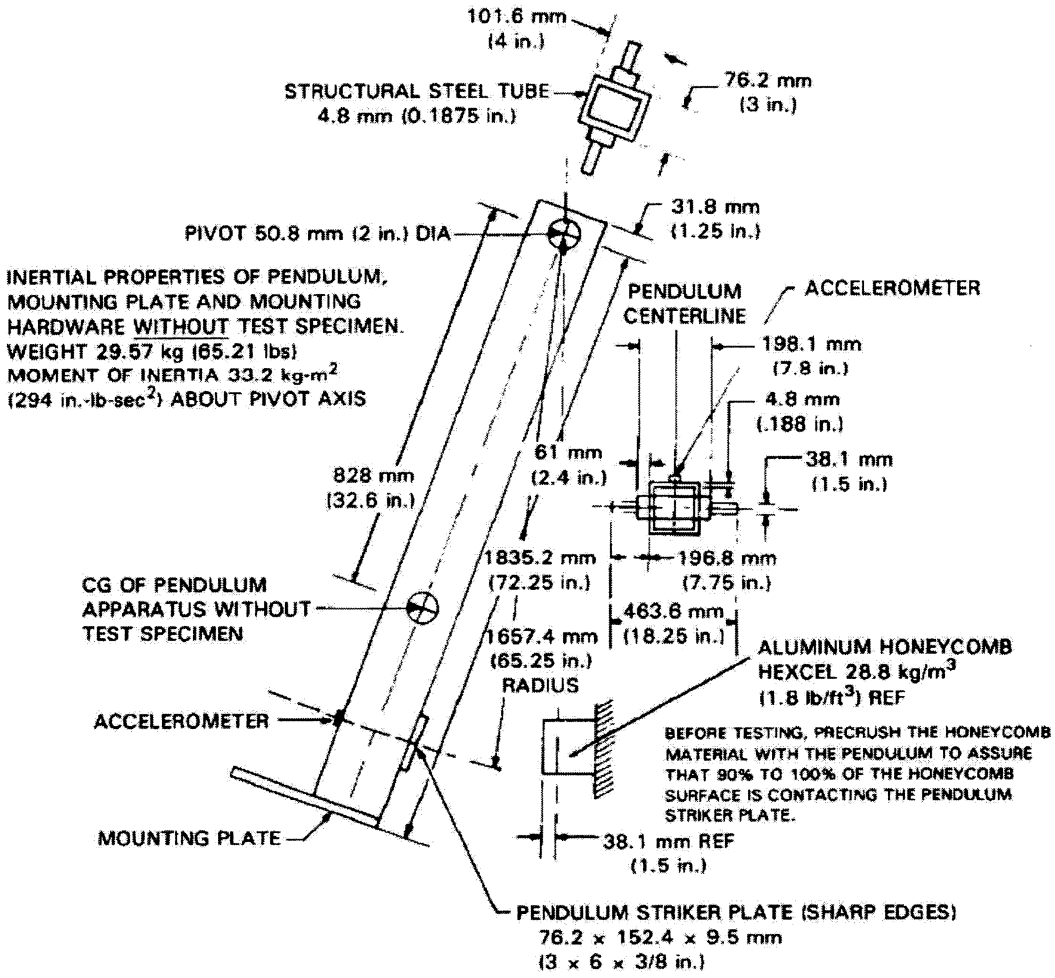
* * * * *

(c) * * *

(3) * * *

**FIGURE 22**

**PENDULUM SPECIFICATIONS**

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## Subpart U—ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male

3. Section 572.180 is amended by revising paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (c)(1), to read as follows:

**§ 572.180 Incorporated materials.**

(a) * * *

(1) A parts/drawing list entitled, "Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), September 2009,"

(2) A drawings and inspection package entitled "Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), September 2009," consisting of:

* * * * *

(c) * * *

(1) The Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re) referred to in paragraph (a)(1) of this section, the Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version) referred to in paragraph (a)(2) of this section, and the PADI document referred to in paragraph (a)(3) of this section, are available in electronic format through Regulations.gov and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, telephone (301) 670–0090.

* * * * *

4. Section 572.181 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 572.181 General description.**

(a) The ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male, is defined by:

(1) The drawings and specifications contained in the "Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), September 2009," incorporated by reference in § 572.180, which includes the technical drawings and specifications described in Drawing 175–0000, the titles of which are listed in Table A;

TABLE A

| Component assembly | Drawing No. |
|---|---|
| Head Assembly | 175–1000 |
| Neck Assembly Test/Cert | 175–2000 |
| Neck Bracket Including Lifting Eyebolt | 175–2500 |
| Shoulder Assembly | 175–3000 |
| Arm Assembly-Left | 175–3500 |
| Arm Assembly-Right | 175–3800 |
| Thorax Assembly with Rib Extensions | 175–4000 |
| Abdominal Assembly | 175–5000 |
| Lumbar Spine Assembly | 175–5500 |
| Pelvis Assembly | 175–6000 |
| Leg Assembly, Left | 175–7000–1 |
| Leg Assembly, Right | 175–7000–2 |
| Neoprene Body Suit | 175–8000 |

(2) "Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), September 2009," containing 9 pages, incorporated by reference in § 572.180,

(3) A listing of available transducers-crash test sensors for the ES–2re Crash Test Dummy is shown in drawing 175–0000 sheet 4 of 6, dated February 2008, incorporated by reference in § 572.180,

(4) Procedures for Assembly, Disassembly and Inspection (PADI) of the ES–2re Side Impact Crash Test Dummy, February 2008, incorporated by reference in § 572.180,

(5) Sign convention for signal outputs reference document SAE J1733 Information Report, titled "Sign Convention for Vehicle Crash Testing" dated December 1994, incorporated by reference in § 572.180.

(b) Exterior dimensions of ES–2re test dummy are shown in drawing 175–0000 sheet 3 of 6, dated February 2008.

(c) Weights of body segments (head, neck, upper and lower torso, arms and upper and lower segments) and the center of gravity location of the head are shown in drawing 175–0000 sheet 2 of 6, dated February 2008.

* * * * *

Issued: January 29, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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