

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–19599 Filed 8–30–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R06–OAR–2021–0029; FRL–12218–01–R6]

Air Plan Disapproval; Texas; Control of Air Pollution From Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is proposing to disapprove a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas through the Texas Commission on Environmental Quality (TCEQ) on August 20, 2020. The SIP submittal addresses emissions during planned Maintenance, Startup and Shutdown (MSS) activities for certain Electric Generating Units (EGUs) and includes requirements intended to address visible emissions (opacity) and Particulate Matter (PM) emissions during planned MSS activities. The requirements are included in eight Agreed Orders (AOs) issued by TCEQ to the affected EGUs and provided in the SIP revision. EPA is proposing to determine that the requirements contained in these AOs do not meet the CAA requirements that emission limitations must be practically enforceable and must apply on a continuous basis. We are taking this action in accordance with section 110 of the Act.

DATES: Comments must be received on or before October 3, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0029 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*.

The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Michael Feldman, (214) 665–9793, Feldman.Michael@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Feldman, Regional Haze and SO₂ Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–9793, Feldman.Michael@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

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I. Background**A. Texas Chapter 111—Control of Air Pollution From Visible Emissions and Particulate Matter**

Texas promulgated rules for the control of visible emissions (opacity) and particulate matter emissions for inclusion in its SIP on January 28, 1972, and EPA first approved those rules into the SIP on May 31, 1972 (37 FR 10895) at 40 CFR 52.2270(b). In the original codification, Texas’ rules concerning visible emissions and emission restrictions for particulate matter emissions were contained in TACB Regulation I—Control of Smoke, Visible Emissions and Particulate Matter, Rule 103.1 and 105.31. In developing these original rules, the state has noted that it relied in part on the findings of a study conducted by the Radian Corporation (Radian Report)¹ on behalf of the Texas Air Control Board (TACB),² a predecessor state agency to the TCEQ. The Radian Report provided information on the steady-state performance of electrostatic precipitator (ESPs) that the state used as part of establishing the Opacity and PM restrictions in TACB Regulation I. The control and performance efficiencies documented in the Radian Report for visible emissions and particulate matter for coal fired EGUs equipped with ESPs did not consider startup and shutdown periods when the EGU boiler exhaust gas is below the minimum temperature required to ensure the effective and safe operation of an ESP as a control device for particulate matter emissions and opacity.³

¹ Radian Corporation, Technical Basis for Texas Air Control Board Particulate Regulations, Delbert Max Ottmers, Jr and Ben R. Breed, August 20, 1971 (included in TCEQ’s SIP submittal in the Docket for this proposed rulemaking).

² The Texas Air Control Board, abolished by Texas S.B. 2, 72nd Leg., 1st C.S., effective September 1, 1993, duties transferred to the Texas Natural Resource Conservation Commission which was formed from a merger with other state agencies including the Texas Water Commission and which was later renamed the Texas Commission on Environmental Quality, Agency 582.

³ TCEQ’s SIP submittal identifies additional studies conducted by the EPA and predecessor agencies as early as 1970 on ESP design and operation (available in the docket for this action): An Electrostatic Precipitator Systems Study: Final Report to The National Air Pollution Control Administration, Southern Research Institute, Contract CPA 22–69–73, October 30, 1970; Effects of Transient Operating Conditions on Steam-

Since the original EPA approval of Rules 103.1 and 105.31 in 1972, there have been several subsequent state rule revision actions and EPA-approved SIP revisions which renumbered and recodified Rules 103.1 and 105.31 to what they are today—namely, 30 TAC 111.111 (for opacity) and 30 TAC 111.153(b) (for particulate matter) of the EPA-approved SIP. See 74 FR 19144 (April 28, 2009). However, none of the subsequent rulemakings and SIP revisions were substantive in nature and the record for those actions do not suggest a change to the original scope and application of Rules 103.1 and 105.31.

In 2009, Texas recodified Regulation I, Rules 103.1 and 105.31, in a new location, 30 TAC 111.111 (Approved by EPA, April 28, 2009 (74 FR 19144) effective May 28, 2009, *Regulations.gov* docket ID NO. EPA-R06-OAR-2005-TX-0028). Despite the changed numbering, the requirements in the rules remain the same. For opacity, 30 TAC 111.111 requires that the affected sources “shall not exceed 30 percent averaged over a six-minute period” (for any source on which construction or operation was begun on or before January 31, 1972), and “shall not exceed 20 percent averaged over a six-minute period for any source on which construction was begun after January 31, 1972.”⁴ For particulate matter, 30 TAC 111.153(b) requires that no affected source “may cause, suffer, allow, or permit emissions of particulate matter from any solid fossil fuel-fired steam generator to exceed 0.3 pound of total suspended particulate per million BTU heat input, averaged over a two-hour period.”⁵

On October 30, 2014, EPA received a petition from the Environmental

Electric Generator Emissions, EPA-600/2-75-022, August 1975; Controlling Particulate Emissions from Coal-Fired Boilers, EPA-600/8-79-016, June 1979.

⁴ See section 111.111 Requirements for Specified Sources, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=111&rl=111](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=111&rl=111), also <https://www.epa.gov/sips-tx/current-texas-sip-approved-regulations#1A1>.

⁵ See section 111.153 Emission Limits for Steam Generators, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=111&rl=153](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=111&rl=153). See also <https://www.epa.gov/sips-tx/current-texas-sip-approved-regulations#1A1>. Also, during the state comment period (as TCEQ was adopting this source-specific SIP revision) TCEQ responded to EPA’s request for clarification and confirmed that the coal-fired EGUs covered by these AOs are “solid fossil fuel-fired steam generator units” as the term is used in 30 TAC § 111.153(b), and the AOs apply specifically to a subset of solid fossil fuel-fired steam generators that use coal as fuel (*i.e.*, those EGUs that use ESPs as a control device).

Integrity Project and Sierra Club (Petitioners) requesting that the EPA object to the title V operating permit issued by the TCEQ to the Southwestern Electric Power Company (SWEPCO) H.W. Pirkey power plant.⁶ Petitioners claimed, among other issues, that the 2014 proposed title V permit created “improper exemptions” from the 20 percent opacity limit in Texas’s SIP at 30 TAC 111.111(a)(1)(B) and the 0.3 lb/MMBtu PM limit in Texas’s SIP at 30 TAC 111.153(b) specifically during planned MSS periods. On May 18, 2015 (after a March 2015 Notice of Intent) Petitioners filed a Complaint, seeking an order declaring that the EPA Administrator must grant or deny the 2014 petition and requiring the Administrator to do so. On December 2, 2015, TCEQ submitted to EPA an interpretive letter asserting that the opacity and PM emission limitations in the state’s rules, adopted in the early 1970’s, were based on the use of ESPs during normal/stable operations and thus did not apply during periods of planned maintenance, startup and shutdown activities. (30 TAC 111.111 and 30 TAC 111.153(b)).⁷

On February 3, 2016, EPA issued an order granting portions of the 2014 petition, objecting to the title V permit for the Pirkey power plant (Petition Number VI-2014-01) which indicated that the Pirkey power plant permit and permit record were unclear as to whether TCEQ’s rules created an exemption from the opacity and PM limits in Chapter 111. EPA found that the Petitioners demonstrated that the title V permit and permit record were unclear regarding whether the SIP opacity and PM limits applicable to the source apply during periods of planned MSS, as required. Therefore, the EPA directed TCEQ to revise the title V permit to “ensure that it requires that the opacity and PM limits of 30 T.A.C. §§ 111.111(a)(1)(B) and 111.153(b) apply during periods of planned MSS.”⁸

⁶ October 30, 2014, Environmental Integrity Project (EIP) and Sierra Club filed a petition for objection to Southwestern Electric Power Company’s (SWEPCO) Title V permit for the H.W. Pirkey power plant.

