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Issued in Fort Worth, Texas, on August 19, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group,
ATO Central Service Center.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2022-0311; FRL-12095-01-R6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Federal Implementation Plan for the Rusk-Panola Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a Federal Implementation Plan (FIP) to establish enforceable emission limits for attaining the 2010 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) for the Rusk and Panola Counties, Texas nonattainment area (Rusk-Panola area). The EPA is proposing the FIP to address deficiencies in Texas' 2022 Rusk-Panola area attainment State Implementation Plan (SIP) revision, as identified in the EPA's proposed limited approval and limited disapproval of that SIP, and which can be found in the same docket as this action. Under the limited approval, if finalized, the entire SIP submission would become federally enforceable. The limited disapproval, if finalized, would trigger the 2-year deadline for EPA to finalize a FIP that addresses the deficiencies in the SIP as well as the 18-month deadline to impose mandatory emission offsets and highway funding sanctions. The EPA is proposing to determine that the proposed FIP would provide for attainment of the 2010 1-hour primary SO₂ NAAQS in the Rusk-Panola SO₂ nonattainment area and meets the other applicable requirements under the Clean Air Act (CAA).

DATES: Comments must be received on or before October 7, 2024.

Virtual Public hearing: The EPA will hold a virtual public hearing to solicit comments on September 5, 2024. The last day to pre-register to speak at the hearing will be on September 3, 2024. On September 4, 2024, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/tx/rusk-panola-so2-nonattainment-area>. If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 28, 2024.

For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2022-0311 at <http://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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 identified in 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Andrew Lee, EPA Region 6 Office, Ozone and Infrastructure Section, 214-665-6750, lee.andrew.c@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. Modeling files and other files related to the alternative model review are available upon request. Copyrighted

materials are available for review in person at EPA Region 6 office in Dallas.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Virtual Public Hearing

The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA will hold a virtual public hearing to solicit comments on September 5, 2024. The hearing will convene at 3:00 p.m. Central Time (CT) with a 30-minute break from 5:00 to 5:30 p.m. CT. The hearing will conclude at 7:00 p.m. CT, or 15 minutes after the last pre-registered presenter in attendance has presented if there are no additional presenters. The EPA will announce further details, including information on how to register for the virtual public hearing, on the virtual public hearing website at <https://www.epa.gov/tx/rusk-panola-so2-nonattainment-area>. The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at <https://www.epa.gov/tx/rusk-panola-so2-nonattainment-area> or contact us via email at lee.andrew.c@epa.gov. The last day to pre-register to speak at the hearing will be on September 3, 2024. On September 4, 2024, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at <https://www.epa.gov/tx/rusk-panola-so2-nonattainment-area>. Additionally, requests to speak will be taken on the day of the hearing as time allows.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Each commenter will have approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by including it in the registration form or emailing it to lee.andrew.c@epa.gov. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the virtual

public hearing. A transcript of the virtual public hearing, as well as copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/tx/rusk-panola-so2-nonattainment-area>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at lee.andrew.c@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 28, 2024. The EPA may not be able to arrange accommodations without advance notice.

I. SO₂ Background

On June 22, 2010, the EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. On December 13, 2016, the EPA designated portions of Rusk and Panola Counties surrounding the Martin Lake Power Plant (“Martin Lake”) in Texas as nonattainment for the 2010 1-hour primary SO₂ NAAQS, effective January 12, 2017.¹ Section 191 of the CAA directs states to submit SIPs for nonattainment areas to the EPA within 18 months of the effective date of the designation, *i.e.*, by no later than July 12, 2018, for the Rusk-Panola area. Under CAA section 192, these SO₂ SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, *i.e.*, January 12, 2022.

II. Rusk-Panola Background

On August 10, 2020, the EPA published “Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010

1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)” that found Texas failed to submit the required SIP for the Rusk-Panola area by the July 12, 2018, CAA deadline.² This finding, effective on September 9, 2020, triggered CAA section 179(a)’s 18-month and 24-month deadlines (March 9, 2022, and September 9, 2022) for the imposition of mandatory emission offsets and highway funding sanctions, respectively, unless the state submits a SIP revision satisfying the CAA’s completeness criteria. Additionally, this finding triggered the CAA section 110(c) requirement for the EPA to promulgate a FIP within two years of the finding (September 9, 2022) unless the state submits, and EPA fully approves a SIP revision before the EPA promulgates a FIP.

