ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

Alabama: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization.

SUMMARY: The Environmental Protection Agency (EPA) is granting Alabama final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on December 10, 2018 and provided for public comment. The Agency received three comments in support of authorizing the Alabama program changes. These comments can be reviewed in the docket for this action under Docket ID No. EPA–R04–RCRA–2018–0529. No further opportunity for comment will be provided.

DATES: This final authorization is effective April 19, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R04–RCRA–2018–0529. All documents in the docket are listed on the http://www.regulations.gov website. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

A. What changes to Alabama’s hazardous waste program is EPA authorizing with this action?

Alabama submitted final complete program revision applications, dated November 2, 2016 and May 11, 2018, seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. EPA now makes a final decision that Alabama’s hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this Final Authorization, please see the proposed rule published in the December 10, 2018 Federal Register at 83 FR 63461.

B. What is codification and is EPA codifying Alabama’s hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not codifying the authorization of Alabama’s revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart B for the authorization of Alabama’s program changes at a later date.

C. Statutory and Executive Order Reviews

This final authorization revises Alabama’s authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the Proposed Rule published in the December 10, 2018 Federal Register at 83 FR 63461. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other related information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final action will be effective April 19, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Mary S. Walker,
Acting Regional Administrator, Region 4.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

42 CFR Part 84

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2018–0003; NIOSH–309]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2018–0068; NIOSH–318]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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[Docket No. CDC–2018–0068; NIOSH–318]

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42 CFR Part 84

[Docket No. CDC–2018–0068; NIOSH–318]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2018–0068; NIOSH–318]
used by miners and other workers to escape dangerous atmospheres.

Since the publication of an April 2017 guidance document in which NIOSH announced its intent not to revoke any certificate of approval for subpart H 1-hour SCSRs manufactured, labeled, or sold prior to June 1, 2019,3 no new CCER approvals have been issued by the NIOSH National Personal Protective Technology Laboratory. Accordingly, NIOSH determined that removing further restrictions on manufacturers’ abilities to manufacture, label, or sell subpart H SCSRs is necessary for the safety of underground coal miners who rely on these devices. HHS published an NPRM in October 2018 to propose revising 42 CFR part 84 to allow the continued manufacturing, labeling, and sale of subpart H SCSRs with current certificates of approval, indefinitely. The need for this rulemaking is discussed in greater detail in the NPRM, available in the docket for this action. HHS also published a March 2018 NPRM to propose the clarification of regulatory text that failed to specify that neither the human subject trials described in 42 CFR 94.303–94.305, nor the environmental conditioning described in § 84.305, would be conducted on post-market respirators (through the NIOSH National Personal Protective Technology Laboratory’s Long-Term Field Evaluation program) except at NIOSH’s discretion.

IV. Summary of Public Comments and HHS Response

Three comments were received on the CCER compliance deadline NPRM. All three commenters support the HHS proposal to remove the regulatory language in §§ 84.70 and 84.301 to allow the indefinite manufacturing, labeling, and sale of approved subpart H SCSRs.

One of the commenters expressed concern about whether subpart H SCSRs were available in sufficient quantity to replenish the portion of the inventory that reached the end of its service life in 2017 and 2018. The commenter asked that NIOSH coordinate with MSHA to determine whether a sufficient number of SCSRs will be produced to replace retiring units.

Throughout the history of this action, at no time was the manufacturing, labeling, or sale of 1-hour SCSRs for mining prohibited by the changing compliance deadline. HHS is not aware that either SCSR manufacturer stopped production because of the compliance deadline extensions, and neither company has indicated to NIOSH that it was unable to fill orders to replace out-of-date units. NIOSH has and will continue to work closely with respirator manufacturers and other industry stakeholders to ensure the uninterrupted supply of NIOSH-approved escape respirators.

V. Summary of Final Rule

For the reasons discussed in the NPRM published in October 2018, NIOSH has determined that removing further restrictions on manufacturers’ abilities to manufacture, label, or sell subpart H SCSRs is necessary for the safety of underground coal miners who rely on these devices. Therefore, with this final rule HHS now allows the continued manufacturing, labeling, and sale of subpart H SCSRs with current certificates of approval, indefinitely. No new approvals under subpart H will be issued. Accordingly, § 84.70 is revised by removing paragraph (a), which was added in 2012 to limit the scope of subpart H to open-circuit escape respirators and those closed-circuit escape respirators approved under subpart H. Removing this paragraph alleviates any confusion about the applicability of subpart H. The remainder of the section is unchanged but for the following paragraphs being redesignated (a) through (d).

Paragraph § 84.301(c) is redesignated as paragraph (a) and revised to state plainly that any CCER approvals issued after April 9, 2012, the original effective date for the subpart O standards, must comply with the technical requirements of subpart O. Paragraph § 84.301(a) is redesignated as paragraph (b) and is revised to indicate that the manufacturing, labeling, and sale of SCSRs already holding a subpart H approval for units intended to be used in mining may continue indefinitely. Finally, paragraph § 84.301(b) is redesignated as paragraph (c) and revised to state that major modifications to a design approved under subpart H will render that approval obsolete. In that case, the entire resulting redesign must fully meet the technical requirements of subpart O and the manufacturer will be issued a new approval accordingly.