⁷ See letter, from Steve Hagle, Deputy Director, Office of Air, TCEQ to Gina McCarthy, Administrator, EPA, dated December 2, 2015 (setting forth TCEQ’s interpretation that the opacity and PM emission limitations in 30 TAC 111.111 and 30 TAC 111.153(b) never applied to periods of planned MSS activities at coal-fired EGUs equipped with ESPs as a control device). In their interpretive letter, TCEQ notes that courts give deference to a state’s interpretation of its own regulations, citing to *Florida Power & Light Co. v. Costle*, 650 F.2d 579,588 (5th Cir. 1981) (“Moreover, it must be emphasized that EPA is to be accorded no discretion in interpreting state law”).

⁸ Order Granting In Part and Denying in Part Petition for Objection to Permit, (February 3, 2016).

Subsequent to the order, in 2016, EPA and TCEQ met to discuss the Pirkey Petition, the MSS issues raised, and a path forward to address issues raised as they relate to MSS.

In a March 13, 2017 letter from EPA to the TCEQ,⁹ and in light of the petitions received and in an effort to resolve issues, EPA and TCEQ reached an agreement on a path forward by which TCEQ agreed to amend provisions applying to excess emissions during periods of startup and shutdown.¹⁰ Specifically, TCEQ agreed to develop and issue AOs for the eight affected coal-fired EGUs equipped with ESPs. These AOs would include enforceable opacity and particulate matter emission limitations that would apply during planned MSS activities. Once adopted, the state indicated that it would submit the AOs as part of a SIP revision to the EPA for approval as source-specific SIP provisions of the Texas SIP. Upon receipt of the proposed SIP revision, the EPA indicated that it would evaluate the SIP submission and proceed to initiate rulemaking as required by Section 110 of the CAA. If the revision complied with the CAA and were approved by EPA, the AOs would be incorporated into the Texas SIP as source-specific requirements found at 40 CFR 52.2270(d).

As a result of the 2016 meeting and letter exchange, TCEQ submitted the August 2020 SIP submittal. In the submittal, Texas reiterated its interpretation that the opacity and PM emission restrictions for coal-fired EGUs equipped with ESPs established in TAC Rule 103.1 and Rule 105.31 were promulgated by the state on the premise that its rules were based on normal (steady state) or routine operations of ESPs, and therefore were not applicable during periods of planned MSS at such sources.¹¹

⁹ Letter from Guy Donaldson, Associate Director, Air Branch, Air and Radiation Division, EPA to Steve Hagle, Deputy Director, Office of Air, TCEQ, dated March 13, 2017. Included in the docket for this action.

¹⁰ See March 13, 2017 letter from Guy Donaldson, Associate Director, Air Branch, Air and Radiation Division, EPA to Steve Hagle, Deputy Director, Office of Air, TCEQ referencing EPA’s 2015 SIP call and SSM Policy published at 80 FR 33840 (June 12, 2015).

¹¹ Texas further supported its conclusion by referencing the State’s simultaneous adoption of general rules that implemented a separate air control strategy for emissions during MSS activities. See (TACB) General Rules 8 and 12.2, adopted on January 26, 1972, and effective on March 5, 1972 (the same dates as TACB Rules 103.1 and 105.31 discussed above). TACB General Rule 8 required sources to provide the State a 10-day advanced notification of excessive emissions from planned MSS activities while General Rule 12.2 provided sources a discretionary exemption from having to meet allowable emission limits in other rules, such

B. August 20, 2020 SIP Submittal

The August 20, 2020 submittal is intended to address emissions from certain sources during planned MSS events. The state adopted and submitted for inclusion in its SIP, AOs for eight coal-fired power plants (comprised of thirteen EGUs)¹² equipped with ESPs as the PM control device. The state developed the AOs to impose requirements for visible emissions and particulate matter during identified periods of planned MSS activities. Although the August 20, 2020 submittal references 30 TAC Chapter 111, specifically 30 TAC 111.111 and 30 TAC 111.153(b), it does not revise the existing language of those two

provisions. Instead, the state included the AOs in the submittal to establish source-specific alternative opacity and PM requirements to apply during periods of planned MSS activities. These requirements include both operational limits on the duration and frequency of planned MSS periods and additional requirements that the state characterizes as work practices. The state asserts that these provisions of the AOs are the same as the opacity and PM operational limitations and work practices already contained in the permits addressing emissions during planned MSS activities.¹³ For all other periods of operation, the affected sources would remain required to comply with the existing emission

limitations set forth in 30 TAC 111.111 and 30 TAC 111.253(b) of the Texas SIP.

The state, through the submittal, seeks to include the eight source-specific AOs into the Texas SIP through incorporation by reference into 40 CFR 52.2770(d), together with a notation in 40 CFR 52.2270(c) to the effect that the requirements of 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) apply to all affected sources during all periods of operation, with the exception of the sources covered by the eight AOs that would be incorporated into 40 CFR 52.2270(d).

The eight affected sources, which are all EGUs, and their county of location are listed in Table 1 below.¹⁴

TABLE 1—THE AFFECTED POWER PLANTS, AGREED ORDER NUMBER, AND THE TEXAS COUNTY

Affected power plants per August 20, 2020 SIP submittal	Agreed order No.	Texas county
Southwestern Electric Power Company (SWEPCO) H.W. Pirkey Power Plant (See FN 14)	2020–0078	Harrison.
Lower Colorado River Authority (LCRA) Sam Seymour Fayette Power Project	2020–0077	Fayette.
Luminant Generation Company, LLC Martin Lake Steam Electric Station	2020–0076	Rusk.
NRG Texas Power, LLC Limestone Electric Generating Station	2020–0075	Limestone.
San Miguel Electric Cooperative, Inc. San Miguel Electric Plant	2020–0074	Atascosa.
Southwestern Public Service Company (SPS) Harrington Station in Potter County	2020–0073	Potter.
Texas Municipal Power Agency (TMPA) Gibbons Creek Steam Electric Station (See FN 14) ...	2020–0178	Grimes.
Public Service Company of Oklahoma (PSCO) Oklaunion Power Station (See FN 14)	2020–0072	Wilbarger.

As stated earlier, if approved, this SIP revision would amend the SIP to provide that the sources subject to the 8 AOs in this SIP revision are required to comply with the stated visible (opacity) and PM emissions restrictions of 30 TAC 111.111 and 30 TAC 111.153(b) during all periods of operation except periods of MSS during which time the requirements of the AOs would apply. Any other sources subject to 30 TAC 111.111 and 30 TAC 111.153(b), not addressed with AOs in this SIP revision, would be required to comply with 30 TAC 111.111 and 30 TAC 111.153(b) at all times including during periods of MSS.

Each of the AOs is comprised of two main sections titled Stipulation and Ordering Provisions. The Stipulation section of the AOs describes the State air agency’s authority for regulating the

quality of the State’s air and preparing and developing a general, comprehensive plan for the control of the State’s air pollution. It also explains that under 42 U.S.C. 7410, Texas is required to submit SIP revisions to EPA for review and approval and that such SIP revisions cannot interfere with any applicable provision concerning attainment or any other applicable requirement of the CAA. The Ordering Provisions section of the AOs state that emissions from the boiler(s), during each planned MSS, shall comply with the opacity limit in 30 TAC § 111.111(a)(1) and the PM limit in 30 TAC § 111.153(b), or the requirements listed in detail and tailored for planned MSS activities. Each of the AOs is signed by the responsible corporate official and TCEQ representatives.

