

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R10-OAR-2023-0195, FRL-10612-03-R10]

**Air Plan Approval; Idaho: Inspection and Maintenance Program Removal; Extension of Comment Period; Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; extension of comment period and correction.

**SUMMARY:** On March 30, 2023, the Environmental Protection Agency (EPA) proposed to approve revisions to the Idaho State Implementation Plan (SIP) submitted by the State of Idaho (Idaho or the State) on December 29, 2022. The proposed revision, applicable in the Boise-Northern Ada County Carbon Monoxide area (Northern Ada County CO area) in Idaho, removes the Inspection and Maintenance (I/M) program. In that publication, we supplied an incorrect docket number for commenters to use when sending comments. The correct docket number is EPA-R10-OAR-2023-0195. The EPA is also announcing the extension of the comment period for the proposed rulemaking.

**DATES:** The public comment period for the proposal published in the **Federal Register** on March 30, 2023 (88 FR 19030) is extended from May 1, 2023 to May 22, 2023. Written comments must be received on or before May 22, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2023-0195, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Claudia Vaupel, EPA Region 10 at (206) 553-6121, or [vaupel.claudia@epa.gov](mailto:vaupel.claudia@epa.gov).

**SUPPLEMENTARY INFORMATION:****Correction**

In the **Federal Register** of March 30, 2023 (88 FR 19030), in FR Doc. 2023-06461, on page 19030, the following corrections are made:

1. On page 19030, in the first column, under the document heading, remove EPA's Docket ID No. "EPA-R10-OAR-2023-0012" and replace it with "EPA-R10-OAR-2023-0195"; and
2. On page 19030, in the second column, in the **ADDRESSES** section, line 2, remove EPA's Docket ID No. "EPA-R10-OAR-2023-0012" and replace it with "EPA-R10-OAR-2023-0195".

Dated: April 18, 2023.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

[FR Doc. 2023-08505 Filed 4-20-23; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R06-OAR-2022-0309; FRL-10903-01-R6]

**Air Plan Disapproval; Texas; Contingency Measures for the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove revisions to the Texas State Implementation Plan (SIP) for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) serious ozone nonattainment areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is proposing to disapprove the portion of these SIP revisions that the state intended to address contingency measure requirements. Contingency measures are control requirements in a nonattainment area SIP that would take effect should the area fail to meet Reasonable Further Progress (RFP) emissions reductions requirements or fail to attain the

NAAQS by the applicable attainment date.

**DATES:** Written comments on this proposal must be received on or before May 22, 2023.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2022-0309, at <https://www.regulations.gov> or via email to [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeff Riley, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](https://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Jeff Riley, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. The EPA Region 6 office encourages the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refers to the EPA.

**I. Background**

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA SIP

revisions addressing requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas—the DFW and HGB areas. As Serious ozone nonattainment areas, the DFW Area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties) and the HGB Area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) were both subject to the CAA section 182 Serious ozone nonattainment area requirements, one of which was that the state must adopt and submit contingency measures for implementation should the area fail to meet RFP emissions reductions or fail to attain the 2008 ozone NAAQS by the applicable attainment date.<sup>1</sup> The May 13, 2020, SIP revision submissions also included such provisions intended to satisfy the contingency measures requirement for both the DFW and HGB areas.

On September 29, 2020 (85 FR 60928), we published a proposed rule to approve those portions of the May 13, 2020, Texas SIP revision addressing the HGB RFP requirements and the contingency measures requirement. On October 9, 2020 (85 FR 64084), we published a proposed rule to approve those portions of the May 13, 2020, Texas SIP revision addressing the DFW RFP requirements and the contingency measures requirement. In this proposal, we refer to the RFP element of the May 13, 2020, Texas SIP revisions as “the RFP demonstration,” and to the contingency measures element of the May 13, 2020, Texas SIP revisions as “the contingency measures.” We also refer to our September 29, 2020, proposed action and Technical Support Document (TSD) as “the HGB proposal,” and to the October 9, 2020, proposed action and TSD as “the DFW proposal.”<sup>2</sup>

In our DFW and HGB proposals, we provided information on ozone formation, the ozone standards, area designations, related ozone nonattainment plan requirements under the CAA, and the EPA’s implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”).<sup>3</sup> EPA received no comments on the HGB proposal by the October 29, 2020 close of the public comment

period. EPA did receive adverse comments on the DFW proposal by the November 9, 2020 close of the public comment period.<sup>4</sup>

