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 EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the final State Implementation Rule on low-income populations and minority populations and concluded that the SIR will potentially advance environmental justice causes (63 FR 57039, Oct. 23, 1998). Today's proposed amendments to the SIR will not affect these beneficial impacts on environmental justice causes.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

In developing this proposed rule, EPA consulted with various states and a state organization to enable them to provide meaningful and timely input in the development of this rule. EPA also worked closely with state governments in the development of the final SIR (63 FR 57039, Oct. 23, 1998).

Through notice, EPA sought input from small governments during the SIR rulemaking process. However, today's proposed rule to amend the SIR will not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Municipal solid waste landfills, Non-municipal solid waste, Non-hazardous solid waste, State permit program approval, Adequacy.

Dated: January 19, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–1907 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD–99–5038]

RIN 2133–AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment concerning whether MARAD should amend its cargo preference regulations governing the carriage of agricultural exports. Your comment is welcome on the questions listed below or on any aspect of MARAD's oversight of other governmental agencies' ocean shipping activities under the Cargo Preference Act of 1954, as amended by the Food Security Act of 1985. Such comments will be considered in any future decision by MARAD to initiate a rulemaking process applicable to the carriage of agricultural export cargoes. Present regulations and policies remain in force. This docket does not address the carriage of military cargoes.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than March 29, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document in your comments and submit your comments in writing to:

Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may call Docket Management at (202) 366–9324. You may visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366–5515. For legal issues, you may call Murray Bloom, Chief, Division of Maritime Assistance Programs of the Office of Chief Counsel at (202) 366–5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Comments

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.

We 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 two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management 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, Docket Management will return the postcard by mail.

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, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the agency consider late comments?

We will consider all comments that Docket Management 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 Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a proposed 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 Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on ''search.'' On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''MARAD–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

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.

The Cargo Preference Act of 1954, Pub. L. 83–664, 68 Stat. 832 (1954), amended the Merchant Marine Act, 1936, by adding Section 901(b), codified at 46 App. U.S.C. 1241(b) ('54 Act). The '54 Act applies:

> ''[w]henever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, * * *''

Government agencies are required to take such steps as may be necessary and practicable to assure that at least 50 percent of the gross tonnage of certain government-sponsored cargoes—

> '' * * * (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas. * * *''

The Food Security Act of 1985, Pub. L. 99–198, exempted certain agricultural export enhancement programs from cargo preference, but increased the U.S.-flag share of humanitarian food aid programs from 50 to 75 percent.

MARAD's oversight role in administration of cargo preference is founded on section 27 of the Merchant Marine Act of 1970, Pub. L. 91–469, which added the following subsection to section 901(b) of the Merchant Marine Act, 1936:

> ''Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.'' 46 App. U.S.C. 1241(b).

The Secretary of Transportation has delegated the authority under this provision to the Maritime Administrator. (49 CFR 1.66(e).) MARAD's regulations governing administration of cargo preference are located at 46 CFR part 381. Guidance as to the priority of a completely U.S.-flag service over a mixed U.S./foreign-flag service is contained in a policy letter issued on June 16, 1986.

MARAD is requesting comment on whether the regulations governing the '54 Act, last revised in 1996, should be updated. Comments are requested specifically on the questions presented below:

1. Clarification of §§ 381.4 and 381.5

Sections 381.4 and 381.5, which address liner and bulk vessels, respectively, relate to the requirement to fix American-flag tonnage prior to fixing foreign-flag vessels in order to ensure fair and reasonable participation of U.S.-

flag vessels. MARAD has interpreted these provisions to mean that at least 75 percent, as applicable to packaged or bulk agricultural products, of the freight generated by each commodity procurement transaction must be transported on U.S.-flag vessels. Doing so ensures that the shipper agencies meet their preference obligations on a current basis during the year. Some shipper agencies have argued that the language of the two sections may not support MARAD's interpretation, or in any event, should be modified to allow greater flexibility. On the other hand, the use of more direct language in §§ 381.4 and 381.5 may serve to quell confusion or doubt as the intent of these provisions. Accordingly, we request your comment on whether these two provisions should be clarified, and also whether the two provisions could be combined or otherwise revised.