II. Applicability of Opacity and PM Limitations in 30 TAC 111

As an initial matter, we acknowledge TCEQ’s interpretation of its regulations is that the existing SIP approved limitations on opacity and PM contained in 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) do not apply to the sources subject to this SIP revision during periods of planned MSS. However, as written, these rules do not contain exemptions or any other textual indication that they do not apply during periods of MSS. We do note that the ESPs that are the existing control measures for PM on these sources have technical constraints that prohibit safe and effective operations until sufficient temperatures are reached therefore it is highly improbable that these sources could have met the limitations required by the rules during MSS as historically

as Rules 103.1 and 105.31, during reported periods of planned MSS activities.

¹² As of the date of this notice: Texas Municipal Power Agency (TMPA) Gibbons Creek Steam Electric Station shut down and surrendered their permits in 2021; Public Service Company of Oklahoma (PSCO) Oklaunion Power Station was sold and converted to natural gas in 2022. The permit was amended to authorize the conversion; and Southwestern Electric Power Company (SWEPCO) H.W. Pirkey Power Plant ceased burning coal and ceased operation in March 2023, however they have not surrendered or submitted amendments to permits. It is unclear whether or not

this facility will resume operations. TCEQ is currently undergoing actions to formally withdraw the consideration of the Gibbons Creek and Oklaunion AOs from their SIP submittal.

¹³ Between 2013 and 2016, these Texas EGUs were issued amended title V/PSD permits to authorize the existing planned MSS activities and associated emissions. TCEQ states in the SIP submittal that, “although these planned MSS activities and emissions occurred after facilities began operation, they had not necessarily been fully authorized in an NSR permit prior to these permit amendments.” TCEQ goes on to explain that these are existing emissions and the permit amendments

did not involve any physical modifications or changes in method of operation.

¹⁴ Since the August 20, 2020 submittal, we note that some of these eight affected power plants with coal-fired EGUs have either shutdown/no longer operating or have converted to natural gas as fuel for power generation. As of the date of this proposal, Texas has not provided a written request to withdraw these portions of the August 2020 SIP revision. However, TCEQ informed EPA that they do plan to submit a request after undergoing the necessary state administrative processes.

configured, over the past fifty years. Texas has employed a number of approaches over the years to address emissions from these sources during MSS events, including discretionary exemptions, affirmative defenses, amending the facility permits to authorize the emissions during MSS events, and now the 2020 SIP submission. While the state's approaches (and explanations) have changed over time, we are not aware of any instance that Texas has taken an explicit action to require companies to meet the requirements set forth in 30 TAC 111.111(a)(1) or 30 TAC 111.153(b) during periods of MSS. In particular, Texas has not taken an enforcement action against these sources for failure to comply with the 30 TAC 111 limits during MSS and that called for any of these sources to upgrade their controls to comply with the limits in the future. EPA has never taken enforcement action with respect to the limitations in 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) for emissions during MSS periods. In the 2020 submission, TCEQ states that these existing SIP approved rules do not apply to emissions during MSS periods but that it now intends to address such emissions through the eight new source specific AOs.

III. Evaluation of Emission Limitations in the SIP Revision

A. SIP Requirements for Emissions Limitations

CAA section 302(k) provides, in relevant part, that “the terms ‘emission limitation’ and ‘emission standard’ mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.” Further, CAA Section 110(a)(2)(A) requires that SIPs include “enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.” In light of these two provisions, EPA's position is, and has been, that emissions limitations contained in SIPs must be continuous. Because emission limitations must be continuous, they cannot include gaps or

periods during which sources are not required to limit their emissions and thus, for example, cannot include exemptions for emissions during periods of operation such as MSS. While emission limits need to be continuous, EPA also believes that SIP emission limitations: (i) do not need to be numerical in format; (ii) do not have to apply the same limitation (e.g., numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation.

B. Environ. Comm. Fl. Elec. Power v. EPA, 94 F.4th 77 (D.C. Cir. 2024)

As noted, the SIP submission at issue in this action raises issues related to emissions during MSS. The term MSS has considerable overlap with the events EPA refers to as startup, shutdown, and malfunction (SSM).¹⁵ Issues associated with SSM are discussed at length in a SIP Call that EPA issued to states in 2015 (the 2015 SSM SIP Action).¹⁶ A number of parties challenged the 2015 SSM SIP Action on various grounds. On March 1, 2024, the D.C. Circuit Court of Appeals issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77. The case was a consolidated set of petitions for review of the 2015 SSM SIP Action. The Court granted the petitions in part, vacating the 2015 SSM SIP Action with respect to specific SIP provisions that the EPA identified as automatic exemptions, director's discretion provisions, and affirmative defenses that are functionally exemptions, and denied the petitions as to other provisions that the EPA identified as overbroad enforcement discretion provisions or affirmative defense provisions that would preclude or limit a court from imposing relief in the case of violations.

Specific to this action, EPA notes that the Court vacated the 2015 SSM SIP Action with respect to SIP provisions that contain automatic exemptions for emissions during SSM events, and that EPA had considered automatic exemptions for emissions during other modes of operation such as maintenance to pose the same legal deficiency. In the 2015 SSM SIP Action, EPA found that

¹⁵ The term SSM refers to startup, shutdown or malfunction at a source. It does not include periods of maintenance at such a source. An SSM event is a period of startup, shutdown or malfunction during which there may be exceedances of the applicable emission limitations and thus excess emissions. *Id.* at 33843.

¹⁶ See 80 FR 33840 (June 15, 2015).

certain SIP provisions were inconsistent with CAA 110(a)(2)(A) and 302(k). CAA 110(a)(2)(A) requires SIPs to “include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.” Because the automatic exemption provisions excluded applicability of emission limitations during SSM periods, the emission limitations at issue no longer operated on a “continuous basis” as required by CAA 302(k).

Significantly, the Court vacated the 2015 SSM SIP Action as to automatic exemptions, because the Agency did not first determine that the particular SIP provisions at issue were “emissions limitations” as defined by CAA 302(k), or that it was “necessary or appropriate” that these provisions be such an emission limitation under CAA section 110(a)(2)(A). The court's opinion stated that while emission limitations must be continuous, SIPs can contain “other control measures, means, or techniques” per CAA 110(a)(2)(A), and such other measures, means, or techniques do not need to meet the CAA's definition of an “emission limitation,” including the requirement that it apply on a continuous basis. The Court therefore took issue with EPA's SIP call for SIP provisions with automatic SSM exemptions, on the basis that “EPA's rationale breaks down if the measure need not qualify as an ‘emission limitation’ in the first place,” and therefore such measure would need not meet the continuity requirement.¹⁷

In light of the court's decision, EPA is evaluating the nature of the SIP provisions at issue in this action. Based on the language of the existing SIP provisions and the SIP submission at issue in this action, EPA finds that 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) are emissions limitations as contemplated under 110(a)(2)(A) and 302(k), and thus are required to be continuous. Texas, in its submittal, confirms that it adopted the AOs for these eight sources to ensure that the SIP provisions are emission limitations that apply continuously. From the SIP submission in the Executive Summary, “[t]he proposed SIP revision would make certain operational limits and work practices for periods of planned MSS at the listed EGUs federally enforceable so that emission limitations apply on a continuous basis (at all times of operation) (see FCAA, § 110(a)(2)(A)—SIP must contain emission limits, measures, etc. and

¹⁷ *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77, 99 (D.C. Cir. 2024).

