

## EXECUTIVE SUMMARY

### Legal Authority for Delegation of Federal Plans in 40 CFR Part 62 25 Pa. Code § 122.4

#### **Purpose of the Final Rulemaking**

The Environmental Quality Board (Board or EQB) is amending 25 Pa. Code Chapter 122 (relating to National standards of performance for new stationary sources) to provide the express legal authority for DEP to request delegation of authority from the United States Environmental Protection Agency (EPA) to implement and enforce the requirements of an applicable Federal Plan established by the EPA in 40 CFR Part 62 (relating to approval and promulgation of state plans for designated facilities and pollutants).

The final-form rulemaking will add a new section to DEP's regulations.

#### **Summary of the Final Rulemaking**

Section 122.4 specifies that Federal Plan requirements for existing sources promulgated in 40 CFR Part 62 are adopted in their entirety by DEP and incorporated by reference, if Pennsylvania does not have its own State Plan approved by the EPA for those existing sources. This section provides the express legal authority for DEP to request delegation of Federal Plans from the EPA for those instances in which DEP does not have a State Plan approved by the EPA.

The Board notes that these final-form requirements will be implemented and enforced by DEP only on the owners and operators of subject existing sources under its jurisdiction. Consistent with § 122.2 (relating to scope), the approved local air pollution control agencies in Philadelphia County and Allegheny County will be responsible for implementing and enforcing applicable requirements upon the owners and operators of subject sources in their respective jurisdictions.

This final-form rulemaking will be submitted to the EPA for approval as a revision to Pennsylvania's State Implementation Plan following promulgation of the final-form regulation.

#### **Affected Parties**

This final-form rulemaking will not impact the owners and operators of subject existing sources under DEP's jurisdiction. The owners and operators of affected existing stationary sources under DEP's jurisdiction 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 either: (1) an emission guideline established by the EPA under 40 CFR Part 60 for which DEP has an EPA-approved State Plan codified in 40 CFR Part 62, Subpart NN (relating to Pennsylvania); or (2) are subject to a Federal Plan established by the EPA under 40 CFR Part 62.

#### **Outreach (Advisory Committee/Stakeholder Consultation)**

DEP discussed the draft final-form regulation and comments received on the proposed rulemaking with the Air Quality Technical Advisory Committee on February 5, 2026, the Small Business Compliance Advisory Committee on February 12, 2026, the Citizen Advisory

Council's Policy and Regulatory Oversight Committee on March 9, 2026, and Citizen Advisory Council on March 10, 2026.

### **Public Comments and Board Hearings**

The proposed rulemaking was published on June 21, 2025, opening a 69-day public comment period, that closed on August 29, 2025. The Board held three public hearings: July 22, 2025, at 10 a.m. at the Southwest Regional Office, July 24, 2025, at 2 p.m. at the Rachel Carson State Office Building, and July 29, 2025, at 10 a.m. at the Southeast Regional Office. The EQB received comments from 21 individuals and organizations during the comment period, as well as comments from the Independent Regulatory Review Commission (IRRC).

IRRC and a commentator asked how DEP determines whether to develop and submit a State Plan to implement and enforce federal emissions guidelines or to request delegation of authority to implement and enforce a Federal Plan. The decision to choose to request delegation of a Federal Plan is case-specific. DEP looks at the number and type of facilities and sources affected by the emissions guidelines, if and how those sources are currently being regulated, the complexity of the new federal requirements, possible emissions reductions, and whether existing mechanisms are sufficient to enforce the requirements in the guidelines or if pursuing customization by developing a State Plan is appropriate for Pennsylvania. When a State Plan would affect the regulated community the same as the Federal Plan, DEP opts to request delegation of a Federal Plan to avoid duplication of effort that would occur if Pennsylvania developed its own plan.

IRRC asked what opportunities exist for stakeholder input and consensus building when DEP requests delegation of authority to implement Federal Plans. A commentator also was concerned that requesting delegated authority to implement a Federal Plan may eliminate stakeholders' opportunity to provide input on proposed regulatory requirements. Stakeholders may provide input to DEP during the public comment period on the agency's request for delegation of authority to implement and enforce a Federal Plan. Stakeholders' opportunity to provide input on regulatory requirements occurs at the federal level by providing comments to the EPA in its development of the emissions guidelines and the Federal Plan.

A commentator was concerned that if DEP requests a delegation for a Federal Plan, then DEP becomes the primary enforcer of the Federal Plan and risks duplicative inspections, higher penalties, and greater administrative burdens. The rulemaking does not change the process of implementing State or Federal Plans, it only codifies explicit language of this authority already given under the CAA. After EPA delegates authority for a Federal Plan, Pennsylvania becomes the implementation and enforcement authority for the standard.

### **Recommendation**

DEP recommends adoption of this final-form regulation.