

# Final-Form Rulemaking: Legal Authority for Delegation of Federal Plans in 40 CFR Part 62

Environmental Quality Board  
6/9/2026





# Purpose

- Regulatory changes required by the EPA.
- Ensure Pennsylvania law allows DEP to request delegation of authority for applicable Federal Plans established by the EPA in 40 CFR Part 62.



# Background

- DEP historically submitted requests for delegation of Federal Plans to the EPA, citing 25 Pa. Code § 122.3 (relating to adoption of standards) as the express legal authority to do so.
- The EPA recently indicated:
  - Language in 25 Pa. Code § 122.3 was insufficient.
  - Pennsylvania needed explicit language addressing adoption and incorporation by reference of Federal Plans.



# Background

- The EPA establishes a Federal Plan in 40 CFR Part 62 to implement applicable emission guidelines established in 40 CFR Part 60.
- Federal Plans may be used by states that do not have an approved State Plan.
- States must request delegation of authority from the EPA to implement the Federal Plan if the state has subject sources in its jurisdiction and does not have an approved State Plan.



## Addition of § 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.
- Allows DEP to ask the EPA for delegation of authority to implement an applicable Federal Plan established by the EPA in 40 CFR Part 62.



Pennsylvania  
Department of  
Environmental Protection

# Public Comment Period

- EQB adopted the proposed regulation on April 8, 2025.
- The proposed regulation was published in the *Pennsylvania Bulletin* on June 21, 2025 (55 Pa.B. 4188).
- Three public hearings were held on July 22, 24, and 29, 2025.
- The 69-day public comment period closed on August 29, 2025.



# Public Comments

- During the public comment period, the Board received comments from 22 commentators.
- One witness provided testimony at the public hearings.
- The Independent Regulatory Review Commission (IRRC) also provided comments.



# Public Comments

- IRRC and others asked how DEP evaluates various impacts of implementing Federal Plans in Pennsylvania.
  - DEP considers the number and type of facilities affected; if and how they are currently regulated; the complexity of the new Federal requirements; possible emissions reductions; and whether existing mechanisms are sufficient.
- IRRC and others sought clarification about stakeholder input and consensus building when DEP requests delegation.
  - Stakeholders can provide input during DEP's public comment period on its request for delegation of authority.



# Public Comments

- Other comments were generally supportive of the rulemaking, expressed general concerns, or were outside the scope of the rulemaking.
- There are no changes to the regulation from the proposed regulation to final-form regulation.



Pennsylvania  
Department of  
Environmental Protection

# Affected Parties

- No facilities are directly affected by the final-form regulation.
- This administrative amendment documents existing practice.



# Advisory Committee Review

The following advisory committees were consulted on this final-form regulation:

- Air Quality Technical Advisory Committee on February 5, 2026
- Small Business Compliance Advisory Committee on February 12, 2026
- Citizens Advisory Council on March 10, 2026



Pennsylvania  
Department of  
Environmental Protection

# Recommendation

DEP recommends the Board adopt this final-form regulation.



Pennsylvania  
Department of  
Environmental Protection

# Questions?

**Ali Tarquino Morris**  
**Deputy Secretary**  
**Office of Waste, Air,**  
**Radiation and Remediation**

...

**altarquino@pa.gov**

**Joseph Martini**  
**Division Manager**  
**Air Resources Management**  
**Bureau of Air Quality**

...

**martjos@pa.gov**

**Jesse Walker**  
**Assistant Director**  
**Bureau of Regulatory**  
**Counsel**

...

**jeswalker@pa.gov**

The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water resources and to provide for the health and safety of its residents and visitors, consistent with the rights and duties established under the Environmental Rights Amendment (Article 1, Section 27 of the Pennsylvania Constitution).