§ 302(k)—emission limits apply on a continuous basis to assure continuous emission reduction). The SIP revision, through the AOs, would establish a SIP limitation for those periods when the SIP limits for PM and opacity contained in § 111.111 and § 111.153 do not apply due to the technical limitations of the ESPs at the power plants that will be subject to the AOs.” Thus, TCEQ indicated that it specifically submitted the SIP revision with the AOs to ensure that the emission limitations apply on a continuous basis, including during MSS periods. EPA agrees that these SIP limits for PM and opacity are emissions limitations that must be continuous under CAA § 302(k). We also note that the state originally submitted these rules as part of the initial Texas SIP intended to provide for the attainment and maintenance of the NAAQS, and EPA originally approved them for this purpose (*See* 37 FR 10896), further confirming that these specific rules should be considered emission limitations and “necessary and appropriate to meet the requirements of this chapter,” in this case attainment and maintenance of the NAAQS.

IV. Evaluation of Alternative Emission Limits

A. EPA Recommendations for Development of Alternative Emission Limitations

As previously discussed, Texas has identified 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) as emission limitations, and EPA agrees with this description. Accordingly, the rules must be continuous and cannot have exemptions. The state indicated that it specifically submitted the SIP revision with the AOs to ensure that the emission limitations apply on a continuous basis, including during MSS periods.

The revision submitted by Texas takes the form of new Alternative Emission Limitations (AELs) intended to apply during MSS periods. The EPA interprets the CAA (80 FR 33913, June 12, 2015) to allow SIP provisions to include AELs that apply to sources during specific modes of operation during which the source cannot meet an otherwise applicable emission limitation, such as may be the case during MSS periods. An AEL, whether a numerical limitation, technological control requirement, or work practice requirement, would apply during a specific mode of operation as a component of the continuously applicable emission limitation. All components of the resulting emission limitation must meet the substantive requirements applicable to the type of

SIP provision at issue, must meet the applicable level of stringency for that type of emission limitation, and must be legally and practically enforceable.¹⁸

EPA has longstanding guidance for AELs, which it reiterated and restated in the 2015 SSM SIP Action. For the AELs to be approvable (*i.e.*, meet CAA requirements), alternative requirements applicable to the source during MSS should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown.¹⁹ As articulated in the 2015 SSM SIP Action, the EPA recommends giving consideration to the following seven specific criteria for states when developing AELs in SIP provisions that apply during modes of operation such as MSS:²⁰ (1) The revision is limited to specific, narrowly defined source categories using specific control strategies; (2) Use of the otherwise applicable control strategy for this source category is technically infeasible during specific modes of operation such as startup or shutdown; (3) The AEL requires that the frequency and duration of operation in MSS mode are minimized to the greatest extent practicable; (4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during MSS based on the applicable AEL; (5) The AEL requires that all possible steps are taken to minimize the impact of emissions during MSS on ambient air quality; (6) The AEL requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and (7) The AEL requires that the owner or operator’s actions during MSS periods are documented by properly signed, contemporaneous operating logs or other relevant evidence.

We also note that AELs applicable during modes of operation such as startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible *de facto* exemptions for emissions during certain modes of operation.²¹ EPA notes that in order to be continuous, an emission limitation cannot have periods during which a source’s emissions are

uncontrolled, and this would include modes of operation during which the ostensible method of controlling emissions merely consists of imposing a time limit, *i.e.*, an exemption allowing effectively uncontrolled emissions for a shorter period of time remains an exemption.

B. EPA’s Evaluation

After reviewing the information in the Texas SIP submittal, EPA has identified the following concerns:

1. No Limit on Frequency of Startup or Shutdown Events

The requirements in the AOs limit the duration of a normal (as opposed to an extended) planned startup or shutdown to a number of hours per event (48 hours for all units with the exception of Martin Lake units which are limited to 24 hours per normal startups) but provides no limit on the frequency of these events. During these times, the only requirements that apply are the work standards concerning placing the ESP in service as soon as practicable during startup or keeping the ESP in service as late as practicable during shutdown. There is no requirement for the sources to limit emissions during such events in any other way. PM emissions during these events can be much higher than normal emissions and there is no limitation on the number of times during the year a boiler can go through a planned startup or shutdown. The SIP provides no discussion on the historical frequency of these events or why there is no limitation on the total number of hours a year, or times per year, these events may occur.²² This is of particular concern as utilization of coal-fired power generation has become more variable and planned startup and shutdown events may occur more frequently.²³ In EPA’s view, the approach adopted by the state in the SIP revision would in effect constitute exemptions from the opacity and PM

²² We note however, the total amount of incremental time that extended startups or shutdowns exceed the duration of a normal startup or shutdown is limited to a number of hours per year, providing some limitation on the frequency and duration of these extended events.

²³ National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 FR 38534 (May 7, 2024), “While coal-fired EGUs have historically provided baseload generation, they are being dispatched much more as load following generating sources due to the shift to more available and cheaper natural gas and renewable generation. As such, traditional generation assets—such as coal-fired EGUs—will likely continue to have more startup and shutdown periods, more periods of transient operation as load following units, and increased operation at minimum levels, all of which can produce higher PM emission rates.”

¹⁸ 80 FR at 33913.

¹⁹ *Id.*

²⁰ June 12, 2015 (80 FR 33980).

²¹ June 12, 2015 (80 FR 33980).

limits in the existing rules, by creating periods of time during which the emissions from these sources would be otherwise uncontrolled. The form of work practices that the state has imposed, *e.g.*, that the source operates the ESP in accordance with manufacturer's instructions, does not effectively reduce emissions during such periods.

2. Consideration of Additional Steps and Practices To Minimize Emissions

With respect to factors 5 and 6, AELs should require that all possible steps are taken to minimize the impact of emissions during modes of operation such as MSS on ambient air quality and to require that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures. We propose to find that the Texas SIP submittal and AOs do not address the feasibility or availability of any specific measures to minimize emissions during startup or shutdown. The only requirement is a work practice that consists of placing the ESP into service as soon as practicable or remove the ESP from service as late as possible. Nothing in the August 20, 2020 submittal indicates that technological or economic limitations prevent affected sources from using additional measures to limit emissions during planned MSS events that would address requirements to minimize emissions during such periods and be practically enforceable. This omission is particularly concerning, when planned MSS is an intentional, predictable event and within the control of the source. Because of the predictability of these events, alternative means of limiting emissions appear to be available such as use of natural gas or other cleaner burning fuels as auxiliary fuel to the maximum extent possible during startup operations until the required operating temperatures of the ESP are met and the ESP can be engaged. In addition, the submittal contains no analysis indicating that the use of another control device for PM emissions (for example, fabric filter baghouse) is not feasible, either.

Furthermore, to the extent that these sources already do utilize fuel oil or natural gas in the start-up process, there is no discussion in the SIP submission or requirement in the AOs that addresses the use of alternative fuels during startup and when coal combustion can begin with respect to operation of the ESPs. PM emissions are likely highest when coal is introduced

into the boiler but the ESP has not yet been engaged. Utilizing natural gas (or fuel oil when natural gas is not an available fuel) to the maximum extent possible to bring equipment to temperature would serve to minimize emissions during startup and could allow for ESPs to reach necessary conditions for operation at the time coal is introduced into the boilers. In fact, EPA's Mercury and Air Toxics Standards (MATS) rule for power plants published February 16, 2012, and amended on May 7, 2024, contains additional requirements for particulate control for these units. Specific to periods of startup and shutdown, the MATS requirements include work practice standards that requires sources to have sufficient clean fuel capacity to startup and warm the facility to the point where the primary PM controls (*e.g.*, ESPs) can be brought online at the same time as the addition of the coal to the EGU.

