

US EPA ARCHIVE DOCUMENT

Dated: November 30, 2010.

**Eric A. Washburn,**

*Bridge Administrator.*

[FR Doc. 2010-30928 Filed 12-8-10; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R10-RCRA-2010-0947; FRL-9236-8]

### Oregon; Correction of Federal Authorization of the State's Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On January 7, 2010, EPA published a final rule under docket EPA-R10-RCRA 2009-0766 granting final authorization for changes the State of Oregon made to its federally authorized RCRA Hazardous Waste Management Program. These authorized changes included, among others, the federal Recycled Used Oil Management Standards; Clarification rule, promulgated on July 30, 2003. During a post-authorization review of the State of Oregon's regulations, EPA identified that the Oregon Administrative Rules (OAR), related to the federal used oil management requirements (OAR 340-100-0002), had not been updated to include the adoption of the federal Recycled Used Oil Management Standards; Clarification rule. Therefore, the State did not have an effective state rule and EPA inaccurately referenced this rule in the State's Final Authorization Action published and effective on January 7, 2010. This action will correct the State of Oregon's federally authorized program, by removing the inaccurate authorization reference to the Federal Recycled Used Oil Management Standards; Clarification rule.

**DATES:** This rule is effective February 7, 2011, unless the EPA receives adverse comment on this revision by the close of business January 10, 2011. If the EPA receives such comments, EPA will publish a timely withdrawal of this direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2010-0947, by one of the following methods:

- <http://www.regulation.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [Kocourek.Nina@epa.gov](mailto:Kocourek.Nina@epa.gov).

- *Mail:* Nina Kocourek, U.S.

Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics, Mail Stop AWT-122, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-RCRA-2010-0947. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>

or in hard copy during normal business hours at the U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics, Mailstop AWT-122, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, contact: Nina Kocourek, phone

number: (206) 553-6502; or the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon, 97204, contact: Scott Latham, phone number: (503) 229-5953.

#### FOR FURTHER INFORMATION CONTACT:

Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT-122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, *phone number:* (206) 553-6502, *e-mail:* [kocourek.nina@epa.gov](mailto:kocourek.nina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 268, 270, 273, and 279.

##### B. What decisions have we made in this rule?

This action will correct the State of Oregon's federally authorized program by removing the inaccurate authorization reference to the Federal Recycled Used Oil Management Standards; Clarification rule promulgated on July 30, 2003 (68 FR 44659) pursuant to the Final Authorization Rule promulgated and effective on January 7, 2010 (75 FR 918) under docket EPA-R10-RCRA-2009-0766. During a post-authorization review of the State of Oregon's regulations, EPA identified that the Oregon Administrative Rules (OAR), related to the federal used oil management requirements (OAR 340-100-0002), had not been updated to include the adoption of the Federal Recycled Used Oil Management Standards; Clarification rule. Therefore, the State did not have an effective state rule and EPA inaccurately referenced this rule in the State's Final Authorization Action published and effective on January 7, 2010.

The Federal Recycled Used Oil Management Standards; Clarification rule addresses three aspects of the used

oil management standards: (1) It clarifies when used oil contaminated with PCBs is regulated under RCRA used oil management standards and when it is not; (2) It explains that used oil mixed with Conditionally Exempt Small Quality Generators (CESQG) waste is subject to RCRA used oil management standards irrespective of how this mixture is to be recycled; (3) It explains that the initial marketer of on-specification used oil must keep a record of the shipment of used oil to the facility to which the initial marketer delivers the used oil. The Federal Used Oil Management Standards; Clarification rule (68 FR 44659, July 30, 2003) is promulgated pursuant to non-HSWA authority and is no more stringent than the current Federal requirements. This federal rule is considered to be an optional rule which States are not required to adopt and seek authorization for this rule, although the State of Oregon intends to revise its OAR to adopt the Federal Recycled Used Oil Management Standards; Clarification rule (68 FR 44665) at a later date.

With this correction to Oregon's federally authorized RCRA Hazardous Waste Management Program, the State will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country (18 U.S.C. 1151), and for carrying out the aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oregon, including issuing permits, until the State is granted authorization to do so.

### C. What is the effect of this authorization decision?

This action will correct the State of Oregon's federally authorized program by removing the inaccurate authorization reference to the Federal Recycled Used Oil Management Standards; Clarification rule promulgated on July 30, 2003 (68 FR 44659), from the State of Oregon's Federally Authorized Program Authorization Revision Final Rule, promulgated and effective on January 7, 2010 (75 FR 918). The effect of this action is a facility in Oregon subject to RCRA will have to comply with the

accurately identified authorized State requirements in order to comply with RCRA. Such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Oregon continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This revision will not impose additional requirements on the regulated community.

### D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before today's rule because we view this as a correction to the existing federally authorized program and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of today's **Federal Register**, we are publishing a separate document that proposes to correct Oregon's federally authorized program. If we receive comments, which oppose this authorization, that document will serve as a proposal to authorize these changes.

