

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OAR-2021-0029; FRL-12218-03-R6]

Notice of Availability for Public Comment; Reconsideration of Air Plan Disapproval; Texas; Control of Air Pollution From Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment.

SUMMARY: On August 20, 2020, the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), submitted a state implementation plan (SIP) to the Environmental Protection Agency (EPA). The SIP submission addressed emissions during planned maintenance, startup, and shutdown (MSS) activities for certain electric generating units (EGUs) and included requirements intended to address visible emissions (opacity) and particulate matter (PM) emissions during planned MSS activities. These requirements were included in eight Agreed Orders (AOs) issued by TCEQ to the affected EGUs, which were provided in the 2020 SIP submission. The EPA disapproved the 2020 SIP submission on December 20, 2024, after determining that the requirements contained in these AOs did not meet the Clean Air Act's (CAA) enforceability requirements or the requirement that emission limitations must apply on a continuous basis. The EPA subsequently granted reconsideration of the disapproval on May 11, 2026. Through this notice of availability, the EPA is providing an opportunity for the public to provide additional information to the Agency during the reconsideration process. Since the EPA disapproved the 2020 SIP submission, TCEQ has rescinded four of the eight AOs. The EPA is soliciting public comments on the impact of these rescissions on the EPA's prior evaluation of the SIP submission as well as any other information that would further inform the Agency's reconsideration of the 2024 disapproval action.

DATES: Written comments must be received on or before October 26, 2026.

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 the person listed under the **FOR FURTHER INFORMATION CONTACT** section. 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 <https://www.regulations.gov>. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Feldman, State Planning and Implementation Branch, Air and Radiation Division, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number: (214) 665-9793; email address: 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, the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple abbreviations and terms in this document. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

List of Acronyms

AEL—Alternative Emission Limitation
AO—Agreed Order
CAA—Clean Air Act
EGU—Electric Generating Unit
ESP—Electrostatic Precipitator
MSS—Maintenance, Startup, and Shutdown
NAAQS—National Ambient Air Quality Standard(s)
PM—Particulate Matter
RTC—Response to Comments
SIP—State Implementation Plan
SSM—Startup, Shutdown, and Malfunction

TAC—Texas Administrative Code
TCEQ—Texas Commission on Environmental Quality

Table of Contents

- I. Executive Summary
 - A. What action is the EPA taking?
 - B. What is the legal authority and what are the requirements?
- II. Background
 - A. Texas's 2020 SIP Submission and Background
 - B. Summary of the EPA's Bases for the 2024 Disapproval
 - C. Petition for Reconsideration
- III. Request for Public Comment

I. Executive Summary

A. What action is the EPA taking?

The EPA is providing notice and opportunity for public comment to inform the Agency's process of reconsidering the December 20, 2024, disapproval action (89 FR 104043). See section III of this preamble for more information.

B. What is the legal authority and what are the requirements?

The EPA issued its December 20, 2024, disapproval action¹ after notice of its proposal and public comment² and in accordance with CAA section 110 and the Agency's implementing regulations regarding SIP submission at 40 CFR part 51, subpart F. The applicable SIP requirements for the 2020 SIP submission and specific bases for the 2024 disapproval are provided in the applicable proposed (89 FR 71237, Sept. 3, 2024) and final rule (89 FR 104043, Dec. 20, 2024) as well as under section II of this preamble. The EPA granted the petition for reconsideration based on its authority under the Administrative Procedures Act (APA).

II. Background

A. Texas's 2020 SIP Submission and Background

The State made a SIP submission to the EPA on August 20, 2020, intended to address emissions from certain sources during planned MSS events. To address these emissions, the State adopted and submitted for inclusion in its SIP AOs for eight coal-fired power plants (comprised of thirteen units) equipped with electrostatic precipitators (ESPs) as the PM control device, four of which TCEQ has rescinded since the EPA's 2024 disapproval.^{3 4} The State

¹ 89 FR 104043 (Dec. 20, 2024).

² 89 FR 71237 (Sept. 3, 2024).

