



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R10-OAR-2026-0365; FRL-13196-01-R10]

Approval and Promulgation of Delegation of Authority for Designated Facilities and Pollutants; Washington; Southwest Clean Air Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving delegation of authority to the Southwest Clean Air Agency (SWCAA) for implementing and enforcing the Federal plan requirements for several categories of incineration units, specifically hospital/medical/infectious waste incineration units, commercial and industrial solid waste incineration units, small municipal solid waste combustion units, and sewage sludge incineration units. The Federal plan addresses the implementation and enforcement of emission limits and other control requirements for designated air pollutants. On March 27, 2023, and March 28, 2023, respectively, the EPA Region 10 Regional Administrator and the Executive Director of SWCAA signed a Memorandum of Agreement (MOA) concerning delegation of authority of the Federal plan to SWCAA, which became effective upon signature. The geographic area covered by this MOA comprises the counties of Clark, Cowlitz, Lewis, Skamania, and Wahkiakum in the State of Washington, except in Indian country. This document informs the public of the MOA, provides a copy of the signed document, and amends regulatory text in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2026-0365. All documents in the docket are listed on the website. Although listed in

the index, some information is not publicly available, *e.g.*, Confidential Business Information, Proprietary Business Information, or other information whose disclosure is restricted by statute. 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 <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-0256 or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean “the EPA.”

I. Background

Section 111 of the CAA, “Standards of Performance for New Stationary Sources,” directs the EPA to establish emission standards for stationary sources of air pollution that could potentially endanger public health or welfare. These standards are referred to as the New Source Performance Standards (NSPS). Section 111(b) of the CAA directs the EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish the NSPS within these categories. Section 111(d) of the CAA addresses the process by which the EPA and States regulate standards of performance for existing sources belonging to those categories established in CAA section 111(b). When the NSPS are promulgated for new sources, CAA section 111(d) and the EPA regulations require that the EPA publish an Emission Guideline (EG) to regulate the same pollutants from existing facilities. While the NSPS are directly applicable to new sources, an EG for an existing source (designated facility) is intended for States to use to develop a State plan to submit to the EPA. Section 111 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement, and enforce a Federal plan for designated facilities located in any State or Indian country that does not have an approved State plan under CAA section 111 that implements the EG. These Federal plans are published in 40 CFR part 62 *Approval and Promulgation of State Plans for*

Designated Facilities and Pollutants.

A State, or local clean air agency in this case, may then meet its CAA section 111(d) obligations by submitting a formal written request for delegation of authority to implement and enforce the Federal plans. On August 11, 2021, SWCAA requested delegation of authority to implement and enforce the following Federal plans in 40 CFR part 62:

- Subpart HHH: *Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008*, in lieu of the requirement to submit a State plan pursuant to 40 CFR part 60, subpart Ce: *Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators (HMIWI)*;
- Subpart III: *Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999*, in lieu of the requirement to submit a State plan pursuant to 40 CFR part 60, subpart DDDD: *Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units (CISWI)*;
- Subpart JJJ: *Federal Plan Requirements for Small Municipal Solid Waste Combustion Units Constructed on or before August 30, 1999*, in lieu of the requirement to submit a State plan pursuant to 40 CFR, part 60, subpart BBBB: *Emission Guidelines and Compliance Times for Small Municipal Solid Waste Combustion Units Constructed on or before August 30, 1999 (SMWC)*;
- Subpart LLL: *Federal Plan for Sewage Sludge Incineration Units Constructed on or before October 14, 2010*, in lieu of the requirement to submit a State plan pursuant to 40 CFR part 60, subpart MMMM: *Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units (SSI)*.

The criteria for delegation for each Federal plan varies by subpart.¹ However, as a general

¹ The criteria for delegation of the Federal plan for HMIWI are found in the Federal plan for HMIWI at 40 CFR 62.14401(a). The criteria for delegation of the Federal plan for CISWI are found in the emission guidelines for

matter, the framework for the EPA to transfer implementation and enforcement authority requires the State or local agency to request delegation through a letter that:

- Demonstrates the State or local agency has adequate resources, as well as the legal authority, to administer and enforce the program;
- Includes an inventory of designated facilities and an inventory of the designated units' air emissions;
- Certifies a public hearing was held on the State or local agency delegation request; and
- A commitment to enter into an MOA between the State or local agency and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement, and the mechanism to transfer authority.

Upon signature of the agreement, the approved document will be published in the *Federal Register*, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

II. Memorandum of Agreement Contents and the EPA Analysis

The EPA has evaluated SWCAA's Federal plan delegation request submittal package to determine whether the package meets the applicable requirements. The EPA's detailed rationale and discussion on the submittal package can be found in the Technical Support Document (TSD), located in the docket for this action. The applicable provisions and the EPA's analysis are briefly summarized as follows:

- SWCAA demonstrated adequate resources and legal authority to administer Federal plans. SWCAA is the operating permitting authority and the new source review permitting authority in non-Tribal land² in Clark, Cowlitz, Lewis, Skamania, and

CISWI at 40 CFR 60.2541(a). The criteria for delegation of the Federal plan for SMWC are found in the *Federal Register* publication for the final rule, 68 FR 5144, January 31, 2003, at page 5149. The criteria for delegation of the Federal plan for SSI are found in the emission guidelines for SSI at 40 CFR 60.5045(a) and repeated in the Federal plan for SSI at 40 CFR 62.15865(a).

² Our approval excludes Indian country as defined in 18 U.S.C. 1151. Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

Wahkiakum counties³ and has the authority to implement and enforce delegated standards in 40 CFR parts 60, 61, and 63. SWCAA provided a statement that referenced a letter from legal counsel submitted as part of their initial request for delegation of National Emission Standards for Hazardous Air Pollutants identifying statutes in the Revised Code of Washington giving SWCAA the authority to promulgate rules and regulations; carry out the Federal plan; adopt emission limits and compliance schedules; enforce applicable laws, regulations standards and compliance schedules; obtain information to determine compliance; and require the installation of control equipment.

- SWCAA provided an inventory of SSI units subject to the SSI Federal plan and the results of recent emissions tests. SWCAA attested that they were not aware of any existing units subject to the other Federal plans for which they requested delegation.
- SWCAA provided a hearings officer report showing that they held a public comment period lasting from April 8 - June 23, 2021, ending with a public hearing on June 23, 2021. No member of the public attended the hearing. One comment letter was received from the Vancouver Westside Water Treatment Plant, which operates a unit subject to the Federal plan for SSI. The comment was not adverse.
- SWCAA committed to enter an MOA to meet the requirements for delegation of the Federal plans for HMIWI, CISWI, SMWC, and SSI units.

The MOA was signed by the EPA Region 10 Regional Administrator on March 27, 2023, the SWCAA Executive Director on March 28, 2023, and became effective upon signature. The effective MOA applies to the designated facilities within SWCAA's jurisdiction and is not implemented and enforced on Indian land.

The EPA has evaluated SWCAA's submittal for consistency with the CAA, EPA

³ Under State law SWCAA's jurisdiction excludes facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173-405, 173-410, and 173-415 Washington Administrative Code (WAC); and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173-400-700.

regulations, and EPA policy. The EPA determined that SWCAA has met all the requirements of the EPA's guidance for obtaining the delegation of authority to implement and enforce the Federal plan.

III. Good Cause Findings

Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary.

The EPA conducted full notice and comment rulemaking in promulgating the respective Federal plans (40 CFR part 62, subparts HHH, III, JJJ, and LLL). The EPA has already approved the delegation of authority to implement and enforce the Federal plans to SWCAA, effective following the signature of both parties on the MOA. SWCAA also held a public hearing and solicited public comment about the request for delegation of authority, pursuant to the requirements in 40 CFR 60.23(d), 60.23(e), 60.2515(a)(6), 60.1515(a)(6), 62.14401(a)(3), and 62.15865(a)(3). Notice and comment are "unnecessary" as this final rule only takes the ministerial action of updating the regulatory text in 40 CFR part 62 to reflect this transfer of authority. It does not alter the universe of sources regulated under the Federal plan and it does not change the regulatory requirements applicable to those sources.

Section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. 553(d)(3), provides that the required publication of service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The EPA has determined that there is good cause for this rule to become effective upon publication. Delaying the effective date is unnecessary and contrary to the public interest because the EPA has already approved the delegation of authority to implement and

enforce the Federal plans to SWCAA, effective following the signature of both parties on the MOA. In addition, this rule does not affect any of the substantive requirements in the delegated Federal plans nor impact the compliance obligations of any sources subject to the Federal plans.

IV. Final Action

The EPA is amending regulatory text at 40 CFR part 62, subpart WW – Washington, to promulgate the approved delegation of authority through the MOA to SWCAA for implementing and enforcing Federal plan requirements under 40 CFR part 62, subparts HHH, III, JJJ, and LLL.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to delegate the authority to implement a CAA section 111(d) Federal plan that complies with the provisions of the CAA and applicable Federal regulations. (40 CFR 60.27). In reviewing CAA section 111(d) delegation requests, the EPA's role is to approve State choices, provided they meet the criteria of the CAA and the EPA's implementing regulations. Accordingly, this action merely codifies in the Code of Federal Regulations the EPA's delegation of authority to implement the Federal plans and does not impose additional requirements beyond those imposed by the already applicable Federal plans.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because approvals of 111(d) actions are exempt from review under Executive Order 12866.

C. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

This action merely codifies in the approval of the transfer of authority from EPA to SWCAA for the for HMIWI, CISWI, SMWC, and SSI units Federal plans. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by the already-applicable Federal plan. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, will result from this action.

F. 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.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to Executive Order 13045 because it is not 3(f)(1) significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. 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 under Executive Order 12866.

J. National Technology Transfer Advancement Act

This rule does not involve technical standards and is therefore not subject to the requirements of section 1(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

K. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 62

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 12, 2026.

Emma Pokon,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 62 is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. Add an undesignated center heading and § 62.11890 immediately after § 62.11882 to read as follows:

EMISSIONS FROM HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS (HMIWI)—

SECTION 111(D)/129 FEDERAL PLAN DELEGATIONS

§ 62.11890 Identification of plan-delegation of authority.

(a) *Identification of plan—delegation of authority.* On March 27, 2023, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart HHH (the “Federal plan”) by which the Federal plan will be administered by the Southwest Clean Air Agency (SWCAA) for designated facilities under the agency’s jurisdiction in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in the State of Washington, excluding Indian Country as defined in 18 U.S.C. 1151.

(b) *Identification of sources.* The MOA and related Federal plan apply to all affected hospital/medical/infectious waste incinerator (HMIWI) units, defined in 40 CFR 62.14490 as any device that combusts any amount of hospital waste and/or medical infectious waste, for which construction commenced no later than December 1, 2008, or modification commenced no later than April 6, 2010, unless the unit meets any of the exemptions of 40 CFR 62.14400(b).

(c) *Effective date of delegation.* The delegation became fully effective on March 28, 2023, upon the signature of both parties.

3. Add an undesignated center heading and § 62.11891 immediately after the newly added § 62.11890 to read as follows:

EMISSIONS FROM EXISTING COMMERCIAL INDUSTRIAL SOLID WASTE INCINERATORS (CISWI)

UNITS—SECTION 111(D)/129 FEDERAL PLAN DELEGATIONS

§ 62.11891 Identification of plan-delegation of authority.

(a) *Identification of plan—delegation of authority.* On March 27, 2023, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart III (the “Federal plan”) by which the Federal plan will be administered by the Southwest Clean Air Agency (SWCAA) for designated facilities under the agency’s jurisdiction in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in the State of Washington, excluding Indian Country as defined in 18 U.S.C. 1151.

(b) *Identification of sources.* The MOA and related Federal plan apply to all commercial and industrial solid waste incineration (CISWI) units, as defined in 40 CFR 62.14840, for which construction commenced on or before November 30, 1999, unless the unit is one of the 15 types of units described in 40 CFR 62.14525 (a) through (o).

(c) *Effective date of delegation.* The delegation became fully effective on March 28, 2023, upon the signature of both parties.

4. Add an undesignated center heading and § 62.11892 immediately after the newly added § 62.11891 to read as follows:

EMISSIONS FROM EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS—SECTION

111(D)/129 FEDERAL PLAN DELEGATIONS

§ 62.11892 Identification of plan-delegation of authority.

(a) *Identification of plan—delegation of authority.* On March 27, 2023, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart JJJ (the “Federal plan”) by which the Federal plan will be administered by the Southwest Clean Air Agency (SWCAA) for designated facilities under the agency’s jurisdiction in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in the State of Washington, excluding Indian Country as defined in 18 U.S.C. 1151.

(b) *Identification of sources.* The MOA and related Federal plan apply to all municipal waste combustion units, as defined in 40 CFR 62.15410, that have the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel for which construction commenced on or before August 30, 1999. See 40 CFR 62.15010. A small municipal waste combustion (SMWC) unit can be exempt from this subpart, if it meets any of the criteria in 40 CFR 62.15020.

(c) *Effective date of delegation.* The delegation became fully effective on March 28, 2023, upon the signature of both parties.

5. Add an undesignated center heading and § 62.11893 immediately after the newly added § 62.11892 to read as follows:

EMISSIONS FROM EXISTING SEWAGE SLUDGE INCINERATION UNITS—SECTION 111(D)/129
FEDERAL PLAN DELEGATIONS

§ 62.11893 Identification of plan-delegation of authority.

(a) *Identification of plan—delegation of authority.* On March 27, 2023, the EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart LLL (the “Federal plan”) by which the Federal plan will be administered by the Southwest Clean Air Agency (SWCAA) for designated facilities under the agency’s jurisdiction in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties in the State of Washington, excluding Indian Country as defined in 18 U.S.C. 1151.

(b) *Identification of sources.* The MOA and related Federal plan apply to all sewage sludge incineration (SSI) units, as defined in 40 CFR 62.16045, that commenced construction on or before October 14, 2010. See 40 CFR 62.15855. Subpart LLL of this part does not apply to units that are not located at wastewater treatment plants designed to treat domestic sewage sludge. See 40 CFR 62.15860.

(c) *Effective date of delegation.* The delegation became fully effective on March 28, 2023, upon the signature of both parties.