2. Foreign-Flag Feeder Vessels

MARAD's guidance letter of June 16, 1986, summarizes the holdings of several long-standing decisions of the Comptroller General (B–145455, June 12, 1968; B–140872, May 10, 1960; B–165421, Dec. 23, 1968; and B–155185, Nov. 17, 1969) and provides that an ocean service which provides for U.S.-flag carriage for the entire voyage has preference over an ocean service which uses a foreign-flag vessel for a portion of the transportation. Only in the absence of all-U.S.-flag service is a mixed U.S.-flag/foreign-flag service considered to be in fulfillment of the requirements of cargo preference. When two mixed U.S.-flag/foreign-flag services are vying for the same shipment, the service that makes the greater use of U.S.-flag vessels (i.e., the service with the longer leg served by U.S.-flag vessels) wins the cargo.

Shipper agencies note that the guidance sometimes restricts their ability to ship cargo expeditiously and comply with cargo preference due to the paucity of direct U.S.-flag service and the relative abundance of mixed U.S.-flag/foreign-flag service. The shipper agencies complain that the added cost of all-U.S.-flag service over mixed U.S.-flag/foreign-flag service results in less funds being available for purchase of commodities. They also note that large, modern U.S.-flag container vessels cannot serve many of the recipient developing nation's ports, or do so economically due to lack of port facilities. Although 75 percent U.S.-flag carriage is statutorily required, there may be ways to achieve that required level of U.S.-flag participation in these cargoes while allowing better use of U.S.-flag vessels and more efficient routing of shipments. Accordingly, we seek your comment on whether MARAD may, and if so should, adopt new preference guidance, which may be incorporated into a rule, such as one that gives equal preference to all-U.S.-flag service and mixed U.S.-flag/foreign-flag service, but counts only the ton miles carried by the U.S.-flag vessel towards the goal of 75 percent U.S.-flag carriage. In other words, can performance by U.S.-flag vessels of 75 percent of the ton miles generated by the preference cargoes equate to fulfillment of the statutory requirement that U.S.-flag vessels carry 75 percent of the preference cargoes in consonance with the determinations of the Comptroller General?

3. Basis for Compliance Measurement

In addition to the 75 percent carriage requirement, the statute requires that U.S.-flag vessels be given fair and reasonable opportunity to transport such cargoes by liner, tanker and dry bulk vessels and by geographic areas. The geographic areas referred to in the statute are foreign geographic areas inasmuch as this provision is intended to ensure that U.S.-flag vessels participate in the long hauls as well as the short hauls.

The Food for Progress Act provides for the donation of food to emerging democratic nations. Section 416 of the Agriculture Act of 1949 provides for the donation of bulk grain and other surplus agricultural commodities. The foreign assistance programs, popularly known as ''PL–480,'' established by the Agricultural Trade Development and Assistance Act of 1954, as amended, consist of three titles. Title I provides concessional, long-term financing for the sale of U.S. agricultural commodities to friendly developing countries. Title II provides for the donation of packaged, processed and bulk commodities to least developed countries. Title III provides for the donation of food to least developed countries on a grant basis.

Compliance with cargo preference requirements for programs under Food for Progress and Section 416 has been measured on a country-by-country basis for each commodity procurement. Title I shipments are monitored by a more restrictive requirement that cargo reservation be measured on a purchase authorization basis by vessel type. Unlike other PL–480 programs, under Title I requirements, each commodity requires a separate purchase authorization. Only with regard to the Title II program has MARAD informally acquiesced to measurement of compliance on a ''global'' basis by vessel type. This program primarily ships numerous smaller parcels on liner vessels, where there is reduced likelihood of disadvantage accruing to the U.S.-flag carrier and greater difficulty by the program office in meeting compliance by country by vessel type.

We invite your comments on whether these compliance regimes should be maintained as is, and memorialized in regulations, standardized or consolidated or otherwise revised. Should performance in meeting preference standards for the Title II program be changed to a country by vessel type basis so as to conform to the requirements for other PL–480 programs?

4. Definition of ''Liner'' Vessel and ''Transshipment'

While the statute specifies that U.S.-flag carriers be given a fair and reasonable opportunity for the carriage of food aid cargo by liner, tanker and bulk vessel, the term ''liner'' does not connote or adequately define what is a liner vessel. The term ''liner'' relates to a type of service instead of a type of vessel. A vessel engaged in liner service, which is regularly scheduled service available for common carriage, may be a general cargo vessel, a breakbulk vessel, a container vessel or a tug/deck barge combination. Cargo shipped under liner service requirements for humanitarian aid programs are contracted for under booking notices, whereas freight for dry bulk or tanker vessels are subject to charter parties or contracts of affreightment. Use of the term ''liner'' in the statute, without further definition in the regulations, has led to administrative difficulties in adequately recording shipments subject to cargo preference. Therefore, we welcome your comments regarding whether MARAD should amend its regulations to define what type of vessels constitute or should be included under the term ''liner'' vessels for the purpose of measuring compliance under cargo preference.