³ The AOs included the following eight facilities: (1) Southwestern Electric Power Company (SWEPCO) H.W. Pirkey Power Plant; (2) Lower Colorado River Authority (LCRA) Sam Seymour Fayette Power Project; (3) Luminant Generation

developed the AOs to impose source-specific alternative requirements for visible emissions (opacity) and particulate matter during identified periods of planned MSS activities. For all other periods of operation, the affected sources would remain required to comply with the existing emission limitations set forth in the Texas SIP, specifically Title 30 of the Texas Administrative Code (TAC) sections 111.111 and 111.153(b). The 2020 SIP submission references but does not revise 30 TAC Chapter 111 regulations, sections 111.111 and 111.153(b), which contain State rules for opacity and particulate matter, and which were originally approved into the State's SIP in 1972.⁵

As noted, the SIP submission at issue in this action raised issues related to emissions during MSS. The term MSS has considerable overlap with the events the EPA refers to as startup, shutdown, and malfunction (SSM).⁶ Issues associated with SSM are discussed at length in a SIP Call that the EPA issued to States in 2015 ("2015 SSM SIP Action"), where the EPA found that certain SIP provisions were inconsistent with CAA sections 110(a)(2)(A) and 302(k) due to how automatic exemption provisions excluded applicability of emission limitations during SSM periods.⁷ On March 1, 2024, the D.C. Circuit Court of Appeals partially remanded and vacated the 2015 SSM SIP Action.⁸ As is relevant here, the Court vacated the

2015 SSM SIP Action with respect to SIP provisions that contain automatic exemptions for emissions during SSM events.⁹ The Court's opinion stated that while emission limitations must be continuous, the EPA must determine that it is "necessary or appropriate" for an emissions restriction in a SIP to meet the definition of "emission limitation" for the continuity requirement to apply.

Because emission limitations must be continuous,¹⁰ 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. The EPA interprets the CAA to allow SIP provisions to include Alternative Emission Limitations (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. However, the generally applicable emission limitation and any AELs must together constitute enforceable standards that apply on a continuous basis to meet the CAA definition of "emission limitation." The August 20, 2022, SIP submission from Texas included new AELs imposed through the AOs that would apply during MSS periods in lieu of the otherwise applicable numerical opacity and particulate matter limits.

B. Summary of the EPA's Bases for the 2024 Disapproval

The EPA previously identified several concerns with Texas's 2020 SIP submission in the 2024 disapproval and accompanying proposal.¹¹ The EPA found that it was "necessary or appropriate" for the relevant PM and opacity limitations (the combination of the existing limits in 30 TAC Chapter 111 and the new requirements established in the AOs) to meet the definition of "emissions limitation." The Agency determined that the combination of limits was not continuous because: (1) there was no limit in the frequency of startup or shutdown events; (2) the submission did not address the feasibility or availability of any specific measures to minimize emissions during startup or shutdown; (3) the AOs were not practically enforceable due to ambiguities that made it unclear as to what procedures an operator must follow to be in compliance during startup and

shutdown 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; and (4) the AOs did not include any work practices that the sources were required to comply with during periods of planned online or offline maintenance activities. The EPA also found that the AOs were not enforceable as required by CAA section 110(a)(2)(A) because: (1) the AOs did not provide for adequate monitoring, recordkeeping and reporting; (2) the conditions in the AOs were too subjective to provide for practical enforceability; and (3) the AOs lacked specificity and clarity as to the start and duration of startup and shutdown periods. The EPA also noted that the 2020 SIP submission did not sufficiently address CAA section 110(l) noninterference requirements for the attainment and maintenance of the NAAQS. The detailed evaluation of these issues can be found in the proposal and further explained in the response to comments in the final rule.¹²

Due to these concerns, the EPA determined in its 2024 disapproval that the requirements contained in the AOs provided in the 2020 SIP submission did not meet the CAA's enforceability requirement or the requirement that emission limitations must apply on a continuous basis.

C. Petition for Reconsideration

In October 2025, the State of Texas and industry submitted a petition for administrative reconsideration of the 2024 disapproval to the EPA.¹³ The October 2025 petition identified as grounds for reconsideration that the rulemaking did not reflect the current Administration's policy views, relied on modeling information that was not made available to stakeholders and public commenters prior to the comment deadline, and lacked a statutory basis. The EPA granted the October 2025 petition for reconsideration on May 11, 2026.¹⁴ As part of the reconsideration process, the EPA is publishing this notice of availability for public comment to

Company, LLC Martin Lake Steam Electric Station; (4) NRG Texas Power, LLC Limestone Electric Generating Station; (5) San Miguel Electric Cooperative, Inc. San Miguel Electric Plant; (6) Southwestern Public Service Company (SPS) Harrington Station in Potter County; (7) Texas Municipal Power Agency (TMPA) Gibbons Creek Steam Electric Station; and (8) Public Service Company of Oklahoma (PSCO) Oklaunion Power Station.