On February 28, 2022, the Texas Commission on Environmental Quality (TCEQ) submitted a Nonattainment SIP for the Rusk-Panola area. The TCEQ’s SIP includes an Agreed Order between the TCEQ and Luminant (Luminant Generation Company LLC, a subsidiary of Vistra) for the Martin Lake facility, a coal-fired power plant in the area, signed on February 14, 2022. The Agreed Order includes emission limits and associated requirements for the Martin Lake facility. On August 24, 2022, the EPA determined that the February 28, 2022, SIP submittal was complete under 40 CFR part 51, App. V, which terminated the mandatory emissions offsets sanctions that were in effect and the 24-month sanction clock for the imposition of highway funding sanctions.³ However, the EPA’s completeness determination did not affect the EPA’s FIP obligation, which is only satisfied by the promulgation of a FIP or the full approval of a SIP. The EPA did not promulgate a FIP by the CAA 110(c) deadline of September 9, 2022. As a result, the EPA was sued for failure to promulgate a FIP and on January 18, 2024, entered into a consent decree⁴ setting a December 13, 2024 deadline for the EPA to take action promulgating a FIP or fully approving a SIP for the Rusk-Panola area. If finalized, this FIP in combination with the limited approval and limited disapproval would satisfy the EPA’s obligations under the Consent Decree.

² See 85 FR 48111.

³ Completeness Determination Letter from David Garcia, Air and Radiation Division Director—EPA Region 6 to Jon Niermann, Chairman, TCEQ, (August 24, 2022), available in the docket for this action.

⁴ *Sierra Club v. EPA, et al.*, No. 3:23-cv-00780-RFL, doc. 45

III. Limited Approval/Limited Disapproval Action

On August 2, 2024, the EPA proposed a limited approval and limited disapproval of Texas’ February 28, 2022, SIP submittal.⁵ A limited approval and limited disapproval is appropriate when a SIP contains regulatory provisions that are SIP strengthening, but also contains a non-separable deficiency that prevents the EPA from granting a full approval of the SIP as meeting all applicable CAA requirements. A limited approval and limited disapproval action allows the EPA to codify SIP requirements that ensure the area makes progress towards attaining the NAAQS while requiring the deficient portions of the SIP be addressed in a timely manner. The EPA’s proposed limited approval and limited disapproval action would find that Texas’ SIP submission would bring the area into attainment and otherwise meet the requirements of an attainment plan SIP submission but for two deficiencies: (1) an untimely compliance date for the emissions limitations several months after the area’s attainment date, and (2) the inclusion of the Agreed Order’s force majeure provision. A deficiency arose from the Texas SIP due to the compliance date for the emission limitations set forth by the state not being effective until after the attainment date for the area. The applicable attainment date for the Rusk-Panola Nonattainment area was January 12, 2022, but the Martin Lake Facility was not required to comply with all of the emissions limitations set forth in the SIP submission’s control strategy until 180 days later, July 11, 2022. A second deficiency was identified in the SIP submission due to enforceability concerns arising from the force majeure provision included in the submittal. If triggered, the force majeure provision in the SIP allows non-compliance with the emission limits of an unknown frequency, duration, and magnitude. As explained in the EPA’s proposed limited approval and limited disapproval of the SIP, this force majeure provision prevents the EPA from being able to fully approve the modeled attainment demonstration and related CAA elements that would otherwise be approvable.

The EPA described the CAA section 172(c) statutory requirements for a complete SO₂ nonattainment area plan in our 2014 nonattainment area guidance, which includes: an accurate emissions inventory of current emissions for all sources of SO₂ within

⁵ 89 FR 63117.

¹ See 81 FR 89870; see also 40 CFR part 81, subpart C.

the nonattainment area; a modeled attainment demonstration; demonstration of Reasonable Further Progress (RFP); implementation of Reasonable Available Control Measures (RACM) (including Reasonably Available Control Technologies (RACT)); nonattainment New Source Review (NSR); emissions limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area.⁶ In the proposed limited approval and limited disapproval action, the EPA proposed that the SIP would adequately satisfy the requirements for a baseline emissions inventory and nonattainment NSR, but due to the presence of the force majeure provision affecting the enforceability of the limits relied upon in the attainment demonstration, cannot fully meet the requirements of CAA sections 110, 172, 191 and 192, particularly for RACM/RACT, RFP, emissions limits as necessary to provide for NAAQS attainment, and contingency measures. Based on these deficiencies, the entire SIP submission is proposed to be subject to a limited approval and limited disapproval.