3. Enforceability of the AELs

Clean Air Act Section 110(a)(2)(A) requires that SIPs include enforceable emission limits. As discussed previously, Texas stated that the AELs are designed to provide continuously effective limits on PM and opacity through all modes of operation, with chapter 111 requirements to apply during routine operations and the AELs to apply during MSS periods. SIP provisions, including emission limitations under Section 110(a)(2)(A), must be both legally and practically enforceable.

One EPA concern with the state's approach in the AOs is that it does not provide for adequate monitoring, recordkeeping and reporting. The monitoring and recordkeeping requirements in the AOs are not sufficient to ensure that all the data necessary for demonstrating compliance is recorded and available for review. The AOs require recordkeeping to identify periods of planned MSS, the opacity measured by the continuous opacity monitoring system (COMS) for the duration of the planned MSS activities, and the work practices followed during the planned MSS activities. However, they do not specifically identify and require recordkeeping of the parameters used to identify when startup or shutdown periods end or begin, such as temperature, unit load or ESP operating parameters, nor do they specifically require recordkeeping of the parameters monitored (*e.g.* air heater outlet temperature, drum metal temperature, when solid fuel is burned) to determine when the ESP should be placed into or

removed from service during these MSS periods. These specific records are necessary to determine compliance with the definitions of when startup and shutdown periods begin or end and compliance with the AO requirements on timing of when the ESPs are placed into or removed from service. In addition, the AOs only require facilities to provide records upon request by the TCEQ or any other air pollution control agency with jurisdiction. The AOs do not require sources to make any other periodic report related to compliance with the AO provisions. EPA cannot determine the enforceability of these rules due to these monitoring, recordkeeping, and reporting gaps. Thus, we are proposing disapproval and taking comment on whether there is other relevant information or analysis that would show that these limits are enforceable notwithstanding the lack of monitoring, recordkeeping, and reporting in the AOs.

EPA also proposes to find that the state's conditions in the AOs are too subjective to provide for practical enforceability. The AELs must be accompanied by appropriate methods and conditions to determine compliance that are fully enforceable (specifying clear, unambiguous, and measurable requirements for which compliance can be practicably determined) and replicable (the procedures for determining compliance which are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result). Moreover, the work practices that apply during MSS events must be practically enforceable and it must be clear when the units are in MSS mode, and thus not subject to the otherwise applicable numerical limits specified in TAC Ch. 111.

a. Work Practices

The AOs contained in Texas' submittal all include a requirement that the sources must comply with the boiler and ESP manufacturer's operating procedures or the owner/operator's written Standard Operating Procedures (SOP) manual and to operate in a manner consistent with those procedures to minimize opacity.²⁴ It is unclear what procedures should be followed if requirements in the SOP are inconsistent with the manufacturer's operating procedures. It is likely that the lengthy operating experience at these units has resulted in the refinement of operating procedures over the many

²⁴ As a reminder, several of these sources, as of the time of this notice, have ceased operation. See FN 14.

years since the manufacturers designed the equipment and developed their recommended operating procedures. Furthermore, as the owner/operator's SOP can be modified over time, the required work practices cannot be considered permanent and enforceable. For a measure to be relied on as an emission limitation, it must be permanent which means it cannot be revised absent following the SIP revision process. Thus, the AOs need to contain more specific conditions to identify what steps must be followed to engage and operate the ESPs during these events.

As summarized in Table 2, the AOs vary in the specificity and conditions for when the ESPs should be placed into service. The Oklaunion AO specifies that the ESP should be placed into service during planned startups "once the outlet gas temperature to the ESP is greater than 300 °F." This is a clear, unambiguous and measurable requirement and compliance can be verified by reviewing the outlet gas temperature and when the ESP is brought online. The AOs for the other

seven facilities lack this level of specificity and are not practically enforceable because they require the ESP to be placed into service "as soon as practical." For Gibbons Creek, Sam Seymour, Limestone and San Miguel, the ESP is to be placed into service as soon as practical after the air heater outlet temperature is within a specified 100 degree F range. It is unclear why a range is specified rather than a minimum temperature or if there are other measurable parameters, such as flow rate or drum metal temperature, that are being evaluated to determine when it would be "practical" to place the ESP into service. Similarly, the AO for Harrington specifies that the ESP be placed into service as soon as practical after solid fuel is being burned. It is unclear what other measurable parameters, such as ESP inlet temperature, is being evaluated to determine when it would be "practical" to place the ESP into service. Finally, for Martin Lake and Pirkey, there is no additional specification for when the ESP is placed into service other than "as soon as practical."

The AOs also vary in the specificity and conditions for when the ESPs should be removed from service. For Harrington, the AO specifies that the ESP should be kept in service while the unit is burning solid fuel. For Sam Seymour, San Miguel, Oklaunion and Pirkey, the AOs provide no specificity to the conditions that determine when the ESP should be removed from service and only require that the ESP be removed from service "as late as possible." For Gibbons Creek, Limestone and Martin Lake, the ESP is to be removed from service as late as possible after the air heater outlet temperature is within a large, specified temperature range. It is unclear why a range is specified rather than a minimum temperature or if there are other measurable parameters, such as flow rate or drum metal temperature, that are being evaluated to determine when the ESP should be removed from service. The AOs for these facilities lack specificity and are not practically enforceable.

TABLE 2—SUMMARY OF REQUIREMENTS FOR PLACING ESP INTO AND REMOVING ESP FROM SERVICE

Facility	Requirements
Gibbons Creek	placing the ESP into service as soon as practical during planned startups or removing the ESP from service as late as possible during planned shutdowns, once the air heater outlet temperature is between 200 and 300 degrees F, but not longer than the durations during startups identified in Paragraph 12.A.
Harrington	When solid fuel is being burned, place the ESP into service as soon as practical during planned startups, but not longer than the durations identified in Paragraph 12.A. and keep the ESP in service while the unit is burning solid fuel.
Sam Seymour	placing the ESP into service as soon as practical during planned startups once the ESP inlet temperature (air heater outlet temperature) is between 150 and 250 degrees F and removing the ESP from service as late as possible during planned shutdowns, but not longer than the durations identified in Paragraph 12.A.
Limestone	placing the ESP into service as soon as practical during planned startups or removing the ESP from service as late as possible during planned shutdowns, once the air heater outlet temperature is between 200 and 300 degrees F, but not longer than the durations identified in Paragraph 12.A.1.
Martin Lake	placing the Boilers into service as soon as practical during planned startups, but not longer than the durations identified in Paragraph 12.A.1. During shutdown, Luminant will operate in a manner consistent with the Procedures to minimize opacity by removing the ESP from service as late as possible during planned shutdowns, once the air heater outlet temperature is between 180 and 260 degrees F, but not longer than the durations identified in Paragraph 12.A.2.
San Miguel	placing the ESP into service as soon as practical during planned startups once the prime inlet air heater is between 250 and 350 degrees F and removing the ESP from service as late as possible during planned shutdowns, but not longer than the durations identified in Paragraph 12.A.
Oklaunion	placing the ESP into service during planned startups once the outlet gas temperature to the ESP is greater than 300 °F, or removing the ESP from service as late as possible during planned shutdowns.
Pirkey	placing the ESP into service as soon as practical during planned startups or removing the ESP from service as late as possible during planned shutdowns.

b. Duration of Startup

The AO requirements for these facilities provide definitions for when the startup period ends that lack

specificity such that it is not clear when the units are in startup mode and when they should be complying with the otherwise applicable numerical emission limitations in TAC Chapter

111. The definitions for when startup ends lack clear, unambiguous and measurable requirements by which compliance could be practicably determined.