⁴ In May 2025, TCEQ revoked the AOs for the following four facilities as the sources have shutdown, are no longer operating, or have transitioned to natural gas as fuel for power generation: (1) TMPA Gibbons Creek Steam Electric Station; (2) PSCO Oklaunion Power Station; (3) SPS Harrington Station; and (4) SWEPCO H.W. Pirkey Power Plant.

⁵ Texas first promulgated rules for the control of visible emissions (opacity) and particulate matter emissions for inclusion in its SIP on January 28, 1972, and the EPA first approved those rules into the SIP on May 31, 1972 (37 FR 10895). The rules have not substantively changed since their original approval as part of the SIP.

⁶ 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. See 80 FR 33840, 33843 (June 12, 2015).

⁷ See 80 FR 33840.

⁸ *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77.

⁹ The EPA had considered automatic exemptions for emissions during other modes of operation such as maintenance to pose the same legal deficiency.

¹⁰ CAA sections 110(a)(2)(A) and 302(k).

¹¹ 89 FR 104043; 89 FR 71237.

¹² 89 FR 104043; see also 89 FR 71237.

¹³ The agency is treating the petition as a petition for rulemaking under the APA, 5 U.S.C. 553(e). Certain industry groups and the State of Texas also filed a petition for review in the Fifth Circuit Court of Appeals, *Business Coalition for Clean Air et al. v. EPA*, No. 25–60077 (5th Cir. 2025).

¹⁴ See letter dated May 11, 2026, from the EPA Region 6 Regional Administrator, Scott Mason IV, to the Texas Attorney General Ken Paxton, granting the October 2025 petition for reconsideration, available in the docket for this notice.

inform the Agency's reconsideration of the 2024 disapproval.

III. Request for Public Comment

As stated in section I.A of this preamble, the EPA is providing notice and opportunity for public comment as part of our reconsideration process. The EPA is soliciting public comments on the impacts of TCEQ's rescissions of four of the eight AOs on the Agency's prior evaluation of the SIP submission on as well as any other information that would further inform the EPA's reconsideration of the 2024 disapproval action. All relevant information and documentation, including for the proposed rule and final rule, as well as information received during the proposal's comment period, are available in the docket for this document (Docket No. EPA-R06-OAR-2021-0029).

Dated: August 26, 2026.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2026-19496 Filed 9-23-26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0120; FRL-13638-01-OFA]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for Primary Magnesium Refining (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Primary Magnesium Refining EPA ICR Number 2098.11, OMB Control Number 2060-0536) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2026. Public comments were previously requested via the **Federal Register** on August 6, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before October 26, 2026.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-

HQ-OAR-2021-0120, to EPA online using www.regulations.gov (our preferred method), by email to a-and-r-docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Aiden Titel Natural Resources Division (D230-0L), Office of Clean Air Programs, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4836; email address: titel.aiden@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through September 30, 2026. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on August 6, 2024 during a 60-day comment period (89 FR 63933). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Magnesium Refining (40 CFR part 63, subpart TTTTT) were proposed on January 22, 2003; promulgated on October 10, 2003; and most recently amended on

November 19, 2020. These regulations apply to both existing and new facilities that perform primary magnesium refining where the total hazardous air pollutants (HAPs) emitted are greater than, or equal to, 10 tons per year for each HAP, or where the total HAPs emitted are greater than, or equal to, 25 tons per year of any combination of HAPs. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart TTTTT.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Primary magnesium refining facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTTT).

Estimated number of respondents: One (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 972 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$135,000 (per year), which includes \$1,820 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent. Operation and maintenance (O&M) have been adjusted upwards based on inflation.

Courtney Kerwin,

Deputy Director, Data and Enterprise Programs Division.

[FR Doc. 2026-19503 Filed 9-23-26; 8:45 am]

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