Dated: December 3, 2023.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. 2023–26850 Filed 12–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0938]

Safety Zone; Sausalito Lighted Boat Parade Fireworks Display, Richardson Bay, Sausalito, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of Richardson Bay, off Sausalito, CA, in support of the Sausalito Lighted Boat Parade Fireworks Display. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the designated Patrol Commander (PATCOM) or other Federal, state, or local agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 165.1191, will be enforced for the location in Table 1 to § 165.1191, Item number 30, from 7:15 p.m. through 9 p.m. on December 9, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT William Harris, U.S. Coast Guard Sector San Francisco Waterways Management Division; telephone 415–399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1, Item number 30, for the Sausalito Lighted Boat Parade Fireworks on December 9, 2023. The Coast Guard will enforce a 600-foot safety zone around the fireworks vessel from 7:15 through 9 p.m. on December 9, 2023, while at the launch site off Sausalito Point. Beginning at 7:15 p.m. on December 9, 2023, 30 minutes prior to the commencement of the 15-minute fireworks display, the safety zone will encompass all navigable waters, from surface to bottom, surrounding the fireworks vessel near Sausalito Point in Sausalito, CA within a radius of 600 feet from approximate position 37°51′30.66″ N, 122°28′27.29″ W (NAD 83) for the Sausalito Lighted Boat Parade Fireworks Display as set forth in 33 CFR 165.1191, Table 1, Item number 30. The safety zone will be enforced from 7:15 p.m. through 9 p.m. on December 9, 2023.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and Marine Information Broadcast.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol defined as Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. Additionally, each person who received notice of a lawful order or direction issued by the PATCOM or Official Patrol shall obey the order or direction. The PATCOM or Official patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Marine Information Broadcast, an entry in the Local Notice to Mariners, or actual notice may be used to grant permission to enter the regulated area.

Dated: November 30, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2023–26796 Filed 12–6–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0212; FRL–10997–02–R6]

Air Plan Disapproval; Louisiana; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is disapproving a State Implementation Plan (SIP) revision submitted by the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), on November 20, 2016, and supplemented on June 9, 2017. The submittals were in response to the EPA's national SIP call on June 12, 2015, concerning excess emissions during periods of Startup, Shutdown, and Malfunction (SSM). EPA is finalizing a determination that the revision to the SIP in the submittals does not correct the deficiency with the Louisiana SIP identified in the June 12, 2015 SIP call. We are taking this action in accordance with section 110 of the Act.

DATES: This rule is effective on January 8, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2019–0212. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO_2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, *Shar.alan@epa.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.

I. Background

The background for this action is discussed in detail in our June 13, 2023 (88 FR 38448) proposal where we proposed to disapprove a revision to the Louisiana SIP, which requested the removal of section LAC 33:III.2201.C.8 and approval of a new section, LAC 33:III.2201.K, titled Startup and Shutdown, in its place.[1] LAC

[1] LAC 33:III.2201.K Startup and Shutdown

''1. For affected point sources that are shut down intentionally more than once per month, the owner or operator shall include NO_x emitted during periods of start-up and shutdown for purposes of determining compliance with the emission factors set forth in Subsection D of this Section, or with

33:III.2201.K would require affected Nitrogen Oxides (NO_X) point sources to comply with either: (1) the applicable emission limitations and standards at all times, including periods of startup and shutdown; or (2) the applicable emission limitations and standards at all times, except during periods of startup and shutdown covered by work practice standards permissible under the rule. Thus, owners and operators of sources that choose not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with alternative work practice standards. The owner or operator would not have to select the same method of compliance (option) for every affected point source and would be allowed to revise its selection of the method of compliance for one or more affected point sources by means of a permit modification. Any noncompliance with the emission limitations or with the alternative plan would be submitted in writing within 90 days of the end of each ozone season (May 1–September 30, inclusive) to the administrative authority. The affected NO_X point sources of concern are electric power generating system boilers, industrial boilers, process heaters and furnaces, stationary gas turbines, and stationary internal combustion engines in the Baton Rouge ozone nonattainment area and its Region of Influence (ROI). The Baton Rouge ozone nonattainment area consists of five parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge, and the ROI is an area to the north of the Baton Rouge ozone nonattainment area that encompasses affected facilities in the attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana.[2]

In the June 13, 2023 (88 FR 38448) notice, we proposed to determine that the SIP revision (the November 20, 2016 submittal, and its June 9, 2017 supplement) does not correct substantial inadequacies identified in the June 12, 2015 SIP call (hereinafter referred to as the ''2015 SSM SIP Action'').[3] The proposal did not reopen the 2015 SSM SIP Action and only took comment on whether the proposed Louisiana SIP revision is consistent with CAA requirements and whether it addressed the substantial inadequacy identified in the 2015 SSM SIP Action for LAC 33:III.2201.C.8 of the Louisiana SIP.

II. Summary of Comments

The public comment period for our proposed disapproval and determination ended on July 13, 2023, and we received comments from Sierra Club, LDEQ, industry groups, and one anonymous commenter.

In general, Sierra Club expressed support for the proposed disapproval. LDEQ disagreed with EPA's conclusions and believed that the work practice standards under LAC 33:III.2201.K are consistent with the CAA and the 2015 SSM SIP policy. The Louisiana Chemical Association and the Louisiana Mid-Continent Oil & Gas Association (hereinafter ''Industry commenters'') stated that EPA's proposed disapproval is unwarranted and arbitrary and capricious; thus, they requested that EPA withdraw its proposed disapproval. Finally, an anonymous commenter questioned the relevance of detailed demographic information and Environmental Justice (EJ) considerations with respect to the proposal and the 2015 SSM SIP Action. The full text of all the comments received is in the docket for this action. A summary of the comments and EPA's responses are provided in the next section.

III. Response to Comments

A. Industry and LDEQ Comments

Comment 1: Industry commenters stated that the addition of the excess emissions provisions in LAC 33:III.2201.K does not render Louisiana's SIP ''substantially inadequate.'' The commenters asserted that EPA's proposed disapproval of the State's SIP submittal (requesting the addition of LAC 33:III.2201.K to the Louisiana SIP) is based on policy preferences published as recommendations and that EPA is using its recommendations as rigid requirements to disapprove Louisiana's excess emissions SIP provisions. The commenters specifically noted that the EPA does not demonstrate that the SIP is inadequate to protect air quality, pointing to declines in NO_X emissions and the 8-hour ozone design value of the Baton Rouge area.

Response: EPA is cognizant of and appreciates LDEQ's efforts in reducing ozone National Ambient Air Quality Standards (NAAQS) design values in the Baton Rouge area.[4] Evidence that NO_X emissions and ozone concentrations have decreased, though, is not by itself a sufficient basis to find that a potential revision to the SIP meets all CAA requirements for SIPs (*e.g.,* the CAA requirement that SIPs include enforceable emission limitations that limit emissions on a continuous basis). Also, as stated in the 2015 SSM SIP Action, even if historically excess emissions have not caused or contributed to an exceedance or a violation, this would not mean that they could not do so at some time in the

an alternative plan approved in accordance with Paragraph E.1 or 2 of this Section.

2. For all other affected point sources, effective May 1, 2017, the owner or operator shall either comply with Paragraph K.1 of this Section or the work practice standards described in Paragraph K.3 of this Section during periods of start-up and shutdown. If the owner or operator chooses to comply with work practices standards, the emission factors set forth in Subsection D of this Section shall not apply during periods of start-up and shutdown.

3. Work Practice Standards

a. The owner or operator shall operate and maintain each affected point source, including any associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

b. Coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines shall use natural gas during start-up. Start-up ends when any of the steam from the boiler or steam turbine is used to generate electricity for sale over the grid or for any other purpose (including on-site use). If another fuel must be used to support the shutdown process, natural gas shall be utilized.

c. Engage control devices such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) as expeditiously as possible, considering safety and manufacturer recommendations. The department shall incorporate into the applicable permit for each affected facility appropriate requirements describing the source-specific conditions or parameters identifying when operation of the control device shall commence.

d. Minimize the start-up time of stationary internal combustion engines to a period needed for the appropriate and safe loading of the engine, not to exceed 30 minutes.

e. Maintain records of the calendar date, time, and duration of each start-up and shutdown.

f. Maintain records of the type(s) and amount(s) of fuels used during each start-up and shutdown.

g. The records required by Subparagraphs K.3.e and f of this Section shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department.

4. On or before May 1, 2017, the owner or operator shall notify the Office of Environmental Services whether each affected point source will comply with Paragraph K.1 or K.3 of this Section during periods of start-up and shutdown.

a. The owner or operator does not have to select the same option for every affected point source.

b. The department shall incorporate into the applicable permit for each affected facility the provisions of Paragraph K.1 and/or K.3 of this Section, as appropriate. The owner or operator may elect to revise the method of compliance with Subsection K of this Section for one or more affected point sources by means of a permit modification.''