### E. What happens if EPA receives comments on this action?

If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on the proposed rule in this **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

### F. What has Oregon previously been authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA

granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); September 10, 2002, effective September 10, 2002 (67 FR 57337); June 26, 2006, effective June 26, 2006 (71 FR 36216); and January 7, 2010, effective January 7, 2010 (75 FR 918).

### G. What changes are we authorizing with this action?

On January 7, 2010, EPA published a final rule under docket EPA-R10-RCRA 2009-0766 granting final authorization for changes the State of Oregon made to its federally authorized RCRA Hazardous Waste Management Program. These authorized changes included, among others, the Federal Recycled Used Oil Management Standards; Clarification rule, promulgated on July 30, 2003. This action will remove the inaccurate authorization reference to the Federal Recycled Used Oil Management Standards; Clarification rule, promulgation on July 30, 2003 (68 FR 44659) from the State of Oregon's federally authorized RCRA Hazardous Waste Management Program.

### H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no substantive requirements are a part of this correction. Oregon will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Oregon for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

**I. What is codification and is EPA codifying Oregon's hazardous waste program as authorized in this proposed rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart MM for codification to a later date.

**J. How would authorizing Oregon for this correction affect Indian country (18 U.S.C. 1151) in Oregon?**

Oregon is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon; (2) any land held in trust by the U.S. for an Indian tribe; and (3) any other land, whether on or off an Indian reservation, that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program on these lands.

**K. Statutory and Executive Order Reviews**

This action corrects the State of Oregon's federally authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This action complies with applicable executive orders and statutory provisions as follows:

**1. Executive Order 12866**

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

**2. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not establish or modify any information or recordkeeping requirements for the regulated community. EPA has determined that it is not subject to the provisions of the Paperwork Reduction Act.

**3. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to

prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the action will only have the effect of correcting pre-existing authorized requirements under State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

**4. Unfunded Mandates Reform Act**

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. This action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, EPA has determined that the requirements of section 203 of the UMRA do not apply to this action.

**5. Executive Order 13132: Federalism**

This action does not have federalism implications. It will 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action authorizes preexisting State rules. Therefore, EO 13132 does not apply to this action. Although section 6 of EO 13132 does not apply to this action, because EPA did consult with officials of the State of

Oregon, Department of Environmental Quality in developing this action.

**6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

This action does not have tribal implications, as specified in Executive Order 13175. This action revises an existing authorized State hazardous waste program in Oregon. This action does not have tribal implications, as specified in EO 13175 because EPA retains its authority over Indian County. Thus, EPA has determined that EO 13175 does not apply to this action.

**7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it corrects an approved state program.

**8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a "significant regulatory action" as defined under EO 12866.

**9. 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 EPA to use voluntary consensus standards in its regulatory activities unless to do 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 bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards bodies. EPA has determined that this action does not involve "technical standards" as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

**10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses a revision of the authorized hazardous waste program in the State of Oregon. EPA has determined that the action is not subject to EO 12898.

**11. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 required 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 action will be effective February 7, 2011.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—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, 6974(b).

Dated: December 1, 2010.

**Dennis J. McLerran,**

*Regional Administrator, EPA Region 10.*

[FR Doc. 2010-31012 Filed 12-8-10; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 572**

[Docket No. NHTSA-2010-0147]

**RIN 2127-AK34**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule makes two changes to the agency's specifications for the Hybrid III six-year-old child dummy, and the Hybrid III six-year-old weighted child test dummy. First, to improve the durability of the dummies' femurs we are changing the design of and material used for the femur assembly. Second, we correct the drawings for the abdomen insert so that the abdominal insert dimensions on the drawings reflect actual parts in the field. The correction responds to a petition for rulemaking submitted by Denton ATD and First Technology Safety Systems.

**DATES:** The effective date of this final rule is June 7, 2011. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 7, 2011.

**Petitions for reconsideration:** Petitions for reconsideration of this final rule must be received not later than January 24, 2011.

**Privacy Act:** Anyone is able to search the electronic form of all submissions 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).

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety

Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. (A copy of the petition will be placed in the docket.)

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Peter Martin, NHTSA Office of Crashworthiness Standards (telephone 202-366-5668) (fax 202-493-2990). For legal issues, you may call Deirdre Fujita, NHTSA Office of Chief Counsel (telephone 202-366-2992) (fax 202-366-3820). The mailing address for these officials is the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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**I. Overview**

This final rule makes two changes to the agency's specifications for the Hybrid III six-year-old child dummy (HIII-6C) set forth in 49 CFR part 572, Subpart N, and for the Hybrid III six-year-old weighted child test dummy (HIII-6CW) in 49 CFR part 572, Subpart S. The notice of proposed rulemaking (NPRM) upon which this final rule is based was published October 21, 2009, 74 FR 53987, Docket No. NHTSA-09-0166.

First, to improve the durability of the dummies' femurs, we are changing the design of and material used for the femur assembly. The primary modifications include the addition of a ¼-inch (6.35 millimeter (mm)) fillet between the femur clamp and the connecting segment (these components are described in detail in section II.b of the NPRM preamble) of the machined femur, removal of material from the connecting segment, and a material change from aluminum bronze to 4340 steel. These changes are made by replacing the drawings of the femur in