During the development of Texas' 2022 attainment SIP revision, TCEQ entered into an Agreed Order with Luminant to establish a control strategy and emission limitations for the Martin Lake facility. The TCEQ adopted the Agreed Order on February 14, 2022, binding Martin Lake to its requirements and incorporating it into the SIP revision. As of 2023, the Martin Lake facility had implemented all measures required by the Agreed Order. The Agreed Order for Martin Lake established revised limits for the three electric generating facilities (EGFs) and for the two auxiliary boilers that exist at the facility. Source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations as required by 40 CFR part 51, subpart G. Since triggering the force majeure provision could result in unaccounted emissions and exemptions from compliance of unknown frequency, duration, and magnitude, the EPA proposed a limited disapproval for failing to establish source specific limits that are permanent and consistent with the emissions used in the SIP demonstration. Therefore, the EPA is promulgating this FIP to establish permanent and enforceable limits for

the Martin Lake facility as necessary to provide for attainment of the NAAQS. For a more detailed explanation of the deficiencies identified in Texas' 2022 attainment plan, see Section III of EPA's proposed limited approval and limited disapproval.⁷

Finalizing this action will satisfy the EPA's obligation to promulgate a FIP, which was initiated by the August 10, 2020, finding that Texas had failed to submit the required SO₂ nonattainment plan by the submittal deadline (85 FR 48111). It will also satisfy the requirement in the Consent Decree issued on February 15, 2022, in *Sierra Club v. U.S. EPA, et al.*, No. 3:23-cv-00780-TLT (N.D. Cal.), directing the EPA to sign a notice to either approve a SIP meeting the applicable CAA requirements or promulgate a FIP for the Rusk-Panola area no later than December 13, 2024.

IV. FIP Action

As discussed in the previous section, the EPA is proposing a FIP to address the SIP's deficiencies that prevent the EPA from fully approving the SIP as meeting applicable CAA requirements for SO₂ nonattainment plans. The EPA's FIP requirements include an enforcement scheme for the area that results in permanent and enforceable emission limitations that provide for attainment of the NAAQS. In our limited approval and limited disapproval action, the EPA proposed to find that the SIP's emissions limits would be adequate to satisfy CAA requirements and provide for attainment of the NAAQS, but for the force majeure provision. Therefore, our FIP incorporates the same proposed emissions limitations that are consistent with Texas' modeled attainment demonstration absent the force majeure provision that necessitated proposing limited disapproval.

In accordance with CAA section 110(a)(2), SIPs must provide for enforceable emissions limitations as necessary to meet applicable CAA requirements and include programs to provide for enforcement of such emission limitations. In the EPA's "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble),⁸ the EPA provided guidance on what it means for emissions limitations to be enforceable. The preamble outlines fundamental principles for SIPs and control strategies, which include enforceability. Specifically, SIPs must provide for a

legal means of ensuring that sources are in compliance with control measures for a measure to be enforceable.⁹ The preamble goes on to state, "a regulatory limit is not enforceable if, for example, it is impracticable to determine compliance with the published limit."¹⁰ Finally, the preamble states, "source-specific limits should be permanent and must reflect the assumptions used in the SIP demonstrations."¹¹ For an SO₂ nonattainment plan to be fully approved, CAA section 172(c)(6) provides SIPs must include enforceable emission limitations as may be necessary or appropriate to provide for NAAQS attainment. Further, CAA section 302(k) defines "emission limitation" to mean a requirement that limits the quantity, rate, or concentration of air pollutant emissions on a continuous basis. For an SO₂ attainment plan to be fully approvable, a modeled attainment demonstration must be based on the maximum allowable emissions permitted under the SIP's emission limitations, and under CAA section 172(c)(6) those limitations must be practically and legally enforceable and under 302(k) must be continuous. The same is true for the demonstration of RACM/RACT, RFP, and contingency measures. Satisfying the enforceability criteria ensures that NAAQS attainment will be achieved via compliance with the SIP as adopted.