Among other issues, the commenters on the DFW proposal asserted that our proposed approval of the DFW area contingency measures would be inconsistent with a September 12, 2016 decision issued by the U.S. Court of Appeals for the Ninth Circuit (“Ninth Circuit”) in a case referred to as *Bahr v. EPA*. In *Bahr*, the Ninth Circuit concluded that contingency measures must be measures that would only take effect at the time the area fails to meet RFP or to attain by the applicable attainment date, not before.<sup>5</sup> After the *Bahr* decision, EPA recognized that within the geographic jurisdiction of the Ninth Circuit (which does not include Texas), the language of CAA sections 172(c)(9) and 182(c)(9) require contingency measures to be both prospective (*i.e.*, that they be undertaken in the future), and conditional (*i.e.*, that implementation is conditional upon the area’s failure to meet RFP or to attain by the applicable attainment date).<sup>6</sup>

On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) issued a decision in response to challenges to EPA’s rule implementing the 2015 ozone NAAQS, (83 FR 62998 (December 6, 2018)). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). Among the rulings in this decision, the D.C. Circuit endorsed the holding of *Bahr* and vacated EPA’s interpretation of the CAA that allowed states to rely on already-implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026–27). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>7</sup> EPA

<sup>4</sup> Comments received on this action from Air Law for All on behalf of the Center for Biological Diversity and the Sierra Club are provided in the docket at <https://www.regulations.gov> under docket ID: EPA-R06-OAR-2020-0161.

<sup>5</sup> *Bahr v. EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

<sup>6</sup> The *Bahr v. EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the additional ozone-specific contingency measure provision in section 182(c)(9), EPA found that the decision affected how it should interpret both sections of the Act in the Ninth Circuit.

<sup>7</sup> Contingency measures that are to take effect upon failure to satisfy standards are likewise not measures that have been implemented before such

notes that the court issued the *Sierra Club* decision after the close of the comment period on both of the prior HGB and DFW proposals concerning contingency measures required by sections 172(c)(9) and 182(c)(9).

On May 10, 2021 (86 FR 24717), EPA finalized its approval of the HGB area RFP demonstration and associated motor vehicle emissions budgets (MVEBs), and a revised 2011 base year emissions inventory. In that final rulemaking, we did not take final action on our October 29, 2020 proposed approval of the contingency measures submitted as part of the State’s May 13, 2020, SIP revision submission for the HGB area. EPA explained that it was reexamining the contingency measures element of the TCEQ submission for the HGB area in light of the D.C. Circuit decision, and that it would address those contingency measures in a separate future action. Similarly, we are proposing to take action here on the DFW contingency measures and we will address the DFW RFP demonstration in a separate action.

## II. The EPA’s Evaluation

### 1. Statutory and Regulatory Requirements

Under the CAA, states with ozone nonattainment areas classified under subpart 2 as Moderate or above must adopt and submit nonattainment plans that include contingency measures consistent with section 172(c)(9). Similarly, states with ozone nonattainment areas classified as Serious or above must include contingency measures consistent with section 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to meet RFP or to attain the NAAQS by the applicable attainment date. The SIP submission should identify such controls or measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the state or the EPA.<sup>8</sup>

As of the dates of our September 2020 and October 2020 proposals to approve the HGB and DFW contingency measures submitted as part of the State’s May 13, 2020, SIP revision submissions, it had been the EPA’s long-standing interpretation of section 172(c)(9) that states could rely on emission reductions from already-implemented measures to meet the contingency measures requirements. Thus, states could rely on

failure occurs. *Sierra Club, et al. v. EPA*, 985 F.3d 1055, 1067–68 (D.C. Cir. 2021).

<sup>8</sup> See 70 FR 71612 (November 29, 2005). See also 80 FR 12264, 12285 (March 6, 2015).

<sup>1</sup> Note EPA’s recent final determination that the HGB and DFW Serious nonattainment areas failed to attain the 2008 ozone NAAQS by the areas’ attainment date. 87 FR 60926 (October 7, 2022).

<sup>2</sup> The May 13, 2020, SIP submissions, our September 2020 proposal, and our October 2020 proposal are provided in the docket for this action.

<sup>3</sup> See 80 FR 12264 (March 6, 2015).

emissions reductions from existing federal measures (e.g., federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) or emission reductions from already-implemented state or local measures in the SIP, or the excess emissions reductions from already-implemented measures that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as meeting Reasonably Available Control Measure (RACM)/Reasonably Available Control Technology (RACT), RFP, or modeled attainment demonstration requirements.