[2] See LAC 33:III.2201.A(1).

[3] 80 FR 33840 (June 12, 2015), State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Final Rule.

[4] It is worth noting that the decline in design values of ozone presented by the commenter covers a period before the effective date of LAC 33:III.2201.K.

future. In addition, given that there are many locations where air quality is not monitored such that a NAAQS exceedance or violation due to excess emissions could be observed, the inability to demonstrate that such excess emissions have not caused or contributed to an exceedance or violation would not be proof that they have not.[5]

Section LAC 33:III.2201.C.8 was identified as substantially inadequate because this provision allowed for automatic exemptions for certain sources in the Baton Rouge ozone nonattainment area during startup and shutdowns from otherwise applicable NO_X emission limitations and such exemptions are inconsistent with the fundamental requirements of CAA sections 110(a)(2)(A), 110(a)(2)(C), and 302(k).[6] Accordingly, in the 2015 SSM SIP Action, EPA found that the exemption provision in LAC 33:III.2201.C.8 is substantially inadequate to meet CAA requirements and issued a SIP call with respect to this provision.[7] The removal of the exemption provision of LAC 33:III.2201.C.8 from the Louisiana SIP is consistent with CAA requirements; however, for the reasons discussed in our proposal and this final rule, the alternative emissions limit provisions of LAC 33:III.2201.K do not meet the CAA requirements for SIPs and the requirements of CAA section 110(l) for EPA approval of a revision to a SIP.

Regarding the comment concerning EPA's alleged use of recommendations as requirements, we believe the commenter is referring to the seven criteria for the development of Alternative Emission Limitations (AELs) applicable during startup and shutdown events.[8] In the context of making *recommendations* to states for how to address emissions during startup and shutdown, the EPA recommended seven criteria for states to evaluate in establishing appropriate alternative emission limitations. Among the purposes for these recommendations was the need to take into account technological limitations that might prevent compliance with the otherwise applicable emission limitations, while ensuring that those alternative limitations complied with the continuity and enforceability requirements of the CAA.[9] In its 2015 SSM SIP Action,[10] comment letters to the State,[11] and the proposal notice for this action,[12] EPA has referred to and identified these seven criteria as recommendations to be given consideration for developing AELs in SIP provisions that apply during startups and shutdowns. To be clear, our disapproval of Louisiana's SIP submittals is not based solely upon the recommended criteria but upon the statutory requirements and the applicable court decision discussed herein.[13] In particular, EPA's final disapproval action is based on the fact that Louisiana's submissions have failed to correct the ''substantial inadequacy'' of the Louisiana SIP as identified in the 2015 SSM SIP Action.[14]

Comment 2: Following the prior comment from the Industry commenters that the excess emission provisions in LAC 33:III.2201.K do not render Louisiana's SIP ''substantially inadequate,'' commenters then discussed EPA's seven recommended criteria to consider in establishing AELs set forth in the 2015 SSM SIP Action.[15] First, the Industry commenters argued that the work practice standards in LAC 33:III.2201.K are limited to specific, narrowly defined source categories using specific control strategies, satisfying EPA's first recommended criterion. The commenters noted that LAC 33:III.2201.K.3.c addresses ''specific control strategies'' and requires affected point sources to engage control devices as expeditiously as possible. The commenters, citing to LDEQ's comments, also alleged that LAC 33:III.2201.K.3.c is potentially applicable to each category of point sources regulated under LAC 33:III.Chapter 22.

Response: In the example provided in the 2015 SSM SIP Action for the first AEL criterion, EPA lists an affected source category as ''cogeneration facilities burning natural gas and using Selective Catalytic Reduction (SCR).'' This example specifies a subset of power generation facilities (cogeneration facility), identifies a certain fuel capability (natural gas), and narrows the number of affected sources to ones with a specific type of post combustion control device (SCR). Contrary to EPA's recommendation that AELs be limited to narrowly defined sources categories, LDEQ's November 20, 2016, and June 9, 2017 submittals define the affected sources covered by the new rule as a *collection of groups of categories* of sources to include electric power generating system boilers, industrial boilers, process heaters and furnaces, stationary gas turbines, and stationary internal combustion engines. These affected sources constitute a diverse array of NO_X emitting source categories within the Baton Rouge ozone nonattainment area and its ROI. These sources can be located in any of the nine parishes (Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, East Feliciana, Pointe Coupee, St. Helena, and West Feliciana).[16]

In addition, the following three examples demonstrate that the affected source categories are indeed broad in type, size, age, and are not narrowly defined. In the first example, the work practice requirements of LAC 33:III.2201.K apply to affected electric power generating system boilers which are defined as units used to generate electric power and can be owned or operated by a municipality, an electric cooperative, an independent power producer, a public utility, or a Louisiana Public Service Commission regulated utility company, or any of its successors.[17] The subject boilers can be coal-fired, number 6 fuel oil-fired, or burn gaseous or liquid as fuel, and located in either the Baton Rouge ozone nonattainment area or its ROI.[18] In addition, these boilers are not restricted to a specific construction, reconstruction, or equipment modification date. Another example of an affected point source category covered by LAC 33:III.2201.K is stationary gas turbines that are defined as units that can be of peaking service type or, either fuel-oil fired or gas fired, can be located in any of the nine parishes, and are not restricted to a specific construction, reconstruction, or equipment modification date.[19] Finally, stationary internal combustion engines, also covered by LAC 33:III.2201.K, are defined as units classified either as rich

[5] 80 FR 33840, 33947.

[6] 78 FR 12460, 12522 (February 22, 2013).

[7] 80 FR 33840, 33968.

[8] See *id.* at 33980.

[9] *Id.* at 33912.

[10] *Id.* at 33980.

[11] See Enclosures to EPA's August 3, 2016, and December 16, 2016 comment letters to Deidra Johnson of LDEQ.

[12] Section II.A, June 13, 2023 (88 FR 38450).

[13] See CAA sections 110(a)(2)(A), 110(a)(2)(C), also 88 FR 38451.

[14] See 78 FR at 12521–12522, and 80 FR at 33967–33968 for a thorough description of why Louisiana's SIP is substantially inadequate because it ''did not comply with any requirement of'' the CAA.

[15] 80 FR 33914.

[16] See Applicability LAC 33:III.2201.A.1.

[17] See Definitions LAC 33:III.2201.B.1.

[18] See NO_X Emission Factors for Sources in the Baton Rouge Nonattainment Area Table D–1A, and NO_X Emission Factors for Sources in the Region of Influence Table D–1B, Section LAC 33:III.2201.D.

[19] See NO_X Emission Factors for Sources in the Baton Rouge Nonattainment Area Table D–1A, and NO_X Emission Factors for Sources in the Region of Influence Table D–1B, Section LAC 33:III.2201.D.

burn [20] or lean burn,[21] are either gas and/or liquid fuel fired, and are either attached to a foundation or portable.[22] These stationary internal combustion engines can be located in any of the nine parishes and are not restricted to a specific construction, reconstruction, or equipment modification date.

The effect of such a broadly-applicable rule covering a diverse array of source categories is that the work practices set forth in LAC 33:III.2201.K.3 during periods of startup and shutdown cannot be sufficiently tied to particular, specific categories of affected sources to ensure the work practices serve to limit emissions from the particular category and are practically enforceable. For example, startup and shutdown emissions from affected industrial boilers and process heaters/furnaces that do not utilize a control device to comply with the SIP rule have no specifically applicable work practice standards; they are governed only by the general duty provision in LAC 33:III.2201.K.3.a. As is discussed at length in the 2015 SSM SIP Action, such general duty provisions are not practically enforceable.

Louisiana has made conclusory and nonspecific claims that the work practice requirements of LAC 33:III.2201.K.3.c (relating to the use of control devices such as SCR) are ''potentially applicable'' to all affected source categories covered under LAC 33:III.2201.K.3. Louisiana, however, has not clearly demonstrated that every source in every covered point source category would be required to comply with the more specific work practice standards laid out in LAC 33:III.2201.K.3.b–d in addition to the general duty provision in LAC 33:III.2201.K.3.a. In fact, it is likely that certain boilers, furnaces, and process heaters comply with the LAC 33:III.Chapter 22 requirements during steady-state operations by utilizing low NO_X burners rather than controls such as Selective Non-Catalytic Reduction (SNCR) or SCR and thus would only be subject to the general duty provisions of LAC 33:III.2201.K.3.a, if selecting the LAC 33:III.2201.K.3 compliance option. Therefore, in such instances, LAC 33:III.2201.K.3 may be read so as to create situations wherein startup and shutdown emissions are functionally exempt, thereby creating a non-continuous emissions limitation that is inconsistent with CAA requirements for SIPs. The framework established in Chapter 22 thus continues to violate CAA requirements, including the requirement that emissions limitations be continuous and practicably enforceable. See CAA sections 110 and 302(k). Additional concerns related to other CAA requirements are discussed below, including the requirement that the work practice requirements in the AEL (LAC 33:III.2201.K.3) must provide RACT-level controls during periods of startup and shutdown.