TABLE 3—STARTUP DURATIONS AND DEFINITIONS IN AOS

Facility	Duration of normal startup	Extended startup limitation	Startup begins	Startup ends
Gibbons Creek ..	2,880 minutes ...	600 hr/yr	forced draft fans start	boiler reaches the lowest sustainable load (LSL) and maintains that load (or greater load) for 60 consecutive minutes and ESP operations have been optimized.
Harrington	48 hours	300 hr/yr	Fans placed into service	unit reaches a sustained load of 150 megawatts.
Sam Seymour ...	48 hours	600 hr/yr	fuel oil igniters are started	Boiler is released to the LCRA Generation Desk for automatic dispatch.
Limestone	2,880 minutes ...	600 hr/yr	forced draft fans start	utility boiler reaches 400 megawatts (MW) and maintains that load (or greater load) for 60 consecutive minutes and ESP operations have been fully optimized.
Martin Lake	24 hours	900 hr/yr (combined on 3 units).	induced draft fans start operation	Boiler reaches stable load and the electrostatic precipitator (ESP) operation has been fully optimized.
San Miguel	2,880 minutes ...	600 hr/yr	induced draft fans start operation	lowest sustainable load (LSL) and maintains that load (or greater load) for 60 consecutive minutes and ESP operations have been fully optimized.
Oklaunion	2,880 minutes ...	18,000 minutes	fans are placed in service	lowest sustainable load on lignite for at least 60 consecutive minutes while coal is being fired.
Pirkey	2,880 minutes ...	18,000 minutes	fans are placed in service	lowest sustainable load on lignite for at least 60 consecutive minutes while coal is being fired.

The AOs for Gibbons Creek and San Miguel define the end of startup as when the “boiler reaches the lowest sustainable load (LSL) and maintains that load (or greater load) for 60 consecutive minutes and ESP operations have been optimized.” The AO for Martin Lake defines the end of startup as when the “[b]oiler reaches stable load and the electrostatic precipitator (ESP) operation has been fully optimized.” However, what constitutes the LSL or stable load is not specified in the requirements. In addition, the startup event does not end until the ESP operations have been optimized, but there is no additional specificity to determine when the ESP would be considered optimized. One can imagine that ESP operations with emissions above the Chapter 111 numerical levels would be considered non-optimized. For Martin Lake, the AO also fails to identify what constitutes a stable load so it is unclear what duration of operation at that load level is considered stable, such that the startup would be deemed to have ended.

Similarly, the AOs for Oklaunion and Pirkey define the end of startup as “lowest sustainable load (LSL) on lignite for at least 60 consecutive minutes while coal is being fired” but do not define the LSL. We also note that it is not clear how the LSL “on lignite” applies to the Oklaunion unit that has historically burned subbituminous coal. While the AO for Harrington does define the necessary load level (150 MW) it also does not identify what duration of operation at that load level is to be considered “sustained.” The AO for Limestone specifies both the load level (400 MW) and the duration (60 minutes) but also requires that the ESP operations are “fully optimized” before the startup event is considered ended. The AO for Sam Seymour defines the end of startup as when the “the boiler is released to the LCRA generation desk for automatic dispatch.” The AO provides no additional details to identify the conditions such as sustained load to identify when the boiler would be released for dispatch to demonstrate that this condition is

consistent with the goal of minimizing the duration of the event and startup emissions. In addition, while all other AOs define the beginning of startup as when the fans are placed into service, the AO for Sam Seymour defines the beginning of startup when the fuel oil igniters are placed in service. It is not clear what limits the source is required to meet when the fans are brought online before the igniters are placed into service.

c. Duration of Shutdown

The AO requirements for these facilities provide definitions for when the shutdown period begins that lack specificity such that it is not clear when the units are in shutdown mode or when they should be complying with the otherwise applicable numerical emission limitations in TAC Chapter 111. The definitions for when shutdown begins lack clear, unambiguous and measurable requirements by which compliance could be practicably determined.

TABLE 4—SHUTDOWN DURATIONS AND DEFINITIONS IN AOS

Facility	Duration of normal shutdown	Extended shutdown limitation	Shutdown begins	Shutdown ends
Gibbons Creek	600 minutes	600 hr/yr	load drops below LSL following dispatch request for a shutdown.	When the boiler water circulating pump manifold temperature reaches 180 degrees Fahrenheit (F).
Harrington	36 hours	when the generator breaker is opened or at the point of main fuel no longer being fired in the boiler, whichever is earlier..	when the generator breaker is open and main fuel is no longer being fired in the boiler.

TABLE 4—SHUTDOWN DURATIONS AND DEFINITIONS IN AOS—Continued

Facility	Duration of normal shutdown	Extended shutdown limitation	Shutdown begins	Shutdown ends
Sam Seymour	12 hours	600 hr/yr	when the LCRA Generation Desk releases control of the boiler to the plant for the purpose of a shutdown.	temperature has been reached that allows personnel to enter the structure and conduct maintenance activities.
Limestone	2,880 minutes	600 hr/yr	when load drops below the lowest sustainable load (LSL) following dispatch request for a shutdown.	when the drum metal temperature reaches 200 degrees F.
Martin Lake	24 hours	900 hr/yr (combined on 3 units).	when the ESP is partially or completely de-energized due to reaching its minimum operating temperature.	when a temperature has been reached that allows personnel to enter the structure and conduct maintenance activities.
San Miguel	2,880 minutes	600 hr/yr	load drops below the LSL following the permit holder's request to dispatch for a shutdown.	ends when the average lower drum metal temperature reaches 200 degrees Fahrenheit (F) or when the induced draft fans are removed from service by the plant operators.
Oklaunion	2,880 minutes	when the Boiler has dropped below the lowest sustainable load for at least 30 consecutive minutes.	24 hours after combustion has ceased.
Pirkey	2,880 minutes	when the Boiler has dropped below the lowest sustainable load for at least 30 consecutive minutes.	24 hours after combustion has ceased.

The duration of shutdown events are limited in the AOs to a specific amount of time, however, the time periods vary between the facilities from 10 hours to 48 hours. There is no discussion as to how the duration of the allowed shutdown period was determined nor justification for how a shutdown period lasting up to 48 hours is consistent with the goal of minimizing the duration of the event and associated emissions.

The AOs for Gibbons Creek, Limestone and San Miguel define the start of a shutdown as when the “load drops below LSL following dispatch request for a shutdown” and the AOs for Oklaunion and Pirkey define the start of a shutdown as when the boiler “has dropped below the lowest sustainable load for at least 30 consecutive minutes.” However, what constitutes the LSL is not specified in the requirements. For Martin Lake, the AO defines the start of shutdown as “when the ESP is partially or completely de-energized due to reaching its minimum operating temperature” but does not identify the minimum operating temperature. For Sam Seymour, the AO defines shutdown as beginning when the LCRA Generation Desk releases control of the boiler to the plant for the purpose of a shutdown but provides no additional details to identify the conditions such as sustained load to identify when the boiler would be released for shutdown. For Harrington, the AO defines shutdown as beginning when the generator breaker is opened or at the point of main fuel no longer being fired in the boiler, whichever is earlier,

but provides no additional details to identify the conditions when the breaker is to be opened. In sum, to be legally and practically enforceable, the AOs should clearly define the moment when the requirements switch from compliance with 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) to compliance with the alternative emission limitations that apply during shutdown in the AOs.

d. EPA’s Conclusion on the Enforceability of AELs

In sum, to be legally and practically enforceable, the AOs should contain enforceable limitations on the duration of start-up and shutdown emissions and clearly define the moment when the requirements switch from compliance with the alternative emission limitations for such modes of operation in the AOs to compliance with 30 TAC 111.111(a)(1) and 30 TAC 111.153(b). These AO restrictions as written, however, are not practically enforceable. Instead, the AOs, due to various ambiguities as discussed above, are unclear as to the procedures an operator must follow to be in compliance and at what point in the startup or shutdown process, the facility must switch from compliance with the AO to compliance with 30 TAC 111.111(a)(1) and 30 TAC 111.153(b) as required for routine operation.

