

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency Environmental Protection</p>			
<p>(2) Agency Number: 7 Identification Number: 585</p>		<p>IRRC Number:</p>	
<p>(3) PA Code Cite: 25 Pa. Code Chapter 122</p>			
<p>(4) Short Title: Legal Authority for Delegation of Federal Plans in 40 CFR Part 62</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Griffin, 717-772-3277, laurgriffi@pa.gov Secondary Contact: High Garst, 717-783-8727, argarst@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking would provide the express legal authority for the Department of Environmental Protection (Department) to request delegation of authority from the United States Environmental Protection Agency (EPA) to implement and enforce the requirements of an applicable Federal Plan for existing sources established by the EPA in 40 CFR Part 62 (relating to approval and promulgation of state plans for designated facilities and pollutants).</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Environmental Quality Board (Board) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth; and section 5(a)(8) of the APCA, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act, 42 U.S.C. §§ 7401—7671q (CAA).</p>			

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Yes. Section 111 of the CAA (42 U.S.C. § 7411) requires the EPA to establish standards of performance for the control of emissions of air pollutants from designated categories of stationary sources. Section 111(d) of the CAA requires the EPA to establish standards of performance for the control of an air pollutant from an existing stationary source in a designated source category that would be regulated if the existing source was a new source. Section 111(d) further requires the EPA to establish a procedure for state governments to implement and enforce these standards of performance for subject existing stationary sources. The EPA has addressed its requirement under section 111(d) of the CAA to control air pollution from existing stationary sources by issuing emission guidelines for the control of an air pollutant from an existing stationary source that, if it were a new source, would be subject to the new source performance standard. These emission guidelines are established in 40 CFR Part 60. The applicable emission guidelines are implemented and enforced by a state government when the EPA approves a plan (State Plan) submitted by a state government that is consistent with the emission guidelines. The EPA has exercised its authority under section 111(d) to prescribe plans for states that have failed to submit a satisfactory plan based on the emission guidelines by establishing Federal Plans in 40 CFR Part 62. The Federal Plans implement and enforce the emission guidelines for state governments that fail to timely submit complete and approvable plans for implementing and enforcing applicable standards of performance (emission guidelines) for existing stationary sources. A state government, in the absence of an approved State Plan, may request delegation of the applicable Federal Plan to directly implement and enforce its requirements on the owners and operators of subject existing stationary sources.

As described in the response to Question 10, the EPA recently determined the Department does not have express legal authority in § 122.3 (relating to adoption of standards) to request delegation of a Federal Plan established in 40 CFR Part 62 and informed the Department that its recent request for delegation of a Federal Plan could not be approved.

There are no deadlines for action on this proposed rulemaking. This proposed rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following publication of the final-form regulation in the *Pennsylvania Bulletin*, if appropriate.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Historically, the Department has submitted State Plans and requests for delegation of Federal Plans to the EPA citing § 122.3 as the express legal authority to do so and the State Plans and requests for delegation were approved by the EPA and codified in 40 CFR Part 62, Subpart NN (relating to Pennsylvania). Section 122.3 states that standards of performance for new stationary sources and emission guidelines for existing sources promulgated in 40 CFR Part 60 by the Administrator of the EPA under section 111 of the CAA are adopted in their entirety by the Department and incorporated into Chapter 122 (relating to National standards of performance for new stationary sources) by reference.

However, the EPA indicated to the Department that the request for delegation submitted on February 3, 2022, of the Federal Plan established in 40 CFR Part 62, Subpart OOO (relating to Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not

been modified or reconstructed since July 17, 2014) could not be approved because § 122.3 does not explicitly include Federal Plans established in 40 CFR Part 62.

This proposed rulemaking would amend Chapter 122 to add § 122.4 (relating to adoption of Federal plans for existing sources) to provide the express legal authority for the Department to request delegation of authority from the EPA to implement and enforce the requirements of an applicable Federal Plan established by the EPA in 40 CFR Part 62.

This proposed rulemaking would not change environmental outcomes. The owners and operators of subject existing sources are already subject to the applicable air pollution control requirements through Federally enforceable requirements administered by the EPA if the owner and operator are subject to a Federal Plan established by the EPA in 40 CFR Part 62. If the Commonwealth does not have an approved State Plan and the EPA has not delegated authority to the Department to implement and enforce an applicable Federal Plan, the Department has no authority to implement and enforce the applicable Federal requirements.

This proposed rulemaking would provide the express legal authority for the Department to request delegation of a Federal Plan that would allow the Department, in addition to the EPA, to implement and enforce the standards of performance applicable to the owners and operators of existing stationary sources of an air pollutant located in this Commonwealth in the absence of an approved State Plan. Affected owners and operators, as well as residents, would be able to contact the Department to address compliance or enforcement concerns, in addition to or instead of contacting the EPA.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not affect Pennsylvania's ability to compete with other states. All states that have existing sources that are covered by an emission guideline established by the EPA in 40 CFR Part 60 are required to implement and enforce either an approved State Plan or request delegation of the applicable Federal Plan in the absence of an approved State Plan.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations of the Department or other state agencies are affected by this proposed rulemaking.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the draft proposed regulation with the Air Quality Technical Advisory Committee on April 4, 2024, and the Small Business Compliance Advisory Committee on April 17, 2024. The Department also discussed the draft proposed regulation with the Citizens Advisory Council’s (CAC) Policy and Regulatory Oversight (PRO) Committee on May 1, 2024, and the CAC on May 14, 2024. On the recommendation of the PRO Committee, the CAC concurred with the Department’s recommendation to forward this proposed rulemaking to the Board.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking would not impact the owners and operators of subject existing sources, including small business-sized sources. This proposed rulemaking is an administrative amendment that would provide express legal authority for the Department to request delegation of a Federal Plan if the Department does not have an approved State Plan. Affected owners and operators of subject sources under the Department’s jurisdiction are subject to Department implementation and enforcement of the applicable requirements if the Department has an approved State Plan codified in 40 CFR Part 62, Subpart NN or has received delegation of a Federal Plan established by the EPA in 40 CFR Part 62 for which the delegation to the Department is codified in 40 CFR Part 62, Subpart NN.

If the Department does not have an approved State Plan or delegation of an applicable Federal Plan, owners and operators of subject existing sources under the Department’s jurisdiction, including small business-sized existing sources, are subject to the applicable air pollution control requirements of the Federal Plan through implementation and enforcement by the EPA only.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

This proposed rulemaking does not include requirements with which the regulated community, local government, or the public would need to comply. This proposed rulemaking would provide the express legal authority for the Department to request delegation of an applicable Federal Plan if the Department does not have an approved State Plan. Please also see the response to Question 15.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This proposed rulemaking generally would not impact the regulated community, including owners and operators of subject existing sources and small business-sized existing sources, labor communities, private organizations or the public. This proposed rulemaking would provide the express legal authority for the Department to request delegation of an applicable Federal Plan if the Department does not have an approved State Plan. If the Department can request and receive approval from the EPA for delegation of an applicable Federal Plan, affected owners and operators, as well as residents, may benefit as they would be able to

contact the Department to address compliance or enforcement concerns in addition to or instead of contacting the EPA. Please also see the response to Question 15.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No costs or adverse effects would result from promulgation of this proposed rulemaking. The proposed amendments would allow the Department, in the absence of an approved State Plan, to implement and enforce applicable emission standards by requesting delegation of a Federal Plan already developed by the EPA to meet the Commonwealth's obligations under the CAA.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No additional costs to the regulated community would be incurred as a result of this proposed rulemaking. No new legal, accounting or consulting procedures would be required. Please also see the response to Question 15 for more detail.

(20) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No additional costs to local governments would be incurred as a result of this proposed rulemaking.

(21) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No additional costs to state government would be incurred as a result of this proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting, or consulting procedures are required.

(22a) Are forms required for implementation of the regulation?

No forms are required.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

No forms are required.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2024-25	FY+1 2025-26	FY+2 2026-27	FY+3 2027-28	FY+4 2028-29	FY+5 2029-30
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Savings	0.00	0.00	0.00	0.00	0.00	0.00
COSTS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	0.00	0.00	0.00	0.00	0.00	0.00
REVENUE LOSSES:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (21/22)	FY-2 (22/23)	FY-1 (23/24)	Current FY (24/25)
Environmental Program Management (161-10382)	\$34,160,000	\$35,739,000	\$39,714,000	\$42,510,000
Clean Air Fund Major Emission Facilities (215-20077)	\$20,083,000	\$19,869,000	\$24,595,000	\$27,073,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$10,153,000	\$10,299,000	\$13,966,000	\$14,539,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.**
- (b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

This proposed rulemaking would not impact the owners and operators of subject small business-sized existing sources.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions were developed because this proposed rulemaking only affects the Department. This proposed rulemaking would provide the express legal authority for the Department to request delegation of a Federal Plan for those instances in which the Department does not submit a complete and approvable State Plan to the EPA to implement performance standards consistent with an applicable emission guideline issued by the EPA.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. As an administrative regulation to facilitate compliance with the CAA, this proposed rulemaking is necessary to address the EPA's instruction that the Department's regulations clearly state its legal authority to request delegation of a Federal Plan.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses;**
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;**
- (c) The consolidation or simplification of compliance or reporting requirements for small businesses;**
- (d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and**
- (e) The exemption of small businesses from all or any part of the requirements contained in the regulation.**

This proposed rulemaking would not impact small businesses. It is an administrative amendment and does not impose compliance obligations upon the owners and operators of subject sources.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The length of the public comment period: | <u>60 days</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>DATES</u> |
| C. The expected date of delivery of the final-form regulation: | <u>X Quarter 202X</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in the Pennsylvania Bulletin</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Not applicable</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>Not applicable</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board is not establishing a sunset date for this proposed regulation, since it is needed for the Department to carry out its statutory authority. The Department will closely monitor this proposed rulemaking after promulgation as a final-form rulemaking in the *Pennsylvania Bulletin* for its effectiveness and recommend updates to the Board as necessary.