

**FINAL-FORM RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 122]**

Legal Authority for Delegation of Federal Plans in 40 CFR Part 62

The Environmental Quality Board (Board) amends Chapter 122 (relating to National standards of performance for new stationary sources) to read as set forth in Annex A. This final-form rulemaking provides 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 established by the EPA in 40 CFR Part 62 (relating to approval and promulgation of state plans for designated facilities and pollutants). This delegation of authority by the EPA would allow the Department to directly implement and enforce the Federal standards of performance applicable to the owners and operators of existing stationary sources of an air pollutant located in this Commonwealth and under the Department’s jurisdiction in the absence of an EPA-approved State Plan.

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

This final-form rulemaking was adopted by the Board at its meeting of **DATE**.

A. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jesse C. Walker, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department’s website at <https://www.pa.gov/agencies/dep.html> (select “Public Participation,” then “Environmental Quality Board,” and navigate to the Board meeting of **DATE**).

C. Statutory Authority

This final-form rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the 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 (CAA) (42 U.S.C. §§ 7401—7671q).

D. Background and Purpose

This final-form rulemaking amends Chapter 122 to add a section to address applicable performance standards for existing sources established under section 111 of the CAA (42 U.S.C. § 7411) through EPA-issued emission guidelines promulgated in 40 CFR Part 60 (relating to standards of performance for new stationary sources) and Federal Plans promulgated in 40 CFR Part 62. Final-form § 122.4 (relating to adoption of Federal Plans for existing sources) provides 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.

Section 111 of the CAA requires the EPA to establish standards of performance for new and existing stationary sources of air pollution. Section 111(b) of the CAA requires the EPA to publish a list of categories of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111(b) of the CAA further requires the EPA to promulgate New Source Performance Standards (NSPS) which are applicable to the owners and operators of new and modified stationary sources included in the list of categories. The EPA establishes NSPS for regulated categories of new and modified stationary sources in 40 CFR Part 60. Section 111(c) of the CAA provides that each state may develop and submit to the EPA a procedure to implement and enforce the applicable standards of performance for new sources located in the state. The Department's procedure for implementing and enforcing the applicable standards for new sources was codified in §§ 122.1 and 122.3 (relating to purpose; and adoption of standards) in 1979. See 9 Pa.B. 1447 (April 28, 1979) and 9 Pa.B. 1534 (May 12, 1979; effective August 1, 1979). Section 122.1 states that Chapter 122 adopts standards of performance for new stationary sources promulgated by the EPA under the CAA. The standards are adopted to make them independently enforceable by the Department and to implement a delegation of Federal authority under section 111(c) of the CAA. Section 122.3 stated, at that time, that standards of performance for new stationary sources promulgated in 40 CFR Part 60 by the EPA under section 111 of the CAA are adopted in their entirety by the Department and are incorporated into Chapter 122 by reference.

Section 111(d) of the CAA requires the EPA to establish standards of performance (emission guidelines) for the control of an air pollutant from an existing stationary source in a listed source category that would be regulated if the existing source were a new source. Section 111(d) further requires the EPA to establish a procedure for state governments to implement and enforce these emission guidelines 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 NSPS. These emission guidelines, like the NSPS, are established in 40 CFR Part 60.

While section 111(d)(1) of the CAA requires states to develop State Plans that establish standards of performance for existing sources that are consistent with the standards in the applicable emission guidelines and provides states with certain discretion in determining the appropriate standards, section 111(d)(2) of the CAA provides the EPA a specific oversight role with respect to State Plans. Therefore, states must submit their plans to the EPA, and the EPA must evaluate each State Plan to determine whether the plan is consistent with the standards of performance in

the applicable emission guideline. The applicable emission guideline is implemented and enforced by a state government when the EPA approves a plan submitted by a state government that is consistent with the applicable emission guideline. The approved state plans are codified by the EPA in 40 CFR Part 62. The Department's approved State Plans are codified in 40 CFR Part 62, Subpart NN (relating to Pennsylvania).

The Department's procedure and legal authority for implementing and enforcing the emission guidelines for existing sources established in 40 CFR Part 60, like that for NSPS, is codified in § 122.3. Section 122.3 was amended in 1997 to state that, like standards of performance for new stationary sources, 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 by reference. See 27 Pa.B. 6804 (December 27, 1997). In accordance with § 122.3 and the EPA's implementing regulations under 40 CFR Part 60, the Department develops plans to implement and enforce air pollution control requirements applicable to the owner and operator of an existing source that is included in a listed source category established by the EPA under section 111 of the CAA and submits the plans to the EPA for approval. The EPA-approved State Plan implements and enforces requirements that are consistent with the standards of performance issued by the EPA in the applicable emission guideline for the source category.