4. Planned Offline and Online Maintenance Activities

In addition to the work practices and operational limits for planned startup and shutdown, the AOs contain provisions specific to planned online or

offline maintenance activities, such as boiler general maintenance, de-slagging, combustion optimization, and flue gas conditioning.²⁵ However, unlike the provisions for startup and shutdown, the AOs do not include any work practices that the sources are required to apply during these periods. For these activities, the AOs “authorize” periods of opacity greater than 20% for a number of hours per year (e.g., 535 hrs/year for each unit at Martin Lake). The only ostensible requirement during maintenance periods appears to be that the source operate the boiler and its ESP in accordance with good air pollution control practices, safe operating practices, and protection of the facility and associated air pollution control equipment. The generic general duty that an owner or operator shall operate a source consistent with safety and good air pollution control practices for minimizing emissions is not sufficient to identify what these specific practices might be across the range of maintenance activities to which the AOs apply, and thus such general duty clauses are not practically enforceable as a limitation on emissions during these activities.²⁶ The AOs and SIP submission contain no discussion of the potential emissions from these activities, or consideration of other forms of alternative emission limitations

²⁵ For example, See AO for Martin Lake, provision 12.C.1–8.

²⁶ See 80 FR at 33,889–890, 33,893, and 33,903–904 for additional rationale describing why general duty clauses cannot operate on their own to fill exemptions in otherwise applicable emission limitations.

such as alternative numerical opacity limits that could potentially apply during these maintenance periods that would provide for a quantifiable and more practically enforceable limitation. Furthermore, EPA notes that the AOs contain no limitations as to the duration or frequency of individual events, the result being that it is possible that no opacity limitation could apply for a period of several hundred hours.

As stated in EPA's June 12, 2015 SSM policy, states may not create SIP provisions that contain automatic or discretionary exemptions from otherwise applicable emission limitations during periods such as "maintenance," "load change," "soot blowing," "on-line operating changes" or other similar normal modes of operation. Like startup and shutdown, the EPA considers all of these to be modes of normal operation at a source, for which the source can be designed, operated and maintained in order to meet applicable emission limitations and during which the source should be expected to control and minimize emissions. Excess emissions that occur during planned and predicted periods should be treated as violations of applicable emission limitations. Accordingly, exemptions for emissions during these periods of normal source operation are not consistent with CAA requirements.

It may be appropriate for an air agency to establish an alternative numerical limitation or other form of control measure that applies during these modes of source operation, as for startup and shutdown events, but any such alternative emission limitation should be developed using the same criteria that the EPA recommends for alternative emission limitations applicable during startup and shutdown. Similarly, any SIP provision that includes an emission limitation for sources that includes alternative emission limitations applicable to modes of operation such as "maintenance," "load change," "soot blowing" or "on-line operating changes" must also meet the applicable level of stringency for that type of emission limitation and be practically and legally enforceable.²⁷ So EPA finds that the general duty provisions that apply during Maintenance activities in the AOs are not practically enforceable and thus cannot be approved.

V. Proposed Action

For the reasons discussed in this notice, the EPA is proposing to disapprove a revision to the Texas SIP submitted by TCEQ on August 20, 2020 (concerning opacity and PM emissions during planned MSS activities for certain EGU sources equipped with ESPs as the PM control device). These EGUs are the Southwestern Electric Power Company (SWEPCO) H.W. Pirkey Power Plant; the Lower Colorado River Authority (LCRA) Sam Seymour Fayette Power Project; the Luminant Generation Company, LLC Martin Lake Steam Electric Station; the NRG Texas Power, LLC Limestone Electric Generating Station; the San Miguel Electric Cooperative, Inc. San Miguel Plant; the Southwestern Public Service Company (SPS) Harrington Station; the Texas Municipal Power Agency (TMPA) Gibbons Creek Steam Electric Station; and the Public Service Company of Oklahoma (PSCO) Oklaunion Power Station.

The effect of this disapproval, if finalized, is that the Agreed Orders will not be incorporated into the SIP. There will be no sanctions or FIP clocks started by this action if finalized.

VI. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section, below, titled "VII. Statutory and Executive Order Reviews." For informational and transparency purposes only, the EPA is including additional analysis of environmental justice associated with this proposed action for the purpose of providing information to the public.

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.²⁸ The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified "buffer" area that covers multiple CBGs.²⁹ An individual CBG is a cluster of contiguous blocks

within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).³⁰ To help mitigate this uncertainty, we have summarized EJSCREEN data within larger "buffer" areas covering multiple block groups and representing the average resident within the buffer areas surrounding the sources. We present EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These indicators of overall pollution burden include estimates of ambient particulate matter (PM_{2.5}), ozone, nitrogen dioxide, and diesel particulate matter concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.³¹ EJSCREEN also provides information on demographic indicators, including percent low-income, unemployment, communities of color, linguistic isolation, and education.

The EPA prepared EJSCREEN reports covering a buffer area of approximately 6-mile radius around each affected EGU. Tables 5 and 6 present a summary of results from the EPA's screening-level analysis for the areas surrounding the affected EGUs in Texas compared to the U.S. as a whole. The full, detailed EJSCREEN report is provided in the docket for this rulemaking.

³⁰ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

³¹ For additional information on provides details on the data and methods used to create the indicators and indexes in EJSCREEN, see "EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation" at <https://www.epa.gov/ejscreen/technical-information-and-data-downloads>.

²⁸ The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

²⁹ See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

²⁷ See 80 FR at 33978.