As mentioned earlier in this proposed action and discussed in our proposed limited approval and limited disapproval action, the SIP demonstration does not reflect potential unaccounted for emissions or exemptions from compliance due to the triggering of a force majeure event, making it impracticable to determine compliance, enforce the SIP requirements, and ensure attainment of the NAAQS. However, as also discussed in the proposed limited approval and limited disapproval action, but for the force majeure provision the EPA believes that the modeled attainment demonstration, and RACM/RACT, RFP, emission limits necessary for attainment, and contingency measures elements would be approvable and would not need to be substantively changed if the force majeure provision did not exist in the adopted and submitted SIP.

Therefore, the EPA is proposing a FIP that provides for reporting, monitoring, recordkeeping, compliance,

⁶ On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO₂ SIPs in a document entitled, "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

⁷ See 89 FR 63121–62122.

⁸ 57 FR 13498 (April 16, 1992).

⁹ General Preamble, 57 FR 13568 (April 16, 1992).

¹⁰ *Id.*

¹¹ *Id.*

enforcement, and contingency measures for the source in the area without a force majeure provision. The EPA believes that the proposed FIP's enforcement scheme would ensure that the emissions limits and SIP requirements necessary to provide for attainment are enforceable. Since the proposed FIP requirements do not include a force majeure provision, the EPA's FIP would address the deficiency in the SIP related to determining compliance and ensuring the limits are consistent with those used in the SIP demonstration.

Overview of the New Rule Provisions

The proposed FIP regulatory language incorporates into the FIP existing limits from the Agreed Order for the Martin Lake facility that are necessary to provide for NAAQS attainment. Additional details on compliance, recordkeeping, and reporting requirements are included in the FIP proposed regulatory language found in the proposed amendment to 40 CFR part 52 section 52.2277 in this action.

The EPA is proposing two separate limits for each type of unit at the Martin Lake facility, consistent with the Agreed Order Luminant adopted with Texas and incorporated in Texas' February 28, 2022, SIP submittal. The three EGF boiler units (S-1, S-2, S-3) would be subject to a combined SO₂ emission rate of 7,469 lb/hr averaged over a 24-hour block period. The three EGF boilers would also be subject to a rate limit of 0.32 lbs/MMBtu averaged over a 24-hour block period for each unit. The EGF boilers would be required to only burn subbituminous coal, No. 2 fuel oil, or natural gas. Furthermore, the owner or operator would be required to limit the firing rate (when fired) for all three EGF boiler units to a combined rate not to exceed 27,000 million British thermal units (MMBtu) per hour. To determine compliance with these limits, the owner or operator would be required to maintain and continuously operate an SO₂ continuous emission monitoring system (CEMS) as of the effective date of the FIP to measure SO₂ emissions from the EGF boilers in conformance with 40 CFR part 60 appendix F procedure 1.

In addition, the EPA is proposing limits for the two auxiliary boilers

located at the facility (S-1A and B) consistent with the Agreed Order. The two auxiliary boilers would be subject to a SO₂ emission rate of 51.46 lbs/hr on a one-hour basis and 22.54 tpy on an annual basis, combined for the boilers.

V. What action is the EPA taking?

The EPA is proposing a FIP to address the deficiency identified in the EPA's proposed limited approval and limited disapproval action by promulgating emissions limits and an enforcement scheme to ensure the Rusk-Panola area attains the NAAQS and meets other nonattainment area planning requirements.

The EPA is taking public comments on this FIP for forty days following the publication of this proposed action in the **Federal Register**. Comments related to EPA's proposed limited approval and limited disapproval of Texas's February 28, 2022, SIP submittal should be made on that rulemaking action as described in that separate notice.¹² The EPA will take all relevant comments on this FIP into consideration in the final action. If this FIP is finalized, it would satisfy the EPA's duty to promulgate a FIP for the area under CAA section 110(c) triggered by our previous finding of failure to submit. However, the finalized FIP would not affect the sanctions clock started under CAA section 179 resulting from the EPA's limited disapproval of Texas's February 28, 2022, SIP revision, which would only be terminated by an EPA rulemaking approving a revised SIP submitted by Texas correcting the deficiency in the limited disapproval action.

VI. Environmental Justice Considerations.

The EPA is providing analyses of environmental justice considerations associated with this action. These analyses are being provided for informational and transparency purposes, not as a basis of our proposed action.