Comment 3: LDEQ also provided comments stating its belief that it had appropriately considered EPA's first recommended criterion in its development of the AELs contained in LAC 33:III.2201.K.3b–3.d. More specifically, LDEQ asserted that since LAC 33:III.2201.K.3.b targets fuel selection, the ''specific control strategies'' aspect of the first criterion is not relevant. Also, since LAC 33:III.2201.K.3.c targets post-combustion control of NO_X, LDEQ claimed that the ''specific, narrowly defined source categories'' aspect of the first criterion is not relevant. Finally, LDEQ noted that LAC 33:III.2201.K.3.d applies only to rich-burn and lean-burn spark-ignition [23] stationary internal combustion engines.

Response: EPA finds that the AELs contained in sections LAC 33:III.2201.K.3.b, 3.c, and 3.d cover such a broad range of sources that they do not comport with EPA's recommendation that AELs be limited to specific, narrowly defined source categories using specific control strategies, thereby leading to difficulties in determining compliance with the applicable SIP emissions limitations.

LAC 33:III.2201.K.3.b applies to coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines. EPA believes that the requirement under LAC 33:III.2201.K.3.b to use natural gas during startup until ''any of the steam from the boiler or steam turbine is used to generate electricity for sale over the grid or for any other purpose (including on-site use)'' could be an acceptable component of an AEL, provided it is associated with appropriate and enforceable recordkeeping and reporting requirements. Note, since the boiler type (wall-fired, tangentially-fired, dry bottom or wet bottom) and boiler age are not specified, we assume that the work practice requirement to use natural gas during startups and applicable shutdowns applies to all such boilers. However, natural gas fired electric power generating system boilers not equipped with a SCR or SNCR only appear to be subject to the general duty provision of LAC 33:III.2201.K.3.a which, as discussed in our response to Comment 4, is problematic for enforcement and compliance determination purposes.

With respect to the work practice requirement that applies to sources with control devices, LAC 33:III.2201.K.3.c requires affected sources to engage control devices as expeditiously as possible. The term ''expeditiously as possible'' is undefined and creates enforceability problems. Also, the term ''engage control devices'' in LAC 33:III.2201.K.3.c is not defined and could allow control devices to operate at much lower levels of removal efficiency than the equipment is capable of achieving. As written, section LAC 33:III.2201.K.3.c is unclear which source categories are required to use the control devices, the timing of their use, and their control efficiency, thereby creating problems with enforceability.[24]

Regarding LDEQ's comment that LAC 33:III.2201.K.3.d is only applicable to rich-burn and lean-burn spark-ignition stationary internal combustion (IC) engines, we note that although it may appear these IC engines are narrowly defined, LAC 33:III.2201.K.3.d does not identify whether these spark ignition engines are of the 2-stroke [25] or the 4-stroke [26] type; these engines can burn either gas and or liquid fuel and do not have to be attached to a foundation (can be portable at a site for longer than 6 months).[27] Stationary Reciprocating Internal Combustion Engines (RICE) use either Compression Ignition (CI) or Spark Ignition (SI) in order to induce combustion within the cylinders. CI

[20] Rich burn engine means any 4-stroke spark ignited engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1, see 40 CFR 60.4248 ''Rich burn engine''.

[21] Lean burn engine means any 2-stroke or 4-stroke spark ignited engine that does not meet the definition of a rich burn engine, see 40 CFR 60.4248 ''Lean burn engine''.

[22] See Definitions LAC 33:III.2201.B.1.

[23] Spark ignition means a gasoline-fueled engine; or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation, see 40 CFR 60.4248 ''Spark ignition''.

[24] See response to Comment 5 concerning the use and effectiveness of SCR and SNCR.

[25] 2-stroke engine means a type of engine which completes the power cycle in single crankshaft revolution by combining the intake and compression operations into one stroke and the power and exhaust operations into a second stroke. This system requires auxiliary scavenging and inherently runs lean of stoichiometric, see 40 CFR 60.4248 ''Two-stroke engine''.

[26] 4-stroke engine means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution, see 40 CFR 60.4248 ''Four-stroke engine''.

[27] LAC 33:III.2201.B Definitions.

RICE typically run on diesel fuel, while SI RICE typically operate on lighter fuels such as gasoline, propane, natural gas, landfill gas. While LDEQ's comment letter discusses work practice measures for spark ignition reciprocating IC engines, LAC 33:III.2201.K.3.d does not identify a specific work practice measure(s) for the CI RICE type units. In addition, this provision fails to identify the use of propane or landfill gas by such sources. As written, LAC 33:III.2201.K.3.d appears to apply to both CI RICE and SI RICE, contrary to LDEQ's comment. Since these work practice measures apply to all of the types of engines, and this provision fails to identify the use of propane or landfill gas by such sources, EPA does not view these AELs as narrowly tailored. This conflict (lack of restriction) could lead to a misunderstanding of the applicability of LAC 33:III.2201.K.3.d and create compliance and enforcement difficulties.

Comment 4: The Industry commenters also noted the concerns expressed in our proposal notice that improper consideration of EPA's first recommended criterion could lead to AELs that present additional SIP approvability difficulties, including a demonstration that the work practice requirements in LAC 33:III.2201.K.3 met other CAA requirements for SIPs, including those related to Reasonably Available Control Technology (RACT). These commenters stated that LDEQ identified work practice standards that function to minimize emissions of NO_X based on review of applicable New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) provisions, relevant EPA Control Technique Guidelines (CTG) and Alternative Control Techniques (ACT), non-CTG/ACT documents, and EPA guidance. The Industry commenters concluded that because the review of the aforementioned sources did not identify control measures beyond what is included in LAC 33:III.2201.K, then those work practice requirements meet all applicable requirements for SIPs, including the imposition of enforceable RACT-level controls, for all the affected point sources subject to LAC 33:III.2201.K. In a similar manner, LDEQ's comments included a discussion of its evaluation of the documents referenced by the Industry commenters above and provides a table of the requirements in LAC 33:III.2201.K.3 which identifies the federal NSPS and NESHAP provisions upon which they are based. Like the Industry commenters, LDEQ concluded that the work practice requirements established in LAC 33:III.2201.K.3 for emissions during startup and shutdown constitute RACT and meet all other applicable CAA requirements. LDEQ also clarified that LAC 33:III.2201.K.3.a should not be considered an AEL but rather a general duty provision.

Response: As stated in our response to Comment 2, the work practice requirements in LAC 33:III.2201.K.3 apply to a broad category of sources and fail to satisfy the CAA requirements for continuous emission limitations and practical enforceability. With respect to the CAA requirements concerning RACT as mentioned by the commenters, EPA first notes that RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[28] LAC 33:III.Chapter 22 Control of Emissions of Nitrogen Oxides was developed with the purpose of establishing RACT for point sources of NO_X in the Baton Rouge ozone nonattainment area and its ROI. Therefore, in its development of AELs to apply during periods of startup and shutdown of Chapter 22-affected point sources, LDEQ examined several different resources in its search for work practices that would be considered appropriate replacements for the numerical emission limitations representing RACT found in the Chapter 22 rules of the existing Louisiana SIP.

We appreciate LDEQ's efforts in searching NSPS and NESHAP rules in its attempt to develop RACT-level work practice requirements applicable to startups and shutdowns of the affected point source categories. The EPA agrees that states may adopt work practice standards to address periods of startup and shutdown as a component of a SIP emission limitation that applies continuously. As stated in the 2015 SSM SIP Action, the adoption of work practice standards from a NESHAP or NSPS as a component of an emission limitation to satisfy SIP requirements was only a recommended approach that states may use if they choose to incorporate an AEL and needed assistance in identifying potential options that might work for their specific situation. The EPA stated that it cannot foretell the extent to which this optional approach of adopting other existing standards to satisfy SIP requirements may benefit an individual state. For a state choosing to use this approach, such work practice standards must meet the otherwise-applicable CAA requirements (*e.g.,* be a RACT-level control for the source as part of an attainment plan requirement) and have the necessary parameters to make it legally and practically enforceable (*e.g.,* have adequate monitoring, recordkeeping and reporting requirements to assure compliance). However, it cannot automatically be assumed that emission limitation requirements in recent NESHAP and NSPS constitute RACT for all sources regulated by SIPs.[29] The universe of sources regulated under the federal NSPS and NESHAP programs is not identical to the universe of sources regulated by states for purposes of the NAAQS. Moreover, the pollutants regulated under the NESHAP (*i.e.,* hazardous air pollutants) are in many cases different than those that would be regulated for purposes of attaining and maintaining the NAAQS, protecting Prevention of Significant Deterioration (PSD) increments, improving visibility, and meeting other CAA requirements.[30] The 2015 SSM SIP Action also states that EPA *encourages* states *to explore* these approaches, as well as any other relevant information available, in determining what is appropriate for revised SIP provisions.[31] It is clear that EPA did not mandate these approaches. As stated earlier, adoption of NSPS or NESHAP work practice standards by the states does not mean an automatic approval of a proposed rule revision, especially when other applicable CAA requirements (*e.g.,* RACT-level control for startup and shutdown, enforceability, and/or SIP public notice and comment) are not adhered to.