For the reasons discussed in the March 2018 NPRM, HHS is revising 42 CFR 84.310 to clarify that neither human subject testing nor environmental testing is required to be routinely conducted on respirators obtained by the NIOSH National
would save $179.15 per unit by not purchasing the subpart O CCER. By not
replacing the subpart H 10-minute SCSR manufactured by Ocenco, the M 20.2,
with the subpart O Cap 1 CCER, the M 20.3, mine operators would save $81.00
per unit. By eliminating the compliance deadline requiring coal mine operators
to purchase newer Subpart O Cap 3 CCERs to replace older Subpart H 1-
hour SCSRs that have reached the end of their service life, HHS estimates that
mine operators may experience a cost savings between approximately $16
million and $20 million over the course of the 15 years that subpart H SCSRs
must be replaced (see Tables 2 and 3). This is likely an over-estimate, since it
is foreseeable that the cost of subpart O CCERs and the number of coal miners
who must be supplied with escape respirators will both decrease in future years.

### Table 1—Current Prices of Subpart H SCSRs and Subpart O CCERs

<table>
<thead>
<tr>
<th>Respirator type</th>
<th>Reservoir model</th>
<th>Per unit cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subpart H 1-hour</td>
<td>SRLD</td>
<td>$854.05</td>
</tr>
<tr>
<td></td>
<td>EBA 6.5</td>
<td>673.00</td>
</tr>
<tr>
<td></td>
<td>SR 2000</td>
<td>831.25</td>
</tr>
<tr>
<td>Subpart O Cap 3</td>
<td>EBA 7.5</td>
<td>852.15</td>
</tr>
<tr>
<td></td>
<td>M 20.2</td>
<td>408.00</td>
</tr>
<tr>
<td>Subpart H 10-minute</td>
<td>M 20.3</td>
<td>489.00</td>
</tr>
</tbody>
</table>

Because the price of a subpart H 1-hour SRLD is greater than the price of
a comparable subpart O Cap 3 SR 2000, the portion of the coal mining respirator
market relying on the SRLD models is not affected and hence was not included
in this analysis. HHS found that, because the subpart H 1-hour SCSR manufactured by
Ocenco Inc., the EBA 6.5, costs less than the subpart O Cap 3 CCER, the EBA 7.5, mine operators
would save $179.15 per unit by not
TABLE 2—COST SAVED BY NOT REPLACING SUBPART H 1-HOUR SCSRs WITH SUBPART O CAP 3 CCERS
[2018 $]

<table>
<thead>
<tr>
<th>Year</th>
<th># deployed EBA 6.5 units to be replaced with EBA 7.5 units</th>
<th>Undiscounted ($)</th>
<th>Discounted 3% ($)</th>
<th>Discounted 7% ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>266</td>
<td>47,653.90</td>
<td>76,358.23</td>
<td>73,503.35</td>
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<tr>
<td>2020</td>
<td>439</td>
<td>78,646.85</td>
<td>121,522.71</td>
<td>126,811.87</td>
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<tr>
<td>2021</td>
<td>4,101</td>
<td>734,694.15</td>
<td>1,152,636.20</td>
<td>1,167,844.72</td>
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<tr>
<td>2022</td>
<td>11,865</td>
<td>2,125,614.75</td>
<td>3,090,106.06</td>
<td>3,187,445.62</td>
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<tr>
<td>2023</td>
<td>12,131</td>
<td>2,173,268.65</td>
<td>3,256,408.53</td>
<td>3,357,841.02</td>
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<tr>
<td>2024</td>
<td>7,843</td>
<td>1,405,073.45</td>
<td>2,107,011.02</td>
<td>2,205,011.02</td>
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<tr>
<td>2025</td>
<td>12,781</td>
<td>2,289,716.15</td>
<td>3,437,714.90</td>
<td>3,540,607.07</td>
</tr>
<tr>
<td>2026</td>
<td>24,943</td>
<td>4,468,538.45</td>
<td>6,552,807.64</td>
<td>6,776,151.50</td>
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<tr>
<td>2027</td>
<td>15,908</td>
<td>2,849,918.2</td>
<td>4,274,877.32</td>
<td>4,490,265.53</td>
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<tr>
<td>2028</td>
<td>14,429</td>
<td>2,584,955.35</td>
<td>3,882,433.75</td>
<td>4,100,151.98</td>
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<tr>
<td>2029</td>
<td>6,795</td>
<td>1,217,324.25</td>
<td>1,758,045.50</td>
<td>1,854,315.37</td>
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<tr>
<td>2030</td>
<td>4,114</td>
<td>737,023.10</td>
<td>1,044,534.45</td>
<td>1,135,772.14</td>
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<td>2031</td>
<td>9,130</td>
<td>1,635,639.50</td>
<td>2,353,454.05</td>
<td>2,522,023.19</td>
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<td>2032</td>
<td>8,531</td>
<td>1,528,328.65</td>
<td>2,145,029.48</td>
<td>2,325,555.29</td>
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<tr>
<td>2033</td>
<td>1,775</td>
<td>317,991.25</td>
<td>473,086.88</td>
<td>514,293.61</td>
</tr>
</tbody>
</table>

