

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

Bureau of Air Quality
February 5, 2026





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Department of
Environmental Protection

Purpose

- Regulatory changes required by 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 EPA, citing 25 Pa. Code § 122.3 (relating to adoption of standards) as the express legal authority
- EPA indicated:
 - Language in 25 Pa. Code § 122.3 was insufficient
 - DEP needs explicit language addressing adoption and incorporation by reference of Federal Plans



Background

- 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.



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Addition of § 122.4

- § 122.4 allows DEP to ask EPA for delegation of authority to implement an applicable Federal Plan established by EPA in 40 CFR Part 62.



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Public Comment Period

- The public comment period opened on June 21, 2025 and three public hearings were held:
 - July 22, 2025
 - July 24, 2025
 - July 29, 2025
- The public comment period closed on August 29, 2025.
- The Independent Regulatory Review Commission's comment period closed on September 29, 2025.



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Public Comments

- During the public comment period, the Board received comments from 22 commentators.
- Testimony from one witness was given at the public hearings.
- The Independent Regulatory Review Commission (IRRC) provided comments.



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Public Comments

- IRRC and others asked how DEP evaluates various impacts of implementing Federal Plans in Pennsylvania.
- IRRC and others sought clarification about stakeholder input and consensus building when DEP requests delegation.
- 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.



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Public Comments

All public comments can be found in their original form on the Department's [eComment webpage](#) as well as on the IRRC website ([IRRC #3439](#)). The Department prepared a Comment and Response document and final-form rulemaking documents that will be submitted to the Environmental Quality Board.



Affected Parties

- Emission guidelines apply to the owner and operator of an existing facility in the covered source category.
- Applicable emission guidelines can be implemented and enforced by DEP either through:
 - An approved State Plan.
 - Delegation of authority to implement and enforce Federal Plan requirements.



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Environmental and Economic Impacts

- No adverse environmental or economic impacts.
- Continued administrative efficiency for DEP to directly implement and enforce the requirements and compliance deadlines.



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Anticipated Rulemaking Schedule

- Citizens Advisory Council Policy and Regulatory Oversight Committee – January 2026
- Citizens Advisory Council – February 2026
- Small Business Compliance Advisory Committee – February 2026
- Environmental Quality Board – 2nd Quarter 2026
- Final-Form Rulemaking Promulgated – 3rd Quarter 2026



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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).