With respect to the CTGs reviewed by LDEQ, we note that CTGs are used to help determine Volatile Organic Compounds (VOC) RACT, not NO_X RACT. Also, while LDEQ's review of ACTs may provide background information on available NO_X control technologies and their respective cost effectiveness,[32] ACTs do not establish

[28] ''NO_X Supplement'' FR titled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' November 25, 1992 (57 FR 55620). Also, see September 17, 1979 (44 FR 53762).

[29] 80 FR at 33916.

[30] *Id.,* n. # 257, while some HAPs are also VOCs or particulate matter, many HAPs are not. Moreover, there are many VOCs and types of particulate matter that are not HAPs and thus are not regulated under the MACT [Maximum Achievable Control Technology] standards. The MACT standards also do not address other criteria pollutants or pollutant precursors from sources that may be relevant for SIP purposes.

[31] *Id.* at 33916–33917 (emphasis added).

[32] Control Techniques Guidelines and Alternative Control Techniques Documents for Reducing Ozone-Causing Emissions, see *https://www.epa.gov/*

work practice standards that function as RACT in minimizing emissions of NO_X.

Although included in LAC 33:III.2201.K.3—Work Practice Standards, we agree with LDEQ's clarification comment that LAC 33:III.2201.K.3.a is a general duty provision, not an AEL. EPA supports the inclusion of general duty provisions as separate additional requirements in SIPs in certain instances—for example, to ensure that owners and operators act consistent with reasonable standards of care. However, as is discussed at length in the 2015 SSM SIP Action, a general duty provision such as LAC 33:III.2201.K3.a., standing alone, cannot be considered an ''enforceable emission limitation'' under CAA section 110(a)(2). As such, LAC 33:III.2201.K.3.a cannot and does not provide the necessary RACT-level control during periods of startup and shutdown.[33] We reject the claim that since the State's document review failed to identify any reasonably available control technologies for certain source categories, then there is no feasible and practical lowest emission limitation that these source categories would be capable of meeting during periods of startup and shutdown (*i.e.,* the NO_X RACT level of emissions control is zero control) and the general duty provision of LAC 33:III.2201.K.3.a is the only SIP requirement to control NO_X emissions during startups and shutdowns for some source categories covered by LAC 33:III.2201.K.3.

Overall, we find that the administrative record accompanying Louisiana's SIP submittals does not sufficiently demonstrate that the generic work practice standards adopted in LAC 33:III.2201.K.3 for each of the affected source categories represent RACT-level controls for periods of startup and shutdown. In correcting this deficiency, LDEQ could identify *each* affected point source category (*e.g.,* gas-fired stationary gas turbines in peaking service) and discuss/analyze all the potential control technologies that might constitute RACT during periods of startup and shutdown. The age, design, and configuration of the affected sources may affect the determination of what constitutes RACT and should be accounted for in the analysis as well. The RACT analysis should consider the full range of control techniques (and associated emissions limitations) that may be applicable during startup and shutdown for each affected point source category (*e.g.,* industrial boilers of 40 MMBtu/Hour and above).[34] For certain categories, this additional review will likely identify techniques beyond those found in the particular EPA rules and other documents examined by LDEQ.

While we acknowledge that, in certain cases, emissions limits applicable to normal operation may not be achievable during startup and shutdown, we also note that without further state review and analysis, it is impossible for EPA to assess at this time whether the work practices set forth in LAC 33:III.2201.K.3 as AELs constitute RACT-level controls for all the affected sources during startup and shutdown. Of course, the adopted work practices must also be analyzed to ensure compliance with all other CAA requirements governing SIPs, including CAA sections 110(a)(2)(A), 110(a)(2)(C), 110(k), 110(l), and 193, as discussed in EPA's 2015 SSM SIP Action.

Comment 5: The Industry commenters next discussed the EPA's second criterion for developing AELs as outlined in the 2015 SSM SIP Action, taking issue with the EPA-identified deficiency concerning whether use of the selected control strategy for the source category is technically infeasible during startup or shutdown periods.[35] Industry commenters stated that LDEQ had justified its inclusion of work practice standards during periods of startup and shutdown based on technical infeasibility of other control measures during such periods. In its comments, LDEQ stated the constraints of SCR and SNCR and their effectiveness during periods of startup and shutdown have been well documented. LDEQ also noted with examples that the need to account for transient conditions (*e.g.,* startups and shutdowns) for the affected NO_X sources is not limited to sources with post-combustion controls. Also, LDEQ stated that there is a need to recognize this infeasibility and that limitations in both control technologies and test methods render work practice standards preferable to numerical emission limitations during periods of startup and shutdown.

Response: As noted previously, EPA recognizes that there are instances where compliance with a SIP emissions limitation for an affected source category using a specific control technology may be infeasible during certain modes of operation, such as during startup and shutdown. We also recognize that during those times, work practice requirements may be preferable to numerical emission limits and that such work practice requirements may be an important component of enforceable emission limitations covering all periods of operation for affected sources under a SIP rule, such as LAC 33:III.Chapter 22. For certain sources and source categories subject to LAC 33:III.Chapter 22, however, demonstrating compliance with the existing numerical emissions limitation in LAC 33:III.2201.D may be achievable during all modes of operation. In those situations, compliance with that degree of emission control (LAC 33:III.2201.D), as stated in 2015 SSM SIP Action,[36] needs to be on a continuous or regular basis.

In evaluating a state's promulgation of rules creating AELs in the form of work practice requirements and their review as a SIP revision, EPA must ensure that the new work practices comply with all CAA requirements for SIPs, including the necessity that the emissions associated with such work practice requirements be legally and practically enforceable (with appropriate monitoring, recordkeeping and reporting), meet other applicable requirements (*e.g.,* applicable RACT/Reasonably Available Control Measures (RACM) requirements), and not interfere with the attainment or maintenance of the NAAQS, as required by CAA section 110(l). Without further State review and analysis, it is impossible for EPA to assess at this time whether the work practices set forth in LAC 33:III.2201.K.3 as AELs properly consider technical infeasibility of controls for all affected sources and, for example, constitute RACT-level controls for all the affected sources during startup and shutdown. For the reasons stated elsewhere in this rulemaking action, EPA is determining that Louisiana's SIP submittal falls short of these requirements and fails to fully correct to deficiency with the Louisiana SIP identified in the 2015 SSM SIP Action.

Comment 6: The Industry commenters move to the fourth recommended criterion for the development of AELs as listed in the 2015 SSM SIP Action.[37]

ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques (Url dated August 2, 2023).

[33] See also comment #4 and comment #5 of our December 16, 2016, comment letter to Deidra Johnson of LDEQ as made available in the Docket.

[34] LAC 33:III.2201.D Table D1–A.

[35] 88 FR 38448, 38451 (June 13, 2023).

[36] 80 FR 33979.

[37] Industry commenters noted that in EPA's proposal notice, the Agency did not allege any specific deficiencies with criterion 3 (frequency and duration of operation in startup and shutdown modes are minimized, criterion 6 (the facility is operated in a manner consistent with good air pollution control practices for minimizing emissions), and criterion 7 (actions during startup and shutdown are properly documented). The June 13, 2023 proposal did not identify deficiencies with respect to these criteria.