The EPA conducted a screening analysis using EJSCREEN, an environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining various environmental and demographic indicators.¹³ The EJSCREEN tool presents these indicators

at a census block group (CBG) level or a larger user-specified "buffer" area that covers multiple CBGs.¹⁴ 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).¹⁵ 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 area surrounding Martin Lake. 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}) and ozone 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.¹⁶ Notably, none of these indicators are the topic of the proposed FIP, which is specific to implementation of the 1-hour SO₂ NAAQS. EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

The EPA prepared an EJSCREEN report covering a buffer area of approximately 6-mile radius around the Martin Lake facility. Table 1 presents a summary of results from the EPA's screening-level analysis for Martin Lake compared to the U.S. as a whole. From that report, Martin Lake did not show EJ indices greater than the 80th percentiles. The full, detailed EJSCREEN report is provided in the docket for this rulemaking.

¹² 89 FR 63117 (August 2, 2024).

¹³ The EJSCREEN tool is available at <https://www.epa.gov/ejscreen>.

¹⁴ See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

¹⁵ 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.

¹⁶ For additional information on environmental indicators and proximity scores in EJSCREEN, see "EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation for Version 2.2," Chapter 3 (July 2023) at <https://www.epa.gov/system/files/documents/2023-06/ejscreen-tech-doc-version-2-2.pdf>.

TABLE 1—EJSCREEN ANALYSIS SUMMARY FOR MARTIN LAKE

Variables	EJSCREEN values for buffer area (radius) for Martin Lake and the U.S. (percentile within U.S. where indicated)	
	Martin Lake (Rusk-Panola area, 6 miles)	U.S.
<i>Pollution Burden Indicators:</i>		
Particulate matter (PM _{2.5}), annual average	9.57 µg/m ³ (77th %ile)	8.67 µg/m ³ (—)
Ozone, summer seasonal average of daily 8-hour max	40.1 ppb (32nd %ile)	42.5 ppb (—)
Traffic proximity and volume score *	0.72 (2nd %ile)	760 (—)
Lead paint (percentage pre-1960 housing)	0.12% (37th %ile)	0.27% (—)
Superfund proximity score *	0.048 (42nd %ile)	0.13 (—)
RMP proximity score *	0.17 (32nd %ile)	0.77 (—)
Hazardous waste proximity score *	0.059 (11th %ile)	2.2 (—)
<i>Demographic Indicators:</i>		
People of color population	31% (52nd %ile)	40% (—)
Low-income population	25% (46th %ile)	30% (—)
Linguistically isolated population	2% (62nd %ile)	5% (—)
Population with less than high school education	13% (65th %ile)	12% (—)
Population under 5 years of age	9% (82nd %ile)	6%
Population over 64 years of age	14% (44th %ile)	16% (—)

* 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.

This action is proposing a FIP to remedy deficiencies found in Texas’ February 28, 2022, SIP submittal to meet CAA nonattainment SIP requirements for the Rusk-Panola nonattainment area for the 2010 one-hour SO₂ NAAQS. The CAA requires this action as it pertains to the SO₂ NAAQS. Information on SO₂ and its relationship to adverse health impacts can be found at final **Federal Register** notice titled “Primary National Ambient Air Quality Standard for Sulfur Dioxide” (75 FR 35520, June 22, 2010).¹⁷ We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the Rusk-Panola nonattainment area, including communities with EJ concerns. At a minimum, this action is not expected to worsen existing air quality as it pertains to SO₂ emissions and is expected to ensure the area is meeting requirements to attain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866, as

¹⁷ See <https://www.federalregister.gov/d/2010-13947>.

amended by Executive Order 14094, because it is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 14094 (88 FR 21879, April 11, 2023). As discussed in detail in section IV, the proposed FIP regulatory language contains requirements for only one facility. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act because it is not a rule of general applicability and affects fewer than 10 entities. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. The Martin Lake Steam Electric Station is not a small entity.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. 1502(1) all terms in

Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms “regulation” and “rule” have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), “the term ‘rule’ does not include a rule of particular applicability relating to . . . facilities.” Because this proposed rule is a rule of particular applicability relating to specific EGUs located at one named facility, the EPA has determined that it is not a “rule” for the purposes of Title II of UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 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 definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it implements a previously promulgated health or safety-based federal standard or implements specific standards established by Congress in statutes.

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

This proposed 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

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health and environmental conditions, around the Martin Lake Steam Electric Station, that exist prior to this action do not result in disproportionate and adverse effects on communities with Environmental Justice concerns.

The EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. This proposed FIP limits emissions of SO₂ from one facility in Texas.

The information supporting this Executive Order review is contained in VI Environmental Justice Considerations of this action and the file EJScreen Report—Martin Lake in the docket for this action.

The EPA believes the human health or environmental risk addressed by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on communities with environmental justice concerns because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any communities with environmental justice concerns.

List of Subjects in 40 CFR Part 52

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

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the EPA proposes to amend title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

- 2. Amend § 52.2277 by adding paragraphs (c) and (d) to read as follows:

§ 52.2277 Control strategy and regulations: Sulfur Dioxide.

* * * * *

(c) The plan submitted by the State on February 28, 2022, to attain the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) for the Rusk-Panola SO₂ nonattainment area does not fully meet the requirements of Clean Air Act (CAA) section 172 with respect to SO₂ emissions from the Martin Lake facility in the Rusk-Panola, Texas area. The EPA has given limited disapproval of the plan provisions addressing these requirements. The deficiencies associated with SO₂ requirements for the Martin Lake facility identified in the EPA’s limited disapproval are addressed by 40 CFR 52.2277(d).

(d) This section addresses and satisfies CAA section 110(c)(1) requirements for the Rusk-Panola SO₂ nonattainment area by specifying the necessary emission limits and other control measures applicable to the Martin Lake facility. This section applies to the owner and operator of the facility located at 8850 FM 2658 in Tatum, Texas.

(1) *SO₂ Emission Limits.* (i) Beginning on the [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], no owner or operator shall emit SO₂ from the following units in excess of the following limits:

Unit	SO ₂ emission limit	Time period/operating scenario
EGF Boiler Units S–1, S–2, S–3 (Combined)	7,469 lbs/hr	24-hour block average.
EGF Boiler Units S–1, S–2, S–3	0.32 lbs/MMBtu	24-hour block average.
Auxiliary Boilers S–1A and B (Combined)	51.46 lbs/hr	1-hour average.
Auxiliary Boilers S–1A and B (Combined)	22.54 tons per year	annual basis.

(ii) Beginning on [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall burn only subbituminous coal, No. 2 fuel oil, or natural gas at the EGF boilers. The auxiliary boilers shall only fire No. 2 fuel oil with a sulfur content of 0.10% by weight or less.

(iii) For EGF boiler units, beginning on [DATE 30 DAYS AFTER DATE OF

PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall limit the firing rate (when fired) for all three EGF boiler units to a combined rate not to exceed 27,000 million British thermal units (MMBtu) per hour (the firing rate is an operating cap for all three EGF boiler units combined).

(iv) For Auxiliary boiler units, beginning on [DATE 30 DAYS AFTER

DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall comply with a 10 percent annual capacity factor for each of the two Auxiliary Boilers. Annual capacity factor is the ratio between the actual heat input from all fuels burned during a calendar year and the potential heat input had the boiler been operated for 8,760 hours during a year at the

maximum steady state design heat input capacity. The 10 percent annual capacity factor limit corresponds to a heat input of 219,000 MMBtu per calendar year, per Auxiliary Boiler.

(2) *Monitoring Requirements.* (i) Beginning on [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO₂ on the EGF boilers. Compliance with the SO₂ emission limits for the EGF boilers shall be determined by using data from CEMS.

(ii) Emissions shall be continuously monitored during all periods of operation of the EGF boilers, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous emission monitoring systems for measuring SO₂ and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen-minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events.

(3) *Compliance.* (i) EGF Boiler Compliance. To demonstrate compliance, the owner or operator must calculate the calendar day 24-hour block average emissions for each unit subject to the long-term average emission limit. A block 24-hour average shall be calculated for each 24-hour period, beginning at midnight and continuing through midnight of the next day, provided that fuel was combusted in the EGF boiler unit.

To demonstrate compliance with the individual lb/MMBTU emission limits described in section (d)(1)(i), the block 24-hour average SO₂ emission rate in lb/MMBTU shall be calculated as the sum of all the hourly mass emissions from an EGF boiler unit during a block 24-hour period divided by the sum of all the hourly heat input from the same EGF boiler unit during the same block 24-hour period.

To demonstrate compliance with the combined lb/hr emission limit

described in section (d)(1)(i), the block 24-hour average SO₂ emission rate in lb/hr shall be calculated as the arithmetic mean of all the hourly SO₂ emissions from the three EGF boiler units combined.