TABLE 5—EJSCREEN ANALYSIS SUMMARY FOR AFFECTED EGU FACILITIES PART 1

Variables	Values for buffer areas (radius) for each affected EGU and the U.S. (percentile within U.S. where indicated)				
	Fayette	Gibbons Creek	Harrington	Pirkey	U.S.
<i>Pollution Burden Indicators:</i>					
Particulate matter (PM _{2.5}), annual average	8.32 µg/m ³ (56%ile)	8.38 µg/m ³ (58%ile)	5.91 µg/m ³ (5%ile)	8.89 µg/m ³ (72%ile)	8.45 µg/m ³ (—)
Ozone, annual average of the top ten 8-hour daily maximums	61.1 ppb (53%ile)	63.1 ppb (63%ile)	59.6 ppb (46%ile)	56.3 ppb (29%ile)	61.8 ppb (—)
Nitrogen dioxide, annual average	4.9 ppb (22%ile)	4.3 ppb (17%ile)	7.7 ppb (51%ile)	3.7 ppb (11%ile)	7.8 ppb (—)
Diesel particulate matter	0.0603 µg/m ³ (12%ile)	0.0553 µg/m ³ (10%ile)	0.172 µg/m ³ (55%ile)	0.105 µg/m ³ (30%ile)	0.191 µg/m ³ (—)
Toxic releases to air score *	74 (21%ile)	82 (22%ile)	260 (36%ile)	10000 (93%ile)	4,600 (—)
Traffic proximity and volume score *	27,000 (8%ile)	12,000 (5%ile)	520,000 (40%ile)	110,000 (18%ile)	1,700,000 (—)
Lead paint (percentage pre-1960 housing)	0.26% (54%ile)	0.037% (23%ile)	0.44% (70%ile)	0.17% (45%ile)	0.3% (—)
Superfund proximity score *	0 (0%ile)	0 (0%ile)	0.015 (56%ile)	0.0065 (56%ile)	0.39 (—)
RMP proximity score *	0.12 (36%ile)	0.012 (28%ile)	1.4 (87%ile)	0.19 (43%ile)	0.57 (—)
Hazardous waste proximity score *	0 (0%ile)	0 (0%ile)	0.45 (32%ile)	0.096 (17%ile)	3.5 (—)
Underground storage tank proximity score *	0.073 (32%ile)	0.022 (29%ile)	0.82 (49%ile)	0.27 (39%ile)	3.6 (—)
Wastewater discharge score *	2,400 (80%ile)	64 (51%ile)	0.57 (19%ile)	31 (45%ile)	700,000 (—)
Drinking water noncompliance, points	8.5 (92%ile)	0.15 (74%ile)	0.97 (77%ile)	0.87 (77%ile)	2.2 (—)
<i>Demographic Indicators:</i>					
People of color population	15% (30%ile)	19% (36%ile)	72% (79%ile)	26% (44%ile)	40% (—)
Low-income population	15% (27%ile)	17% (32%ile)	55% (86%ile)	29% (53%ile)	30% (—)
Unemployment rate	2% (36%ile)	3% (44%ile)	4% (51%ile)	4% (56%ile)	6% (—)
Linguistically isolated population	0% (0%ile)	2% (62%ile)	10% (85%ile)	7% (79%ile)	5% (—)
Population with less than high school education	4% (30%ile)	10% (58%ile)	35% (94%ile)	12% (64%ile)	11% (—)
Population under 5 years of age	3% (34%ile)	3% (34%ile)	7% (70%ile)	6% (62%ile)	5% (—)
Population over 64 years of age	31% (89%ile)	17% (54%ile)	11% (29%ile)	11% (27%ile)	18% (—)

*The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers. The underground storage tank proximity indicator is the weighted count within a 1,500-foot block group. The toxic releases to air indicator is the modeled toxicity-weighted concentration. The wastewater discharge indicator is the modeled toxicity-weighted concentrations divided by distance in meters.

TABLE 6—EJSCREEN ANALYSIS SUMMARY FOR AFFECTED EGU FACILITIES PART 2

Variables	Values for buffer areas (radius) for each affected EGU and the U.S. (percentile within U.S. where indicated)				
	Limestone	Martin Lake	Oklauion	San Miguel	U.S.
<i>Pollution Burden Indicators:</i>					
Particulate matter (PM _{2.5}), annual average	8.13 µg/m ³ (49%ile)	8.8 µg/m ³ (69%ile)	6.94 µg/m ³ (17%ile)	8.38 µg/m ³ (58%ile)	8.45 µg/m ³ (—)
Ozone, annual average of the top ten 8-hour daily maximums	61 ppb (53%ile)	56.9 ppb (32%ile)	57.2 ppb (33%ile)	61.7 ppb (56%ile)	61.8 ppb (—)
Nitrogen dioxide, annual average	3.7 ppb (11%ile)	3.2 ppb (8%ile)	3.6 ppb (11%ile)	2.9 ppb (6%ile)	7.8 ppb (—)
Diesel particulate matter	0.0574 µg/m ³ (11%ile)	0.0572 µg/m ³ (11%ile)	0.0496 µg/m ³ (8%ile)	0.0384 µg/m ³ (4%ile)	0.191 µg/m ³ (—)
Toxic releases to air score *	320 (39%ile)	9400 (92%ile)	32 (14%ile)	92 (23%ile)	4,600 (—)
Traffic proximity and volume score *	12,000 (5%ile)	9,900 (4%ile)	59,000 (13%ile)	28,000 (8%ile)	1,700,000 (—)
Lead paint (percentage pre-1960 housing)	0.061% (29%ile)	0.12% (38%ile)	0.51% (74%ile)	0.08% (32%ile)	0.3% (—)
Superfund proximity score *	0 (0%ile)	0.014 (56%ile)	0 (0%ile)	0 (0%ile)	0.39 (—)
RMP proximity score *	0.14 (39%ile)	0.18 (42%ile)	0.32 (53%ile)	0.084 (30%ile)	0.57 (—)
Hazardous waste proximity score *	0.058 (15%ile)	0.055 (15%ile)	0 (0%ile)	0 (0%ile)	3.5 (—)
Underground storage tank proximity score *	0.022 (29%ile)	0.18 (36%ile)	0.11 (34%ile)	0.000039 (26%ile)	3.6 (—)

TABLE 6—EJSCREEN ANALYSIS SUMMARY FOR AFFECTED EGU FACILITIES PART 2—Continued

Variables	Values for buffer areas (radius) for each affected EGU and the U.S. (percentile within U.S. where indicated)				
	Limestone	Martin Lake	Oklauinion	San Miguel	U.S.
Wastewater discharge score *	52 (50%ile)	50 (49%ile)	0.35 (18%ile)	14 (38%ile)	700,000 (—)
Drinking water noncompliance, points	2.7 (87%ile)	9.9 (92%ile)	2.2 (87%ile)	0.86 (77%ile)	2.2 (—)
<i>Demographic Indicators:</i>					
People of color population	21% (37%ile)	33% (51%ile)	43% (60%ile)	44% (61%ile)	40% (—)
Low-income population	33% (60%ile)	28% (52%ile)	41% (72%ile)	15% (29%ile)	30% (—)
Unemployment rate	3% (45%ile)	4% (55%ile)	5% (62%ile)	9% (79%ile)	6% (—)
Linguistically isolated population	1% (59%ile)	0% (56%ile)	4% (71%ile)	0% (57%ile)	5% (—)
Population with less than high school education	11% (60%ile)	8% (50%ile)	30% (91%ile)	29% (91%ile)	11% (—)
Population under 5 years of age	4% (47%ile)	9% (80%ile)	5% (54%ile)	0% (13%ile)	5% (—)
Population over 64 years of age	27% (83%ile)	17% (53%ile)	17% (55%ile)	35% (92%ile)	18% (—)

* See Table 5 footnote.

Communities in close proximity to and/or downwind of these EGUs may be subject to environmental impacts of emissions. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death.³² Emissions during planned MSS may be higher than emissions under normal steady-state operations. The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

We therefore propose to determine that this rulemaking action, if finalized as proposed, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

VII. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action

³² See <https://www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic-what> (accessed dated 02/05/2024).

proposes to disapprove the SIP submittal as not meeting applicable requirements of the CAA.

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA (44 U.S.C. 3501 *et seq.*) because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is certified to not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no

enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This proposed action has no tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). This action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as it does not have applicable or related tribal laws.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045

because it merely proposes to disapprove a SIP revision. Furthermore, the EPA's Policy on Children's Health does not apply to this action.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action is not subject to the requirements of section 12(d) of the NTTAA (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (Federal Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is

described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have no impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024-19600 Filed 8-30-24; 8:45 am]

BILLING CODE 6560-50-P