These commenters objected to the EPA-identified deficiency that the State air agency, as part of its justification for the proposed SIP revision, failed to properly analyze the potential worst-case emissions that could occur during startup and shutdown based on the applicable AEL.[38] These commenters stated that when compared to the SIP-called exemption in LAC 33:III.2201.C.8 of the Louisiana SIP, the additional controls imposed by LAC 33:III.2201.K.3 can only serve to improve ambient air quality. Industry commenters asserted that a worst-case emissions scenario would be reflected in an (overly conservative) assumption that the removal of the startup and shutdown exemption and the imposition of the additional work practice requirements in LAC 33:III.2201.K.3 have no effect on air quality. The Industry commenters then referred to the State's meeting of the ozone NAAQS in recent years as the reason or justification to refute EPA's stated deficiency in LDEQ's analysis. In its response to this EPA-identified deficiency, LDEQ noted that LAC 33:III.919 (Emission Inventory) requires sources quantify and separately report emissions during startups and shutdowns. Similar to the Industry comments and the overly conservative assumption that the work practice requirements in LAC 33:III.2201.K.3 have no demonstrable impact on NO_X emissions, LDEQ stated that a better representation of the potential ''worst-case'' scenario would be the historical emissions data from the sources covered by LAC 33:III.Chapter 22. LDEQ then noted the decline in the design values for the 8-hour ozone NAAQS during the time period that the SIP-called exemption in LAC 33:III.2201.C.8 was in effect and that historical actual NO_X emissions from sources subject to LAC 33:III.Chapter 22 have declined 47.9 percent from 2005 to 2022.

Response: EPA is cognizant and appreciative of LDEQ's efforts in reducing ozone concentrations to the benefit of public health in the Baton Rouge area. We also note that the ozone pollution control strategy is a complex function of meteorology, VOC and NO_X emissions controls. Federal rules, including the Cross-State Air Pollution Rule, the Tier 3 Vehicle Emissions and Fuels Standards, and mobile source fleet turnover also play a significant role in reducing ozone-forming pollution.

We note that EPA's 2015 SIP call for LAC 33:III.2201.C.8 of the Louisiana SIP was not based on specific demonstrated air quality concerns, but rather on EPA's interpretation of the CAA that emission limitations in SIPs cannot include exemptions for emissions during periods of startup and shutdown. In addition, the LDEQ statement that historical excess emissions associated with the exemption provided by LAC 33:III.2201.C.8 have not caused or contributed to an exceedance or violation of a NAAQS does not mean that such emissions could not do so at some time in the future. Also, as stated in the 2015 SSM SIP Action, given that there are many locations where air quality is not monitored such that a NAAQS exceedance or violation could be detected, the inability to demonstrate that such excess emissions have not caused or contributed to an exceedance or violation of a NAAQS would not be proof that they have not.[39]

Although an affected point source may not have in fact emitted sufficient NO_X to exceed a NAAQS during past periods during which it was subject to the impermissible exemption provided by LAC 33:III.2201.C.8 for NO_X emissions during periods of startups and shutdowns, the SIP does not prevent the source from doing so in the future (for example if circumstances arise that necessitate such emissions) under the work practice requirements provided by LAC 33:III.2201.K.3. Such NO_X emissions may be significantly higher than historical actual emissions, especially for those sources (*e.g.,* process heaters and furnaces without a control device required under a SIP rule) where the only requirements during startup and shutdown under LAC 33:III.2201.K.3 are the unenforceable ''general duty'' provisions of LAC 33:III.2201.K.3.a. As stated in EPA's 2015 SSM SIP Action, AELs applicable during 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.[40]

Had LDEQ simply removed the impermissible exemption in LAC 33:III.2201.C.8, it would likely have been approvable, but here, the EPA must also evaluate whether the AELs (developed to replace the removed exemption) meet CAA requirements; we cannot presume that the SIP is sufficient solely because it contains some kind of AEL requirement where previously there was none. For example, the AEL may allow for emissions that are functionally equivalent to an impermissible exemption. Finally, we also note that the removal of the exemption in LAC 33:III.2201.C.8 and the addition of LAC 33:III.2201.K is not an severable piece of the submission that EPA can approve without taking action on the AEL Without the State's consent, the proposed disapproval of the addition of LAC 33:III.2201.K to the Louisiana SIP with approval of the removal of LAC 33:III.2201.C.8 from the SIP would make the SIP more stringent than Louisiana anticipated or intended.[41]

Comment 7: The Industry commenters then move to the fifth recommended criterion for consideration in the development of AELs, as listed in the 2015 SSM SIP Action—namely, that AELs should include a requirement that ''all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality.'' [42] Industry commenters reject as unnecessary EPA's recommended language that could be used to meet the fifth criterion. In addition, the Industry commenters, as well as LDEQ in its comments, stated that frequency and duration of startup and shutdown events are addressed in LAC 33:III.2201.K.1 and LAC 33:III.2201.K.3.a, respectively; thus, the requirement to take all possible steps to minimize impacts of emissions during startups and shutdowns on ambient air quality is met.

Response: The failure to include EPA's recommended language in LAC 33:III.2201.K is not a basis for our disapproval. By recommending a revision to LAC 33:III.2201.K that would require the owner or operator to take all possible steps so that NAAQS or PSD increments are not exceeded as a result of emission events from these sources, EPA suggested language that might be viewed as addressing the deficiency identified in the proposal notice with respect to proper consideration of the fifth recommended criterion.

Under LAC 33:III.2201.K.1, affected point sources that are shut down intentionally more than once per month are excluded from the option of choosing to comply with the work practice standards in LAC 33:III.2201.K.3 in lieu of complying with the emission factors in LAC 33:III.2201.D. While this exclusion limits the number of sources that may elect to comply with the work practice requirements in LAC 33:III.2201.K.3, there is no evidence in the record establishing that these work practices

[38] *See* 88 at 38452.

[39] 80 FR at 33947.

[40] *Id.* at 33980.

[41] See *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028, 1036–37 (7th Cir. 1984); see also 88 FR at 38452, n. 30.

[42] 80 FR at 33865.

require such sources to take all possible steps to minimize the *impacts* of emissions during startups and shutdowns on ambient air quality. Likewise, there is no evidence in the record establishing that the unenforceable ''good air pollution control practices'' requirement in LAC 33:III.2201.K.3.a by itself constitutes taking all possible steps to minimize the *impact* of emissions during startup and shutdown on ambient air quality. Moreover, neither LAC 33:III.2201.K.1 nor LAC 33:III.2201.K.3.a provide for making work practice-related information available, nor do these provisions address if or how the duration and frequency of startup and shutdown events are being accounted for, monitored, recorded, reported, enforced, or modeled to show the impact of NO_X emissions from these events on ambient air quality is minimized in corresponding air permits issued by LDEQ.

Comment 8: In addition to disagreeing with the concerns noted above related to the adequacy of LDEQ's consideration of the recommended criteria for the development of AELs for periods of startup and shutdown, the Industry commenters also disagreed with several other EPA-identified deficiencies described in the June 13, 2023, proposed disapproval notice (including use of a permit-based approach to establish components of the AELs, reliance upon a permit mechanism to specify flue gas temperatures for engaging control devices such as SCR and SNCR under LAC 33:III.2201.K.3.c, and creating a non-SIP mechanism for amending compliance obligations selected under LAC 33:III.2201.K.4.b). The Industry commenters believed that these deficiencies are misplaced because the permitting contemplated under the work practice standards in LAC 33:III.2201.K.3.c and K.4.b through the modification of an affected facility's permit are not SIP revisions under the Act. Similar to the Industry commenters, LDEQ also objected to EPA's alleged deficiencies related to the use of the air permitting program as referenced in LAC 33:III.2201.K.3.c and LAC 33:III.2201.K.4.b. and EPA's concerns related to the NAAQS and the PSD increment. LDEQ also referred to EPA's letter to LDEQ, dated August 3, 2016, comment 3.f, to justify its use of its air permitting program to implement the control obligations imposed by LAC 33:III.2201.K.3.c.

Response: Both the Industry commenters and LDEQ disagreed with EPA's concerns related to the use of permitting mechanism referenced in LAC 33:III.2201.K.3.c and LAC 33:III.2201.K.4.b. We will address the comments and our concerns with each of these provisions separately. LDEQ comments concerning NAAQS and the PSD increment as they relate to the two provisions above are addressed in our response to Comment 11 below.

a. Concerns With LAC 33:III.2201.K.3.c

LAC 33:III.2201.K.3.c requires control devices such as SCR or SNCR be ''engaged . . . as expeditiously as possible considering safety and manufacturer recommendations.'' This rule goes on to say that the ''appropriate requirements describing source-specific conditions or parameters'' will be incorporated into the affected source's permit. There are two primary problems with the approval of LAC 33:III.2201.K.3.c as an alternative emission limitation during startup and shutdown into the SIP. First, in addition to its imprecise and vague terms creating enforcement concerns, there is no language in LAC 33:III.2201.K.3.c which actually requires the use of a control device by any affected source or source category under LAC 33:III.2201.K. That is, the work practice requirement to engage control devices as expeditiously as possible is not linked to any specific source or source category. Presumably, the requirement for and use of a control device is contained in the source's air permit. The second problem with LAC 33:III.2201.K.3.c then arises when it references such permits as the vehicle to be used to establish source-specific conditions and parameters for the commencement of operation of the control device. As LDEQ concedes in its comments, the establishment of both the obligation to use a control device and the establishment of source-specific conditions associated with use of a control device are occuring outside the SIP rule itself.

