

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 572**

[Docket No. NHTSA–2023–0031]

RIN 2127–AM20

Anthropomorphic Test Devices; THOR 50th Percentile Adult Male Test Dummy; Incorporation by Reference**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).**SUMMARY:** This document announces the availability of documents supplementing NHTSA's September 2023 notice of proposed rulemaking to amend NHTSA's regulations to include an advanced crash test dummy, the Test Device for Human Occupant Restraint 50th percentile adult male.**DATES:** The documents referenced in this notification will be available in the docket as of July 9, 2024. You should submit your comments early enough to be received not later than August 8, 2024.**ADDRESSES:** You may submit comments electronically to the docket identified in the heading of this document by visiting the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- **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. To be sure someone is there to help you, please call (202) 366–9826 before coming.

- **Fax:** (202) 493–2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. 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.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. You may also access the docket at 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.**Confidential Business Information:** If you claim that any of the information in your comment (including any additional documents or attachments) constitutes confidential business information within the meaning of 5 U.S.C. 552(b)(4) or is protected from disclosure pursuant to 18 U.S.C. 1905, please see the detailed instructions given under the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. 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 (Volume 65, Number 70; Pages 19477–78).**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Mr. Garry Brock, Office of Crashworthiness Standards, Telephone: (202) 366–1740; Email: Garry.Brock@dot.gov; Facsimile: (202) 493–2739. For legal issues, you may contact Mr. John Piazza, Office of Chief Counsel, Telephone: (202) 366–2992; Email: John.Piazza@dot.gov; Facsimile: (202) 366–3820. The address of these officials is: the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590.**SUPPLEMENTARY INFORMATION:** On September 7, 2023, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend NHTSA's regulations to

include an advanced crash test dummy, the Test Device for Human Occupant Restraint (THOR) 50th percentile adult male (THOR–50M). The dummy represents an adult male of roughly average height and weight and is designed for use in frontal crash tests. The documentation for the dummy, including detailed design information, engineering drawings, qualification tests, and procedures for assembly and inspection, would be incorporated by reference in 49 CFR part 572, Anthropomorphic Test Devices.

This document notices the availability of additional research reports and a memorandum of understanding that are being placed in the research and rulemaking dockets, respectively. These documents are briefly described below.

Research Reports

The NPRM referenced a variety of research NHTSA had conducted to support the development of the THOR–50M dummy. Most of this research was published or made available in the research docket before the NPRM was published. However, the NPRM noted that research in several areas was ongoing and that additional research reports would be docketed after the NPRM was published.

That research has been completed and NHTSA is now docketing the associated research reports. As we did for other research reports and documentation referenced in the NPRM, these reports are being placed in the research docket, Docket No. NHTSA–2019–0106, and not the docket for this rulemaking.¹ Nevertheless, NHTSA intends these documents to be included as part of the rulemaking record for this rulemaking action. The following documents are being docketed:

- “Comparison of the THOR–50M IR–TRACC Measurement Device to an Alternative S-Track Measurement Device”
- “Analysis of THOR–50M Alternate Configurations in Gold Standard Sled Testing”
- “Development of an Alternative Shoulder for the THOR–50M”
- “THOR–50M In-dummy Data Acquisition System Evaluation”

Memorandum of Understanding Regarding Intellectual Property of Humanetics

NHTSA is also placing in the rulemaking docket a memorandum of

¹ As we explained in the NPRM, NHTSA did not place the dummy documentation and related research reports in the docket for this rulemaking action to avoid potential confusion from having identical documents docketed at different times in different dockets. A memorandum explaining this determination was docketed along with the NPRM.

understanding between NHTSA and Humanetics concerning the use of Humanetics proprietary information in NHTSA rulemaking activities. Humanetics is a global industrial technology group (including Human Solutions, Avalution, mg-sensors, ADT-LabTech, Fibercore, HITEC Sensor Development, and OpTek Systems) that, among other things, develops and manufacturers crash test dummies and components used in those dummies.

As NHTSA explained in the NPRM, portions of the shoulder assembly specified in the 2018 drawing package (referred to as the SD-3 shoulder) are covered by a patent issued to Humanetics. NHTSA has generally avoided specifying in part 572 patented components or copyrighted designs without either securing agreement from the rights-holder for the free use of (or reasonable license to) the item or developing an alternative unencumbered by any rights claims. In the NPRM, NHTSA explained the reasons for taking this position. Among other things, proprietary components may be modified by the proprietary source such that the original is no longer available, and the new part no longer fits. The proprietary source also may alter the part in ways that change the response of the dummy, such that dummies with the newer part do not provide the same response as dummies with the older part.²

NHTSA therefore designed, built, and tested an alternative design for a part of the shoulder assembly referred to as the shoulder pivot assembly that is not subject to any intellectual property claims. The proposed drawing package (the 2023 drawing package) included specifications for the SD-3 shoulder pivot assembly as well as the alternate shoulder pivot assembly so that NHTSA could use either one. In the NPRM, NHTSA specifically solicited comment on whether the final drawing package should include the SD-3 shoulder, the alternate shoulder, or both.

After the NPRM was published, NHTSA staff discussed with Humanetics the disposition of its intellectual property claims on various anthropomorphic test devices, including the THOR-50M.³ Humanetics' designs and drawings may include information that is subject to patent rights and/or copyrights. Based on these discussions, NHTSA and Humanetics reached the following understanding with respect to

Humanetics proprietary information used either in an NPRM or final rule. (Below we briefly summarize this understanding; the full terms can be found in the Memorandum of Understanding.)

Under the Memorandum of Understanding, for proprietary information used as part of a NHTSA proposed rulemaking under part 572, NHTSA may use such information as long as the information includes language notifying the public that the design and/or drawings are property of Humanetics and are being provided by Humanetics to support evaluation and comment related to NHTSA's rulemaking process. Under the proposed rulemaking, design drawings may not be copied or used for any other purposes without the written consent of Humanetics and no license would be granted to any patented designs.

Under the Memorandum of Understanding, for proprietary information used in a final rule issued under part 572, no restrictions will apply to copyrighted design and drawings upon the effective date of the final rule, and all restrictive notices used in a proposal document will be removed in the final rule. Similarly, no restrictions will apply to the patented design upon the effective date of the final rule if the final rule does not specify the use of another design as an alternative to the patented design. Specifically, Humanetics will provide to NHTSA for each applicable patent either a notice of abandonment of that patent to the United States Patent and Trademark Office or a letter stating that that patent will not be enforced against any third-party use. Likewise, if no alternative design is specified, all restrictive notices used in the proposal document associated with the use of the patented design will be removed as part of the publication of the final rule. In that circumstance, Humanetics will provide NHTSA a notice confirming that no restrictions on patented designs will apply.

Based on the comments received to date, NHTSA notes a general preference for a single open-source shoulder design over a single proprietary shoulder or alternative designs. In line with these comments, and subject to the understanding reached with Humanetics, NHTSA has tentatively concluded that it would be preferable if the final rule specifies only the SD-3 shoulder. In addition, specifying only one shoulder design will help make the dummy responses more uniform. NHTSA seeks comment on this tentative conclusion.

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 agency name and the docket number or RIN 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.

If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition process, thus allowing NHTSA to search and copy certain portions of your submissions.

Please note that pursuant to the Data Quality Act, 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. OMB's guidelines may be accessed at <https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines>.

How can I be sure that my comments were received?

If you wish the Docket to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket will return the postcard by mail.

How do I submit confidential business information?

You should submit a redacted "public version" of your comment (including redacted versions of any additional documents or attachments) to the docket using any of the methods identified under **ADDRESSES**. This "public version" of your comment should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed have been redacted. See below for further instructions on how to do this.

You also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in part

² See Section VIII of the NPRM.

³ These discussions were a continuation of discussions NHTSA and Humanetics have had over the past several years regarding the use of its proprietary information in NHTSA rulemaking activities.

512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to part 512.8; and a certificate, pursuant to part 512.4(b) and part 512, appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].”

You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

Will the Agency consider late comments?

We will consider all comments received 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. You can arrange with the docket to be notified when others file comments in the docket. See www.regulations.gov for more information.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0224; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BE32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Barrens Topminnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Barrens topminnow (*Fundulus julisia*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1.5 acres (0.6 hectares) of spring pool and 11.4 miles (18.3 kilometers) of spring run in Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the Barrens topminnow.

DATES: We will accept comments received or postmarked on or before September 9, 2024. Comments

submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 23, 2024.

ADDRESSES:

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R4–ES–2023–0224, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2023–0224, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <https://www.fws.gov/office/tennessee-ecological-services> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2023–0224.

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R4–ES–2023–0224 on <https://www.regulations.gov> for a document that summarizes this proposed rule.