If a state fails to submit a plan or the EPA determines that a submitted plan is not complete and approvable, section 111(d)(2) of the CAA authorizes the EPA to prescribe a Federal Plan for a state that fails to submit a complete and approvable plan. The EPA has exercised its authority under section 111(d) of the CAA to prescribe plans for states 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 standards of performance consistent with the applicable emission guidelines for existing stationary sources. The EPA implements and enforces the requirements of the Federal Plan; however, a state government, in the absence of an approved state plan, may request delegation of the Federal Plan from the EPA to directly implement and enforce its requirements on the owners and operators of subject existing stationary sources.

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, when approved by the EPA, approval of the State Plan or delegation of the Federal Plan is codified in 40 CFR Part 62, Subpart NN. On August 29, 2016, the EPA issued emission guidelines for the control of designated pollutants from existing municipal solid waste landfills that commenced construction, modification or reconstruction on or before July 17, 2014, which are codified at 40 CFR Part 60, Subpart Cf (relating to emission guidelines and compliance times for municipal solid waste landfills). Prior to the Department submitting a State Plan to implement and enforce these guidelines, the EPA issued a Federal Plan for this category on May 21, 2021. The Federal Plan is codified at 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). On February 3, 2022, the Department submitted to the EPA a request for delegation of the Federal Plan established in 40 CFR Part 62, Subpart OOO, citing § 122.3 as the legal authority for the Department's request. However, the EPA informed the Department that this request for delegation could not be approved because § 122.3

does not explicitly include Federal Plans established in 40 CFR Part 62. The EPA did not act on the request for delegation and returned it to the Department.

Therefore, the Board amends Chapter 122 to add § 122.4 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.

Advisory Committees

The Department discussed the draft final-form regulation with the Air Quality Technical Advisory Committee on February 5, 2026, and the Small Business Compliance Advisory Committee on February 12, 2026. The Department also discussed the draft final-form regulation with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight (PRO) Committee on March 9, 2026, and the CAC on March 10, 2026. On the recommendation of the PRO Committee, the CAC concurred with the Department's recommendation to forward this final-form rulemaking to the Board.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

There were no changes made to the regulation from the proposed rulemaking to this final-form rulemaking. The following is a summary of the final-form rulemaking.

This final-form rulemaking amends Chapter 122 to add § 122.4.

§ 122.4. Adoption of Federal Plans for existing sources

Subsection (a) specifies that Federal Plan requirements for existing sources promulgated in 40 CFR Part 62 by the Administrator of the EPA under section 111(d) of the CAA (42 U.S.C. § 7411(d)) and section 129 of the CAA (42 U.S.C. § 7429), as applicable, for which a complete and approvable State Plan under 40 CFR Part 60 has not been submitted to the EPA, are adopted in their entirety by the Department and incorporated by reference, including all amendments and supplements thereto consistent with 1 Pa.C.S. § 1937 (relating to references to statutes and regulations).

This subsection provides the express legal authority for the Department to request delegation of Federal Plans from the Administrator of the EPA 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. If the Department has an approved State Plan codified in 40 CFR Part 62, Subpart NN for a designated source category, and the EPA issues a Federal Plan for this designated source category, this Federal Plan will not be adopted in its entirety and incorporated by reference under subsection (a).

Subsection (b) specifies that the incorporation by reference established in subsection (a) does not include incorporation by reference of State Plans for designated facilities and pollutants and approved delegations of authority codified by the Administrator of the EPA in 40 CFR Part 62, Subparts B—DDD.

The Board notes that 40 CFR Part 62, Subparts B—DDD codify the state-specific and territory-specific plans submitted by the 50 United States, the District of Columbia and the United States territories of American Samoa, Puerto Rico, the Virgin Islands and the Northern Mariana Islands.

Additionally, these requirements are implemented and enforced by the Department only on the owners and operators of subject sources under its jurisdiction. Consistent with § 122.2 (relating to scope), the approved local air pollution control agencies in Philadelphia County and Allegheny County are responsible for implementing and enforcing applicable requirements upon the owners and operators of subject sources in their respective jurisdictions.