CAA section 110(a)(2)(A) requires that SIPs include enforceable emission limitations, including during periods of startup and shutdown. Establishing control device obligations and associated conditions in a source's permit rather than the SIP rule (*e.g.,* LAC 33:III.2201.K.3.c) does not satisfy the enforceable emission limitations requirement for SIP rules, as set forth in CAA section 110.

The fact that EPA has approved a state's air permitting program itself into the SIP does not mean that EPA has approved the *actual contents* of each permit issued or has made such contents an approved part of the SIP.[43] While inclusion of these components of the AEL in a permit issued under an EPA-approved SIP permitting program makes the requirements federally enforceable, the State rules do *not* provide a SIP mechanism for assuring those requirements are permanent and would not be changed without first going through the CAA's SIP revision process, as required by section 110 of the Act. For example, there is nothing in LAC 33:III.2201.K that prohibits an affected source from amending its air permit to revoke or revise its obligation to install a control device; the language in LAC 33:III.2201.K.3.c applies only *if* a source is required to have a control device, presumably under some other provision of State law or regulation. Such untethered obligations do not meet the CAA requirements for ''enforceable emission limitations'' in SIPs. Furthermore, use of a permit-based approach when establishing essential components of an alternative work practice standard outside of the SIP process (including public notice and comment) circumvents EPA's role in reviewing and approving permanent SIP emission limitations to ensure that AELs are ''enforceable,'' as required by CAA section 110(a)(2)(A) and 110(a)(2)(C). This non-SIP mechanism also creates the potential for confusion because conditions and obligations of the AEL would not be contained in the SIP, allowing for the possibility that conditions and obligations of non-SIP AELs might conflict with the work practice requirements in the SIP. Moreover, it does so without the opportunity for EPA review or disapprove where the AEL fails to meet CAA requirements for SIPs.

Finally, in the context of emission limitations contained in a SIP, EPA views the approach of establishing AELs through a permit program that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP as a form of ''director's discretion,'' a type of provision that, as explained in the 2015 SSM SIP Action, is inconsistent with CAA requirements because it would allow the state permitting authority to create alternatives to SIP emission limitations without complying with the CAA's SIP revision requirements.

In addition to the concerns noted above and in response to LDEQ's comment regarding EPA's August 3, 2016 comment letter (comment 3.f), we note that this document (EPA's 2016 comment letter) is made available in docket for this rulemaking action. The August 3, 2016, comment 3.f reads:

''The EPA encourages the operation and maintenance of control devices in accordance

[43] 80 FR at 33915–33916 and 33922.

with safety and manufacturer recommendations, as required by proposed rule LAC 33:III.2201.K.3.c; however, for enforceability purposes, we believe that the rule should make clear that the source's Title V operating permit will include specific conditions that identify/detail when safe operation of control devices (including SCR/SNCR) will begin.''

Comment 3.f was intended to assure consistency between the proposed SIP revision and the specific conditions and contents of a modified Title V permit of the affected NO_X point source and to facilitate enforceability and compliance determinations. Nothing in the August 3, 2016, comment 3.f states, or should be construed to mean, that EPA is advocating or suggesting circumvention or bypassing of the CAA's SIP revision process, or allowing LDEQ to employ an air permitting program as a substitute for SIP revision requirements through LAC 33:III.2201.K.3.c. Moreover, EPA in comment 3.f is not suggesting that the Title V permit be the only place that contains these specific conditions.

b. Concerns with LAC 33:III.2201.K.4.b

We now turn to the objections by the Industry commenters and LDEQ to EPA's concerns with the approvability of LAC 33:III.2201.K.4.b which requires the incorporation of the provisions of LAC 33:III.2201.K.1 and/or K.3 into the applicable permit for each affected facility. LAC 33:III.2201.K.4.b also states that the owner or operator may elect to revise the method of compliance with LAC 33:III.2201.K for one or more affected point sources by means of a permit modification.

In its comments, LDEQ noted that the only options available to the owner or operator of an affected point source are to comply with the emission factors set forth in LAC 33:III.2201.D or with the work practice standards in LAC 33:III.2201.K.3. The Industry commenters asserted that CAA section 110 does not require EPA to approve each permit modification that changes the compliance option selected under LAC 33:III.2201.K.4.b and to submit it as a SIP revision because such changes are not, in fact, SIP revisions.

In response to these comments, we first note that here the ''compliance options'' are different emission limitations and not merely how to comply with a single limit. We agree with the commenters that the decision by a source to choose one of two different emission limitations need not be treated as a revision to the SIP, provided EPA has previously reviewed and approved *both* emission limitations as meeting CAA requirements and incorporated both limitations into the SIP. As stated earlier, LAC 33:III.2201.K.4 provides that for periods of startup and shutdown of affected point sources, the source owner or operator is required to notify LDEQ by May 1, 2017, of its choice of whether the source will comply with LAC 33:III.2201.K.1 or LAC 2201.K.3 during periods of startup and shutdown. Also, LAC 33:III.2201.K.4b requires LDEQ to incorporate the option chosen into the applicable permit for each affected facility, and the source may modify its permit (after notice and comment) and choose the other option in the future.

The option of complying with the emissions limitations in LAC 33:III.2201.K.1 incorporates the requirements of LAC 33:III.2201.D and LAC 33:III.2201.E which have been previously approved into the Louisiana SIP; however, the other option of complying alternative emissions limitations developed pursuant to LAC 33:III.2201.K.3 is not part of the EPA-approved Louisiana SIP. For the reasons discussed in this rulemaking action, the alternative work practice requirements of LAC 33:III.2201.K.3 do not satisfy the CAA requirements for SIPs; consequently, LAC 33:III.2201.K.4.b cannot be approved into the Louisiana SIP at this time.

B. Comments by Sierra Club and the Anonymous Commenter

Comment 9: Sierra Club expressed support for the proposed disapproval and thanked EPA for a thorough evaluation in this rulemaking.

Response: EPA acknowledges the support.

Comment 10: Sierra Club requested that EPA finalize its disapproval and promulgate a Federal Implementation Plan (FIP) that corrects the deficiencies with LAC 33:III.2201.C.8, as identified in the 2015 SSM SIP Action. In promulgating a FIP, the commenter goes on to recommend that the EPA simply remove LAC 33:III.2201.C.8 from the Louisiana SIP without attempting to create impractical and unenforceable work practice standards.

Response: CAA section 110(c)(1) requires EPA to promulgate a FIP within two years of the effective date of this final disapproval action, unless EPA first approves a complete SIP revision that corrects the deficiency with LAC 33:III.2201.C.8 as identified in the 2015 SSM SIP Action. EPA intends to work in partnership with the State to resolve this issue in an equitable manner consistent with the CAA requirements and court rulings. EPA is hopeful that Louisiana will submit a revision that corrects the deficiency and a FIP will not be necessary as a result of this disapproval. EPA notes that states are not required to adopt and submit to EPA SIP revisions creating AELs for periods of SSM. States may choose to remove SSM provisions providing for exemptions (whether automatic or discretionary) or affirmative defense provisions altogether, rather than developing AELs for periods of SSM. For example, following this disapproval, Louisiana could elect not to create new AEL regulations such as LAC 33:III.2201.K and instead remove LAC 33:III.2201.C.8 in its entirety and rely upon their enforcement discretion should a source exceed an emission limit which is part of the EPA-approved SIP. Finally, it is outside the scope of this rulemaking to address contents of a future rule (FIP), should one become necessary.

Comment 11: Sierra Club expressed a belief that the work practices (in LAC 33:III.2201.K) are too vague and ambiguous to be enforceable and that they do not reflect adequate consideration of the seven specific criteria in EPA's guidance by which AELs for startup and shutdown should be developed. Sierra Club outlined the reasons why LDEQ's proposed reliance on these SSM work practice standards would be inappropriate. Specifically, Sierra Club states that Louisiana's SIP submittals fail to demonstrate that the work practice standards in LAC 33:III.2201.K: (1) are narrowly tailored to defined source categories using specific control strategies or that the use of the control strategy is ''technically infeasible'' during startup and shutdown; (2) would not violate the NAAQS or PSD increments; and (3) require that the actions during startup and shutdown are properly documented or that the work practice standards are enforceable.