Ocean transportation has changed dramatically since the cargo preference regulations were last revised. Containerization with hub and spoke networks, alliances and consortia now dominate the non-bulk trades. The commercial world and insurance underwriters now differentiate between ''transshipment'' and ''relay'' between vessels of the same transportation network manager. Should MARAD recognize and define ''relay'' versus ''transshipment?'' What should be those definitions? Should they apply only to containerized cargoes? What impact

would this have on preference cargo transportation?

5. Definition of Commercial Terms

The use of special government-defined terms of sale and transportation for preference cargoes sometimes creates confusion in the marketplace and increases costs. Commercial suppliers and carriers use commercial terms for the majority of their business but must use non-standard government terms when dealing with the U.S. Government. For example, the U.S. Department of Agriculture (USDA) and the Agency for International Development (AID) have defined the term ''FAS'' (free along side) to mean delivery to a point of rest in a terminal rather than the International Commercial Terms (Incoterms) definition of ''FAS (* * *named port)'' as ''alongside the vessel on the quay or in the lighters at the named port of shipment.'' As a result, MARAD interprets the government definition to not require that a vessel physically call at the port whereas the commercial Incoterm definition requires a physical vessel call. Similarly, USDA and AID use other non-standard terms, such as ''Intermodal-Plant'' and ''Intermodal-Point'' with different buyer/seller/carrier responsibilities than the commercial Incoterm ''EXWorks (. . .named place).''

We welcome your comments on whether MARAD should require the use of commercial terms for cargo preference transactions. Would this clarify the sales and transportation requirements? Would it simplify the process and reduce overall government costs?

6. Commercial Practices

The use of non-commercial practices in government cargo preference transportation contracts may be reducing competition and increasing costs. For example, USDA and AID transportation contracts do not follow the general commercial practices of ''freight earned upon loading'' and ''freight payable on loading,'' or ''free-in and out'' for dry bulk charters. As a result, the ocean carrier has to finance the costs of moving these government agricultural cargoes. Those added financial costs to the carrier are reflected in higher freight rates borne by the Government.

Should MARAD require the use of commercial practices in the transportation of preference cargoes? If so, what commercial practices should be implemented? Would such commercial practices simplify the transportation contracts and reduce costs to the Government?

7. Other Issues

This request for comments concerning the desirability of rulemaking is not limited to the foregoing. MARAD also seeks comments and/or suggestions concerning other issues that may affect the implementation of the cargo preference statutes and whether MARAD's regulations should be amended or modified in light of such issues.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

If a rule is actually promulgated, we may consider it an economically significant regulatory action under section 3(f) of E.O. 12866. In the event that MARAD decides to proceed with a rulemaking, we will prepare a preliminary regulatory evaluation that reflects the comments to this advance notice of proposed rulemaking.

Federalism

MARAD has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration will evaluate any future proposed rule under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, to certify whether any rule that might be promulgated subsequent to this advance notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. Companies providing the carriage of preference cargoes generally are not small entities.

EIS

Any rule that might be subsequently promulgated would not be expected to significantly affect the environment. Accordingly, an Environmental Impact Statement may not be required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

We would evaluate any rule that might be promulgated to determine whether it would be expected to significantly change the current requirement for the collection of information.

By order of the Maritime Administrator.

Dated: January 25, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–2046 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–99–5032]

RIN 2127–AG 77

Anthropomorphic Test Dummy; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adopt design and performance specifications for a new 3-year-old child dummy. The agency believes that the new dummy, part of the family of Hybrid III test dummies, is more representative of humans than the existing 3-year old child dummy specified by agency regulations. Further, it allows the assessment of the potential for more types of injuries. The new dummy is especially needed to evaluate the effects of air bag deployment on out-of-position children. It would also provide greater and more useful information in a variety of environments to better evaluate child safety. Adopting the dummy would be the first step toward using the dummy to evaluate the safety of air bags for children. The issue of specifying use of the dummy in determining compliance with performance tests, e.g., as part of the agency's occupant protection standard and/or child restraint standard, is being addressed in other rulemakings, most notably the proposed advanced air bag rulemaking currently pending before the agency.

DATES: Comments must be received by March 29, 1999.

ADDRESSES: Comments should refer to the docket number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912).