Total cost savings .................................................................................................................. 24,194,386.65 19,475,327.54 14,935,657.85

TABLE 3—COST OF REPLACING SUBPART H 10-MINUTE SCSRs WITH SUBPART O CAP 1 CCERS
[2018 $]

<table>
<thead>
<tr>
<th>Year</th>
<th># deployed M 20.2 units to be replaced with M 20.3 units</th>
<th>Undiscounted ($)</th>
<th>Discounted 3% ($)</th>
<th>Discounted 7% ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>16</td>
<td>1,296.00</td>
<td>1,584.80</td>
<td>1,601.12</td>
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<tr>
<td>2020</td>
<td>35</td>
<td>2,835.00</td>
<td>3,492.27</td>
<td>3,492.27</td>
</tr>
<tr>
<td>2021</td>
<td>653</td>
<td>52,893.00</td>
<td>68,466.65</td>
<td>68,466.65</td>
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<tr>
<td>2022</td>
<td>1,070</td>
<td>86,670.00</td>
<td>106,660.20</td>
<td>106,660.20</td>
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<tr>
<td>2023</td>
<td>874</td>
<td>70,794.00</td>
<td>88,708.60</td>
<td>88,708.60</td>
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<tr>
<td>2024</td>
<td>462</td>
<td>37,422.00</td>
<td>47,142.80</td>
<td>47,142.80</td>
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<tr>
<td>2025</td>
<td>1,504</td>
<td>121,824.00</td>
<td>149,565.00</td>
<td>149,565.00</td>
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<tr>
<td>2026</td>
<td>3,647</td>
<td>295,407.00</td>
<td>368,529.28</td>
<td>368,529.28</td>
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<tr>
<td>2027</td>
<td>2,551</td>
<td>206,631.00</td>
<td>254,395.60</td>
<td>254,395.60</td>
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<tr>
<td>2028</td>
<td>2,076</td>
<td>168,156.00</td>
<td>213,422.60</td>
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<tr>
<td>2029</td>
<td>2,412</td>
<td>195,372.00</td>
<td>244,123.60</td>
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<tr>
<td>2030</td>
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<td>257,580.00</td>
<td>317,304.60</td>
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<tr>
<td>2031</td>
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<td>215,379.00</td>
<td>264,392.70</td>
<td>264,392.70</td>
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<tr>
<td>2032</td>
<td>1,318</td>
<td>106,758.00</td>
<td>134,755.20</td>
<td>134,755.20</td>
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<tr>
<td>2033</td>
<td>602</td>
<td>48,762.00</td>
<td>61,426.30</td>
<td>61,426.30</td>
</tr>
</tbody>
</table>

Total cost savings .................................................................................................................. 1,867,779.00 1,407,897.86 982,781.41

Because OMB has determined that this rulemaking is not significant, pursuant to E.O. 12866, and because it is both a deregulatory action and does not impose costs, OMB has determined that this rulemaking is exempt from the requirements of E.O. 13771. Thus it has not been reviewed by OMB.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. HHS certifies that this rule has “no significant economic impact upon a substantial number of small entities” within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. In accordance with section 3507(d) of the PRA, HHS has determined that the Paperwork Reduction Act does apply to information collection and recordkeeping requirements included in this rulemaking. The Office of Management and Budget (OMB) has already approved the information collection and recordkeeping requirements under OMB Control Number 0920–0109, Information Collection Provisions in 42 CFR part 84—Tests and Requirements for Certification and Approval of Respiratory Protective Devices (expiration date 4/30/2021). The revisions in this rulemaking would not impact the collection of data.
E. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), HHS will report the promulgation of this rule to Congress prior to its effective date.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 et seq.) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector “other than to the extent that such regulations incorporate requirements specifically set forth in law.” For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local, or Tribal governments in the aggregate, or by the private sector.

G. Executive Order 12988 (Civil Justice Reform)

This rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13132 (Federalism)

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” The rule would 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.”

I. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

J. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule would not have a significant adverse effect.

K. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS has attempted to use plain language in promulgating the rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 42 CFR Part 84

Mine safety and health, Occupational safety and health, Personal protective equipment, Respirators.

Final Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 84 as follows:

PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

§ 84.301 Applicability to new and previously approved CCERs.

(a) Any CCER approval issued after April 9, 2012 must comply with the technical requirements of subpart O.

(b) The continued manufacturing, labeling, and sale of closed-circuit apparatus previously approved under subpart H is authorized for units required for use in underground coal mines pursuant to 30 CFR 75.1714–1.

(c) Any manufacturer-requested modification to a device approved under the subpart H technical requirements must comply with the subpart H technical requirements and address an identified worker safety or health concern to be granted an extension of the NIOSH approval. Major modifications to the configuration that will result in a new approval must meet and be issued approvals under the requirements of this subpart O.

4. Amend § 84.310 by revising paragraph (e), removing paragraph (d), and redesignating paragraphs (e) through (g) as (d) through (f).