Response: As outlined in our proposal notice, Louisiana's SIP submittals do not demonstrate LDEQ's proper application and consideration of certain criteria recommended by EPA for a state's development of the alternative work practice requirements, such as those in LAC 333:III.2201.K. Our assessment of the SIP submittals with respect to the first criterion (*i.e.,* that AELs should apply to specific, narrowly tailored source categories using specific control technologies) is fully addressed in our responses to Comments 2, 3, and 4. Likewise, our response to Comment 5 provides our assessment of the AELs in LAC 33:III.2201.K.3 with respect to the recommendation in criterion 2 (*i.e.,* that use of the control strategy for the specific source category is technically infeasible). With respect to Sierra Club's concern that LDEQ failed to

demonstrate that the work practice standards in LAC 33:III.2201.K would not violate NAAQS or PSD increments, we note that states have a statutory duty to develop and submit SIPs and SIP revisions, as appropriate, that provide for the attainment, maintenance and enforcement of the NAAQS, as well as meeting many other CAA requirements and objectives (*e.g.,* protecting PSD increments). The specific procedural and substantive requirements that states must meet for SIPs are set forth in CAA section 110(a)(1) and section 110(a)(2), other more specific requirements throughout the CAA (*e.g.,* the attainment plan requirements for each of the NAAQS as specified in CAA Title I, Part D), and EPA regulations. It is important to note, however, that EPA's 2015 SIP call for LAC 33:III.2201.C.8 of the Louisiana SIP was not based on demonstrated air quality concerns, but rather on EPA's interpretation of the CAA that emission limitations in SIPs cannot include exemptions for emissions during periods of startup and shutdown. LDEQ has removed the exemption and adopted LAC 33:III.2201.K. in its place, including the work practice standards applicable to periods of startup and shutdown contained in LAC 33:III.2201.K.3. As stated in response to Comment 6 above, some affected sources may emit more NO_X under the work practice requirements provided by LAC 33:III.2201.K.3 and such emissions may be significantly higher than historical actual emissions for such sources. Notwithstanding the concerns expressed by Sierra Club with respect to the NAAQS and PSD increment, EPA concludes that the SIP submittals do not correct the deficiency in the Louisiana SIP, as identified in Louisiana SIP the 2015 SSM SIP call for the reasons discussed in our proposal action, this notice, and the 2015 SSM SIP Action.

Finally, with respect to Sierra Club's comment claiming that the work practice standards in LAC 33:III.2201.K.3 fail to ensure the actions during startup and shutdown are properly documented or that the work practice standards are enforceable, we note that section LAC 33:III.2201.K.3.e requires a source to ''maintain records of the calendar date, time, and duration of each startup and shutdown'' and section LAC 33:III.2201.K.3.f requires a source to ''maintain records of the type(s) and amount(s) of fuels used during each start-up and shutdown.'' However, the required records of LAC 33:III.2201.K.3.e and LAC 33:III.2201.K.3.f are *only* made available upon request by authorized representatives of LDEQ, per LAC 33:III.2201.K.3.g. As discussed in our response to Comment 12 below, EPA generally agrees that SIP provisions must include adequate monitoring, recordkeeping, and reporting requirements, as appropriate, to be legally and practically enforceable; however, EPA has determined the provisions of LAC 33:III.2201.K do not meet minimum CAA requirements for AELs for reasons unrelated to the issue of recordkeeping or reporting, and thus is disapproving the provision for those reasons.

Comment 12: As part of its comments, Sierra Club attached and incorporated its August 3, 2016, letter to LDEQ that contains a discussion of its concerns with the State's proposed adoption of LAC 33:III.2201.K. Expanding upon the comments submitted to EPA on the enforceability of LAC 33:III.2201.K, Sierra Club noted a lack of reporting requirements in LAC 33:III.2201.K. Sierra Club also claimed that the work practice requirements set forth in LAC 33:III.2201.K do not meet the CAA section 110(a) enforceability requirement because: (1) the work practice requirements in LAC 33:III.2201.K do not limit emissions on a continuous basis; (2) alternative limits or work practices must be incorporated through the SIP amendment process, allowing for public notice and comment and EPA approval; and (3) source-specific alternative limits work practices are generally not proper at all, and source-specific alternative plans under LAC 33:III.2201.E.1 and E.2 do not comport with the CAA requirements for SIP revisions (including public comment).

Response: EPA supports the use of properly developed and enforceable AELs for modes of operation during which otherwise applicable emission limitations cannot be met, as may be the case during startup or shutdown. These AELs, 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.[44]

EPA notes that Sierra Club also commented that LAC 33:III.2201.K lacks sufficient reporting requirements to support enforcement of the work practice standards. The commenter suggested that the state should require at least quarterly reporting by sources concerning their compliance with the AELs. EPA generally agrees that SIP provisions must include adequate monitoring, recordkeeping, and reporting requirements, as appropriate, to be legally and practically enforceable. As described in the proposal notice and in this final rulemaking, EPA has determined the provisions of LAC 33:III.2201.K do not meet minimum CAA requirements for AELs for reasons unrelated to the issue of reporting, and thus is disapproving the provision for those reasons. Should Louisiana make a new SIP submission containing AELs, we encourage the State to consider whether the reporting requirements are adequate to make the AELs legally and practically enforceable. Because the work practice standards in LAC 33:III.2201.K.3 are intended to be components of a continuous SIP emissions limitation, the provision and associated reporting requirements must meet all applicable CAA requirements for SIPs, including CAA sections 110(a)(2), 113, 302(k), and 304, as well as applicable regulatory requirements including 40 CFR 51.211.

Turning to Sierra Club's comment that the work practice requirements set forth in LAC 33:III.2201.K do not meet the CAA section 110(a) enforceability requirement because they do not limit emissions on a continuous basis, we previously noted in our response to Comments 3 and 8 that the work practice standards in LAC 33:III.2201.K.3.c are not sufficiently tied to any particular source or source category under the SIP to ensure their enforceability. In addition, as Sierra Club correctly noted, the imprecise and vague language in LAC 33:III.2201.K.3.c (*e.g.,* ''as expeditiously as possible, considering safety and manufacturer recommendations'' and ''engage'') may be read so as to create situations wherein startup and shutdown emissions are functionally exempt, thereby creating a non-continuous emissions limitation that is inconsistent with CAA requirements for SIPs. EPA also agrees with Sierra Club's suggestion that certain control technologies may be employed in different manners at different times resulting in great variation in the amount of emission control and thus the requirements should be described in more defined terms than currently required by LAC 33:III.2201.K.3.c. In addition, this information should have been considered by LDEQ to ensure the development of enforceable work

[44] 80 FR at 33913.

practice requirements that would provide RACT-level controls during the entire duration of startup and shutdown periods.[45]

Next, we address Sierra Club's comment that alternative emission limits or work practices must be incorporated through the SIP process and allow for public notice/comment and EPA approval. Sierra Club noted that, during periods of startup and shutdown, LAC 33:III.2201.K provides certain affected sources with the option of complying with the LAC 33:III.2201.K.1 (and existing emission factors in LAC 33:III.2201.D or an alternative plan approved under LAC 33:III.2201.E.1 or E.2) or the work practice standards under LAC 33:III.2201.K.3. Sierra Club asserted that any choice by a particular source to use an alternative plan or the work practice standards should be incorporated into the Louisiana SIP after public comment and EPA approval as a SIP revision. As stated earlier, review of Louisiana's SIP submittals included an evaluation and determination of whether they corrected the Louisiana SIP deficiency identified in the 2015 SSM SIP Action. Since we are determining in this rulemaking that the alternative emission limitations in Louisiana's SIP submittals do not correct that deficiency, we do not need to address the issue raised by the Sierra Club that a SIP cannot provide equally approvable options that provide for continuous and enforceable emission limitations meeting all substantive CAA requirements. We note, however, that under LAC 33:III.2201.K.4, owners and operators were required to notify LDEQ by May 1, 2017, whether each affected point source will comply with LAC 33:III.2201.K.1 or LAC 33:III.2201.K.3 during periods of startup and shutdown. As noted in our response to Comment 8, had the requirements of LAC 33:III.2201.K satisfied all other applicable requirements for SIPs including being continuous and practically enforceable, met applicable stringency requirements, and required appropriate monitoring, recordkeeping and reporting, EPA believes that the mechanism set forth in LAC 33:III.2201.K.4 may have been acceptable under the CAA; also, the selection or revision of which approved emission limitation option a particular source chose to comply with would not necessitate a SIP revision. We are noting a difference between using a permit to incorporate a selected approved compliance option versus the use of the permitting process to *establish* necessary elements of emission limitations, the latter of which, as discussed in our response concerning LAC 33:III.2201.K.3.c, is not appropriate. For the reasons discussed elsewhere in this rulemaking action, LAC 33:III.2201.K does not meet all CAA SIP requirements.

Finally, Sierra Club claimed that source-specific alternative limits and work practices are generally not proper at all (and source-specific alternative plans under LAC 33:III.2201.E.1 and E.2 do not comport with the CAA requirements for SIP revisions). Since EPA is determining that the Louisiana SIP submittals do not correct the deficiency in the Louisiana SIP as identified in the 2015 SSM SIP Action for all the reasons discussed elsewhere in this rulemaking action, there is no need for an additional response to Sierra Club's concern at this time.