F. Summary of Comments and Responses on the Proposed Rulemaking

The Board adopted the proposed rulemaking on April 8, 2025, which was published in the *Pennsylvania Bulletin* at 55 Pa.B. 4188 (June 21, 2025) for a 69-day public comment period that closed on August 29, 2025. The Board held three public hearings to accept comments on the proposed rulemaking on July 22, 2025, at 10 a.m. at the Department’s 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 Department’s Southeast Regional Office. During the public comment period, the Board received 21 comments, including testimony from one witness at the public hearings. The Independent Regulatory Review Commission (IRRC) submitted comments on September 29, 2025.

IRRC and an industry trade association asked how the Department determines whether to submit State Plans or request delegation of authority to implement and enforce Federal Plans. Also, IRRC asked how the Department evaluates the various impacts of implementing Federal Plans on this Commonwealth’s industry. The decision to choose to request delegation of a Federal Plan is case-specific. When deciding whether to request delegation of authority for a Federal Plan in this Commonwealth or to develop its own State Plan, the Department evaluates several factors. The Department 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 the Commonwealth. The Department identifies the most efficient and effective option to implement the emissions guidelines, balancing the effect on the regulated community with the resources required to develop a State Plan. When a State Plan would be the same as the Federal Plan, the Department typically chooses the more efficient option to request delegation of a Federal Plan because it requires significantly less Department resources than developing a State Plan.

IRRC and an industry trade association asked what opportunities exist for stakeholder input and consensus building when the Department requests delegation of authority to implement Federal Plans. Stakeholders have the opportunity to provide input to the Department during the public comment period on the agency’s request for delegation of authority to implement and enforce a Federal Plan, as well as providing comments to the EPA in its development of the emissions guidelines and the Federal Plan.

An industry trade association was concerned that the regulation would be a significant expansion of the Department's enforcement powers because the Department becomes the primary enforcer of the Federal Plan and risks duplicative inspections, higher penalties and greater administrative burdens. This final-form 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. Under the CAA, there are three options for enforcement of the emissions guidelines requirements: an EPA approved State Plan, a Federal Plan delegated to the State to implement and enforce, or a Federal Plan administered by the EPA if no State Plan or delegation is requested. Therefore, this final-form rulemaking would not duplicate enforcement. Either the Commonwealth or the EPA would enforce the emissions guidelines requirements, not both.

Other comments received were either generally supportive or unrelated and outside of the scope of the rulemaking. A detailed summary of the comments submitted to the Board and the Department's responses to those comments are available in the comment and response document that accompanies this final-form rulemaking.

G. Benefits, Costs and Compliance

Benefits

These final-form amendments ensure the Department can request delegation from the EPA to implement and enforce applicable emission standards issued by the EPA in a Federal Plan. Expressly stating in a regulation the Department's legal authority to request delegation of a Federal Plan allows the EPA to accept and approve the Department's requests for delegation of authority to implement and enforce the standards of a Federal Plan. Affected owners and operators, as well as residents, will be able to contact the Department to address compliance or enforcement concerns instead of contacting the EPA. Without delegation of authority to implement and enforce the standards of a Federal Plan, and in the absence of an approved State Plan, the Department is not able to enforce the requirements of the applicable emission guideline.

Compliance costs

There are no compliance costs associated with this final-form rulemaking.

Compliance assistance plan

No compliance assistance plan is needed for this final-form rulemaking. This final-form rulemaking is an administrative amendment and does not impose compliance obligations upon the owners and operators of subject sources.

Paperwork requirements

There are no additional paperwork requirements associated with this final-form rulemaking with which the industry would need to comply.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This final-form rulemaking provides the express legal authority for the Department to request delegation of an applicable Federal Plan from the EPA. This is an administrative procedure and is not expected to directly affect emissions of regulated air pollutants.

I. *Sunset Review*

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 22, 2025, the Board submitted a copy of the notice of the proposed rulemaking, published at 55 Pa.B. 4188, and a copy of the Regulatory Analysis Form to IRRC and to the chairpersons of the Environmental Resources and Energy Committee of the Senate and the Environmental and Natural Resource Protection Committee of the House of Representatives (Senate and House Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Senate and House Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments from IRRC, the Senate and House Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on DATE, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on DATE and approved this final-form rulemaking.

K. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth

Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 55 Pa.B. 4188.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 122, are amended by adding § 122.4, as set forth in Annex A.

(b) The Chairperson of the Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the Senate and House Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

JESSICA SHIRLEY,
Chairperson