To demonstrate compliance with the combined MMBtu/hr operating limited described in section (d)(1)(iii), the hourly firing rate limit in MMBtu/hr shall be calculated as the sum of all the hourly firing rates from the three EGF boiler units combined.

SO₂ emissions shall be calculated using continuous emission monitoring system (CEMS) data obtained in accordance with the procedures specified in 40 CFR part 75, on an hourly basis. Only valid operating hours will be included in the calculations for the daily emission rates. Valid operating hours include only hours that meet the primary equipment hourly operating requirements of 40 CFR 75.10(d). For example, if the source only meets 40 CFR 75.10(d) operational requirements for one hour in a particular 24-hour block period, the compliance with the emissions limit would be calculated by the total emissions divided by the one hour of operation that meets 40 CFR 75.10(d). Therefore, any day with at least one hour that meets operational requirements will have a calculated block average that will be used to demonstrate compliance with the emissions limits. Hours when the units are experiencing startup, shutdown, or malfunction conditions will be used for the calculation if they meet the primary equipment hourly operating requirements of 40 CFR 75.10(d). When valid SO₂ pounds per hour or SO₂ pounds per million Btu emission data cannot be obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems subject to EPA approval to provide emission data for a minimum of 18 hours in each 24-hour period and at least 22 out of 30 successive operating days.

(ii) Auxiliary Boiler Compliance. For the auxiliary boilers, to determine compliance with Section (d)(1)(ii), the owner or operator shall monitor the sulfur content of the liquid fuel in accordance with fuel sampling requirements specified in 40 CFR part 75, Appendix D, 2.2 Oil Sampling and Analysis. Vendor fuel certification receipts may be used to comply with this condition. Compliance with SO₂ emissions limits shall be determined based on hourly fuel usage, sulfur content of the fuel oil, and the SO₂ emission factor from EPA AP-42,

Compilation of Air Pollutant Emissions Factors from Stationary Sources, Table 1.3-1, version date May 2010.

Compliance with the tons per year limitations specified in paragraph (d)(1)(i) shall be based on the annual average sulfur dioxide emissions for the calendar year for the two auxiliary boilers combined.

(4) *Recordkeeping.* The owner/operator shall maintain the following records continuously for five years beginning on the effective date of the FIP:

(i) All records of firing rate for each emission unit, including hourly combined heat input in MMBtu/hr for the three EGF boiler units and the two auxiliary boilers.

(ii) All records of the type of fuel used at the EGF boilers and auxiliary boilers, the results of fuel oil sampling or vendor fuel certification receipts for the two auxiliary boilers, and the amount of fuel oil used on an hourly basis during periods that the auxiliary boilers are operated.

(iii) All records of hourly emissions, 24-hour block average emissions, and annual emissions calculated in accordance with the requirements laid out in section (d)(3).

(iv) In accordance with section (d)(3), all CEMS data including: the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(v) Records of quality assurance and quality control activities for CEMS including, but not limited to, any records required by 40 CFR part 60 appendix F Procedure 1.

(vi) Records of all major maintenance activities performed on emission units, air pollution control equipment, CEMS, and other production measurement devices.

(5) *Reporting.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications required by this section shall be submitted to Air and Radiation Division Director, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: ARD, at 1201 Elm Street, Suite 500, Dallas, Texas 75270. For each unit subject to the emissions limitations in this subsection, the owner or operator shall comply with the following requirements:

(i) The owner or operator shall report CEMS data quarterly in accordance with CEMS requirements in section (d)(5)(ii-v) and the compliance requirements set forth in paragraph (d)(3) no later than the 30th day following the end of each calendar quarter.

(ii) The owner or operator shall submit quarterly excess emissions

reports for all units identified in paragraph (d)(1)(i) no later than the 30th day following the end of each calendar quarter. Excess emissions mean emissions that exceed the emission limits specified in paragraph (d)(1) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during all periods of operation including startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken, or preventative measures adopted.

(iii) For each unit, the owner or operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative

(except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative, and steps taken to prevent recurrence, and any CEMS repairs or adjustments no later than the 30th day following the end of each calendar quarter.

(iv) The owner or operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (*e.g.*, Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits) no later than 30 days after the test is performed.

(v) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by paragraphs (d)(5)(iii) of this section.

(6) *Enforcement.* (i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

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