Comment 13: The anonymous commenter, referencing the 2008 Sierra Club case opinion by the D.C. Circuit court, claimed the court held that a general duty to minimize emissions is not a CAA section 112-compliant standard. Considering that states have the responsibility of developing plans that best suit their needs, the commenter remarked that EPA should explain how it reached the conclusion that a general duty to minimize emissions in LAC 33:III.2201.K.3.a during SSM is not a section 110-compliant standard.

Response: We believe commenter's reference to the 2008 D.C. Circuit case is *Sierra Club* v. *Johnson,* 551 F.3d 1019, 1021 (D.C. Cir. 2008) (interpreting the definition of emission limitation in section 302(k) and section 112 of the CAA). The commenter noted that LAC 33:III.2201.K.3.a is a general duty provision requiring the affected point sources to minimize emissions. As discussed in our proposed action, standing alone, the general duty provision in LAC 33:III.2201.K.3.a does not comply with section 110 CAA requirements for SIPs. For example, it is unclear how the general duty to utilize ''good air pollution control practices'' required by LAC 33:III.2201.K.3.a, would be practically enforceable and serve as a sufficient limitation on emissions (as defined in 42 U.S.C. 7602(k)) to satisfy applicable SIP requirements (*e.g.,* ensure the application of RACT-level controls during startup and shutdown). Additional concerns to LAC 33:III.2201.K.3.a are discussed elsewhere herein, including our response to Comment 4. In addition, the 2015 SSM SIP Action discussed at length why general duty provisions in SIPs cannot constitute practically enforceable, continuous emissions limitations as required by the CAA.

Comment 14: Finally, the anonymous commenter claimed being misled by the notice, stating it appears that the Environmental Justice (EJ) concerns are now described as the purpose of the SSM policy and the 2015 SSM SIP Action. Although the commenter expresses agreement with EPA for having concern for protection of overburdened communities, it questions the need for the EJ and the detailed-demographic survey and its relationship to the basis of the June 13, 2023, proposed action.

Response: EPA acknowledges the commenter's statement of support for the protection of overburdened communities, as neighborhoods in close proximity of industrial sources may be vulnerable and subject to disproportionate environmental impacts caused by excess emissions during SSM events. With respect to the question of the relationship between EJ and the detailed demographic analysis and the basis for the proposed action, we note that the opening statement in section IV of the proposal notice stated, ''For informational and transparency purposes only, the EPA is providing additional analysis of environmental justice associated with this proposed action for the purpose of providing information to the public.'' [46] In addition, in section V.J of the proposal notice, EPA specifically wrote that the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. While EPA performed an environmental justice and demographic analysis, the EJ ''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.'' [47]

Based on the above responses to comments received and the identified deficiencies described in section II.B at 88 FR 38450–38452 of our proposal notice, we disagree with the Industry commenters' statement characterizing our June 13, 2023 proposal as unwarranted, arbitrary and capricious. Therefore, we are finalizing the action as proposed.

IV. Final Action

The EPA is disapproving the revision to the Louisiana SIP submitted by LDEQ

[45] See Sierra Club comment letter to LDEQ dated August 3, 2016, pages 9–10, included in the docket for this action.

[46] 88 FR at 38453, Section IV Environmental Justice Considerations.

[47] *Id.* at 38455, Section V Statutory and Executive Order Reviews, Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.

on November 20, 2016, and supplemented on June 9, 2017, in response to EPA's 2015 SSM SIP Action concerning excess emissions during periods of SSM. In accordance with section 110 of the Act, we are finalizing disapproval of the revision to the Louisiana SIP that would repeal LAC 33:III.2201.C.8 and add a new section LAC 33:III.2201.K Startup and Shutdown in its place. The EPA is also making a determination that this SIP revision fails to correct deficiencies identified in the June 12, 2015 SIP Action related to the above-referenced provisions.

CAA section 110(c)(1) requires EPA to promulgate a FIP within 24 months of the effective date of this final disapproval action, unless EPA first approves a complete SIP revision that corrects the deficiency with LAC 33:III.2201.C.8 as identified in the 2015 SSM SIP Action. In addition, this final disapproval triggers mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, a complete SIP revision that corrects the identified deficiencies within 18 months of the effective date of the final disapproval action.[48]

V. Environmental Justice Considerations

EPA provided an environmental justice analysis associated with this action for the purpose of providing information to the public in our July 22, 2022 (87 FR 43760) proposal. As discussed in the proposed action, we believe that this final action will be beneficial to all population groups within Louisiana and may reduce impacts. Exemptions for excess emissions during periods of SSM undermine the ability of the SIP to attain and maintain the NAAQS, to protect Prevention of Significant Deterioration increments, to improve visibility and to meet other CAA requirements. Such exemption provisions have the potential to lessen the incentive for development of control strategies that are effective at reducing emissions during certain modes of sources' operations such as startups and shutdowns or to take prompt steps to rectify malfunctions. Removal of these exemption provisions from the Louisiana SIP will bring the treatment of excess emissions in the SIP into line with CAA requirements; thus, sources in the State will no longer be able to use the repealed exemptions and will have greater incentives to control their air emissions. We therefore determine that this rule will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

VI. Statutory and Executive Order Reviews

Under the CAA, 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, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action disapproving Louisiana's excess emissions-related rule as a SIP revision merely ascertains that this State law does not meets Federal requirements and therefore does not impose additional requirements beyond those imposed by State law. Additional information about these statutes and Executive orders can be found at *www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain pre-existing State requirements for inclusion in the SIP.

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 does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

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: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per

[48] Consistent with our proposal (88 FR at 38453, footnote 31), EPA has evaluated the geographic scope of potential sanctions under CAA section 179(b) resulting from our disapproval of Louisiana's November 20, 2016, and June 9, 2017, SIP submittals concerning LAC 33:III.2201.C.8 and LAC 33:III.2201.K. We note that the provisions of LAC 33:III.Chapter 22 Control of Emissions of Nitrogen Oxides (NO_X) of the EPA-approved Louisiana SIP are considered elements of an implementation plan required under Part D of Title I of the Act. One provision in the Chapter 22 rules—namely, LAC 33:III.2201.C.8—provides an exemption from otherwise applicable and continuous NO_X emission limitations from affected point sources subject to Chapter 22. Since such exemption provisions are inconsistent with CAA requirements for SIPs, EPA issued a SIP call in 2015, and Louisiana submitted the proposed revisions that are the subject of our disapproval action. With respect to the geographic scope of potential sanctions under CAA section 179 triggered by our disapproval, we note that ''the EPA interprets the section 179 sanctions to apply only in the area or areas of the state that are subject to or required to have in place the deficient SIP and for the pollutant or pollutants that the specific SIP element addresses.'' 80 FR 33840, 33930 (June 12, 2015). See also 40 CFR 52.31 and 59 FR 39832, 39835 (August 4, 1994). Here, the pollutant controlled by the Chapter 22 rules is NO_X, a precursor of ozone, and it is the only pollutant that is the subject of the disapproval. There are no areas in Louisiana that are currently designated as nonattainment for ozone and thus there are no potential CAA section 179 sanctions triggered by our disapproval action, at this time.

the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create any new regulations, but simply disapproves certain pre-existing State requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211, 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. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA 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 Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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, described in the section titled, ''Environmental Justice Considerations'' of the June 13, 2023 (88 FR 38448) proposal. 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 final action is expected to have a neutral to positive impact on the air quality of the previously designated Baton Rouge ozone nonattainment area and its Region of Influence. In addition, there is no information in the record upon which this final action 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. This final action simply disapproves a SIP submission as not meeting CAA requirements for SIPs.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the disapproval of Louisiana's November 20, 2016, and June 9, 2017 SIP submittals may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 30, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–26753 Filed 12–6–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2023–0283; FRL–11127–02–R5]

Air Plan Approval; Indiana; Municipal Solid Waste Landfill State Plan Approval for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Indiana's state plan to control air pollutants from Municipal Solid Waste (MSW) Landfills. The Indiana Department of Environmental Management (IDEM) submitted the state plan on March 20, 2023. The Indiana MSW landfill state plan was submitted to fulfill the state's obligations under section 111(d) of the Clean Air Act (CAA) to implement and enforce the requirements under the MSW Landfills Emission Guidelines (EG). EPA is approving the state plan.

DATES: This final rule is effective on January 8, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2023–0283. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Melissa Hulting, Clean Air Strategies Section Supervisor, at (312) 886–2265 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Clean Air Strategies Section, Air Toxics Branch (AT–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever