B. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

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

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not impose additional requirements or create any new information collection burdens.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

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 any new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, 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

This action does not have tribal implications as specified in Executive Order 13175, because this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not create any new regulations. This action finds that a state has failed to submit required SIP revisions.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action does not involve technical standards.

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

Executive Order 12898 (59 FR 7629 (February 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 effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This action finds that a state has not met the requirement to submit CAA section 185 fee program SIP revisions and begins clocks that could result in the imposition of sanctions if the state continues to not meet this statutory obligation. If the state fails to submit the required SIP revisions or submits SIP revisions that the EPA cannot approve, then the EPA will be required to develop the plans in lieu of the state.

L. Congressional Review Act (CRA)

This action is subject to the CRA, 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).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action 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 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 23, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–00567 Filed 1–13–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R08–OAR–2022–0929; FRL–10462–02–R8]

Approval and Promulgation of Implementation Plans; Colorado; Delegation of Authority of the Federal Plan for Existing Hospital, Medical, Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA) is providing notice and codifying approval of a request submitted by the Colorado Department of Public Health and Environment (CDPHE) on June 27, 2022 for delegation of authority to implement and enforce the Federal Plan Requirements for Hospital/Medical/

Infectious Waste Incinerators (HMIWI) Constructed On or Before December 1, 2008 (the Federal Plan), within the state of Colorado. The Federal Plan establishes emission limits and monitoring, operating, and recordkeeping requirements for HMIWI units constructed on or before December 1, 2008, or modified on or before April 6, 2010. A Memorandum of Agreement (MOA) was signed on July 21, 2022 by the CDPHE Air Pollution Control Division Director, Michael Ogletree. This MOA constitutes the mechanism for the transfer of authority from the EPA to CDPHE. The MOA became effective upon signature by Regional Administrator, KC Becker, on August 8, 2022. The MOA delineates policies, responsibilities, and procedures by which the Federal Plan will be administered and enforced by the CDPHE, as well as the authorities retained by EPA.

DATES: This direct final rule is effective on March 20, 2023 without further notice, unless EPA receives adverse written comments on or before February 16, 2023. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2022–0929. All documents in the docket are listed on the *http://www.regulations.gov* website. 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, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Allison Reibach, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6949, email address: *reibach.allison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Why is EPA using a direct final rule?

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the delegation if relevant adverse comments are received. This rule will be effective on March 20, 2023 without further notice unless we receive adverse comment by February 16, 2023. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now.

II. Background

Section 129 of the Clean Air Act (the ''CAA'' or ''Act''), titled ''Solid Waste Combustion,'' requires EPA to develop and adopt standards for solid waste incineration units pursuant to sections 111(d) and 129 of the Act. On April 4, 2011, EPA promulgated revisions to the emissions guidelines (EG) for HMIWI units (76 FR 18407). Codified at 40 CFR part 60, subparts Ce, this final rule sets limits for nine pollutants under section 129 of the CAA: Cadmium (Cd), carbon monoxide (CO), hydrogen chloride (HCl), lead (Pb), mercury (Hg), nitrogen oxides (NO_X), particulate matter (PM), dioxins/furans, and sulfur dioxide (SO_2). The EG apply to existing HMIWI units, which are those units that commenced construction on or before December 1, 2008, or that commenced modification on or before April 6, 2010 (see 40 CFR 60.32e).

CAA section 129 also requires each state in which HMIWI units are operating to submit a plan to implement and enforce the EG with respect to such units. State plan requirements must be ''at least as protective'' as the EG and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B. For states that do not submit a plan, EPA is required to develop and implement a Federal Plan within two years following promulgation of the emission guidelines. The EPA implementation and enforcement of the Federal Plan is viewed as an interim measure until states assume their role as the preferred implementers of the emission guidelines requirements stipulated in the Federal Plan. Accordingly, EPA promulgated the HMIWI Federal Plan on May 13, 2013 (78 FR 28051). In this rulemaking, EPA strongly encouraged state and local agencies in jurisdictions that did not submit approvable state plans to request delegation of the HMIWI Federal Plan so that they can have the primary responsibility for implementing and enforcing regulations affecting existing HMIWI units, consistent with the intent of section 129 of the CAA.

III. Submittal and EPA Approval of Requests for Delegation of the Federal Plan

On June 27, 2022, CDPHE requested delegation of authority from EPA to implement and enforce the Federal Plan for existing HMIWI units, codified at 40 CFR part 62, subpart HHH. The scope of the request from the CDPHE included all affected facilities within the State of Colorado. The delegation of authority does not apply to sources located in Indian Country.

The EPA evaluates requests for delegation of the HMIWI Federal Plan pursuant to the provisions of the HMIWI Federal Plan and the EPA's Delegations Manual. Pursuant to the HMIWI Federal Plan, a state may meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal Plan that includes the following elements: (1) A demonstration of adequate resources and legal authority to administer and enforce the Federal Plan; (2) an inventory of affected HMIWI units, an inventory of emissions from affected HMIWI units, and provisions for state progress reports); (3) certification that the hearing on the state delegation request; and (4) a commitment to enter into a MOA with the Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority (see 40 CFR 62.14401) (78 FR 28051). CDPHE met delegation requirements (1) through (3) in a letter to EPA dated June 27, 2022, which is included in the docket for this action, as well as requirement (4), which is addressed below.

Pursuant to the EPA's Delegations Manual, item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)(2)/129(b)(3) Federal Plans, a copy of which is included in the Supporting Documents for this action, the Regional Administrator is authorized to delegate authority to implement and enforce section 111(d)/129 Federal Plans to states. Whereas a state plan implementing the EG must be submitted by the state, a local agency may directly request delegation of authority to implement the HMIWI Federal Plan with respect to sources within its jurisdiction, provided it has authority under state law to do so and has met the delegation requirements

identified above (78 FR 28051). The requirements and limitations of a delegation agreement are set forth in item 7–139 of the Delegations Manual. Consistent with those requirements, the EPA prepared an MOA between the EPA and CDPHE which defines policies, responsibilities, and procedures pursuant to the HMIWI Federal Plan by which the Federal Plan will be administered by CDPHE. Subsequently, on July 21, 2022, Michael Ogletree, Director of the Colorado Air Pollution Control Division of CDPHE signed the MOA, thus agreeing to the terms and conditions of the MOA and accepting responsibility for implementation and enforcement of the policies and procedures of the Federal Plan, except for certain authorities (*e.g.,* approval of major alternatives to test methods or monitoring) retained by the EPA. The EPA continues to retain enforcement authority along with CDPHE. The MOA, and resulting delegation of authority, became effective upon signature by the Regional Administrator on August 8, 2022.[1]

The EPA has evaluated the CDPHE submittal for consistency with the CAA, EPA regulations, and EPA policy. CDPHE has met all the requirements of the EPA's guidance for obtaining delegation of authority to implement and enforce the HMWI Federal Plan. CDPHE entered into a MOA with EPA and it became effective on August 8, 2022. Accordingly, the EPA is approving the CDPHE request dated June 27, 2022 for delegation of authority to implement and enforce the Federal Plan for existing HMIWI units. EPA will continue to retain certain specific authorities as specified in the HMIWI Federal Plan and as indicated in the MOA (*e.g.,* authority to approve major alternatives to test methods or monitoring, etc.).

III. Final Action

In this action, EPA is codifying approval of a request submitted by CDPHE for delegation of authority to implement and enforce the Federal Plan for existing HMIWI units in Colorado, pursuant to 40 CFR part 62, subpart HHH.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to delegate the authority to implement a 111(d)/129 Federal Plan that complies with the provisions of the CAA and applicable Federal regulations (see 40 CFR 60.27*).* In reviewing 111(d)/129 Federal Plan delegation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and of EPA's implementing regulations. Accordingly, this action merely codifies in the Code of Federal Regulations EPA's delegation of authority to implement the Federal Plan and does not impose additional requirements beyond those imposed by the already-applicable Federal Plan. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the delegation of authority is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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 of the rule 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: January 5, 2023.

KC Becker,

Regional Administrator, Region 8.

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 G—Colorado

■ 2. Revise § 62.1360 to read as follows:

§ 62.1360 Identification of plan—delegation of authority.

On August 8, 2022, EPA signed a Memorandum of Agreement (MOA) that

[1] The MOA is located in our docket (Docket ID No. EPA–R08–OAR-[docket number]). found at *www.regulations.gov.*

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 Colorado Department of Public Health and Environment (CDPHE).

■ 3. Revise § 62.1361 to read as follows:

§ 62.1361 Identification of sources.

The MOA and related Federal Plan apply to existing hospital/medical/infectious waste incinerators for which construction was commenced on or before December 1, 2008, or for which modification was commenced on or before April 6, 2010.

■ 4. Revise § 62.1362 to read as follows:

§ 62.1362 Effective date.

The delegation became fully effective on August 8, 2022, the date the MOA was signed by the EPA Region 8 Regional Administrator.

[FR Doc. 2023–00411 Filed 1–13–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[CMS–6088–N]

RIN 0938–ZB76

Medicare Program; Updates to Face-to-Face Encounter and Written Order Prior to Delivery List

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Update to certain codes.

SUMMARY: This document announces updates to the Healthcare Common Procedure Coding System (HCPCS) codes on the Required Face-to-Face Encounter and Written Order Prior to Delivery List.

DATES: The implementation is effective on April 17, 2023.

FOR FURTHER INFORMATION CONTACT:
Cristine Egan (410) 786–8088.
Olufemi Shodeke (410) 786–1649.
Jennifer Phillips (410) 786–1023.
Misty Whitaker (410) 786–4975.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 2019, the Centers for Medicare & Medicaid Services published a final rule titled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Amounts, DMEPOS Competitive Bidding Program (CBP) Amendments, Standard Elements for a DMEPOS Order, and Master List of DMEPOS Items Potentially Subject to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements'' (84 FR 60648). The rule became effective January 1, 2020, harmonizing the lists of DMEPOS items created by former rules and establishing one ''Master List of DMEPOS Items Potentially Subject to Face-to-Face Encounter and Written Orders Prior to Delivery and/or Prior Authorization Requirements'' (the ''Master List''). The rule provided that items would be selected from the Master List for inclusion on the Face-to-Face Encounter and Written Orders Prior to Delivery List and/or Prior Authorization List through the **Federal Register**. It also clarified that certain items (that is, power mobility devices (PMDs)) require a face-to-face encounter per statute and would remain on the list indefinitely.

On January 13, 2022, in accordance with the November 2019 final rule (84 FR 60648), we selected codes from the Master List and published the first iteration of the Required Face-to-Face Encounter and Written Order Prior to Delivery List (hereinafter referred to as ''F2F/WOPD List''). (For more detailed information see 87 FR 2051). The F2F/WOPD List became effective on April 13, 2022. It included 46 K-codes representative of PMDs as well as 7 Healthcare Common Procedure Coding System (HCPCS) that describe other items.

II. Provisions of the Document

This document announces that CMS has selected an additional set of items to be added to the F2F/WOPD List.

A. Reiteration of the Face-to-Face Encounter and Written Order Prior to Delivery List Process and DMEPOS Items Currently on The List

The F2F/WOPD List, as described at § 410.38(c)(8), is comprised of PMDs, per statute, and those items selected from the Master List (which is described in §§ 410.38(c)(7) and 414.234(b)). Items on this list require a face-to-face encounter and a written order prior to delivery as a condition of payment.

In the November 2019 final rule, we stated that since the face-to-face encounter and written orders are statutorily required for PMDs, per section 1834(a)(1)(E)(iv) of the Act, they are included on the Master List and the F2F/WOPD List in accordance with our statutory obligation, and will remain there. These codes, as listed in Table 1, will remain on the F2F/WOPD List.

TABLE 1—STATUTORILY REQUIRED POWER MOBILITY DEVICES

[Currently on the list]

HCPCS	Description
K0800	Power Operated Vehicle, Group 1 Standard, Patient Weight Capacity Up To And Including 300 Pounds.
K0801	Power Operated Vehicle, Group 1 Heavy Duty, Patient Weight Capacity, 301 To 450 Pounds.
K0802	Power Operated Vehicle, Group 1 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
K0806	Power Operated Vehicle, Group 2 Standard, Patient Weight Capacity Up To And Including 300 Pounds.
K0807	Power Operated Vehicle, Group 2 Heavy Duty, Patient Weight Capacity 301 To 450 Pounds.
K0808	Power Operated Vehicle, Group 2 Very Heavy Duty, Patient Weight Capacity 451 To 600 Pounds.
K0813	Power Wheelchair, Group 1 Standard, Portable, Sling/Solid Seat And Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0814	Power Wheelchair, Group 1 Standard, Portable, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0815	Power Wheelchair, Group 1 Standard, Sling/Solid Seat And Back, Patient Weight Capacity Up To And Including 300 Pounds.
K0816	Power Wheelchair, Group 1 Standard, Captains Chair, Patient Weight Capacity Up To And Including 300 Pounds.
K0820	Power Wheelchair, Group 2 Standard, Portable, Sling/Solid Seat/Back, Patient Weight Capacity Up To And Including 300 Pounds.