The EPA has previously approved nonattainment area plan submissions under the now invalidated interpretation that already-implemented measures were permissible as contingency measures, i.e., contingency measures that consisted of one or more federal or state control measures that are already in place and provide reductions that are in excess of the reductions needed to meet other requirements or relied upon in the modeled attainment

demonstration.<sup>9</sup> However, after *Bahr*, and especially after *Sierra Club*, EPA can no longer interpret the CAA to allow approval of already-implemented measures as meeting the contingency measures requirements of CAA sections 172(c)(9) or 182(c)(9). Contingency measures must be prospective and conditional, i.e., measures that would take effect in the event the area fails to make RFP or attain by the applicable attainment date, not before.

2. Summary of the State's Submission

For both the DFW and HGB 2008 ozone NAAQS Serious nonattainment areas, the contingency measures the state submitted as part of the May 13, 2020, SIP revision submissions consist of surplus emissions reductions from already-implemented control measures. The state relied on the excess emissions from such already-implemented measures to demonstrate compliance with the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9).<sup>10</sup> The State determined the emissions reductions from these measures to be surplus, in that the state

did not rely upon them in the nonattainment plan for demonstrating RFP or attainment. The May 13, 2020, SIP submissions explained that these surplus emission reductions will continue to take place during calendar year 2021, and thus the state identified them as contingency measures for the DFW and HGB areas. These measures consist of projected emission reductions from federal vehicle and engine emissions certification programs and from fuel control programs for both on-road and non-road vehicles (see Table 1) which were already adopted by EPA and the implementation of which does not depend on whether a nonattainment area attains or meets its reasonable further progress requirements. The State claimed that the projected combined VOC and NO<sub>x</sub> emissions reductions of 3 percent for the DFW area and NO<sub>x</sub> emissions reductions of 3 percent for the HGB area to be achieved between January 1, 2021 through December 31, 2021 (from the 2011 baseline) satisfies the CAA requirements for contingency measures.<sup>11</sup>

TABLE 1—DFW & HGB AREA CONTROL MEASURES IDENTIFIED FOR CONTINGENCY EMISSION REDUCTIONS, JANUARY 1, 2021–DECEMBER 31, 2021

Control strategy description	Year control program started	Additional information
DFW Area I/M Program <sup>12</sup>	1990	1990—Dallas, Tarrant Counties only. 2002—I/M & Anti-Tampering Program (ATP) expanded to Collin, Denton Counties. 2003—I/M & ATP expanded to Ellis, Johnson, Kaufman, Parker, Rockwall Counties.
Tier I, Federal Motor Vehicle Control Program (FMVCP)	1994	Phased-in 1994–1997.
HGB Area On-road & Non-road Reformulated Gasoline (RFG).	1995 (Phase I), 2000 (Phase II)	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller Counties.
DFW Area On-road & Non-road RFG	1995 (Phase I), 2000 (Phase II)	Collin, Dallas, Denton, Tarrant Counties.
East Texas Regional use of gasoline with low Reid Vapor Pressure (RVP) <sup>13</sup>	2000	Ellis, Johnson, Kaufman, Parker, Rockwall, & Wise Counties.
HGB Area Inspection and Maintenance (I/M) Program	1997	Brazoria, Fort Bend, Galveston, Harris, Montgomery Counties.
National Low Emission Vehicle Program	2001.	
Tier II, FMVCP	2004	Phased-in from 2004–2009.
On-road & Non-road Texas Low Emission Diesel (TxLED).	2006.	
Ultra-Low Sulfur Diesel (ULSD)	2006	Phased-in for on-road diesel fuel 2006–2010, non-road diesel fuel 2007–2014.
2007 Heavy-Duty FMVCP	2007	Phased-in from 2007–2010.
Tier III, FMVCP (including Low Sulfur Gasoline)	2017	Phased-in from 2017–2025.

3. The EPA's Review of the State's Submission

As previously stated, pursuant to the D.C. Circuit decision, we must evaluate whether the May 13, 2020, contingency measures identified for the DFW and HGB areas are both prospective and

conditional, i.e., measures that would take effect only upon the area's failure to make RFP or attain by the applicable attainment date, not before.

Because the contingency measures that the state identified in the May 13, 2020, SIP submissions consist entirely

of emission reductions from measures that will occur regardless of whether the nonattainment area fails to meet RFP or to attain by the applicable attainment date, these measures do not satisfy the requirements of CAA sections 172(c)(9) and 182(c)(9) that contingency measures

<sup>9</sup> See, e.g., 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP

revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

<sup>10</sup> May 13, 2020 RFP plan submission, Chapter 3, Tables 3–4 and 3–5.

<sup>11</sup> May 13, 2020 RFP demonstration submission, Chapter 4, Tables 4–17 and 4–18.

<sup>12</sup> I/M is not implemented in Wise County. See 82 FR 27122 (June 14, 2017).

<sup>13</sup> The Dallas-Fort Worth nonattainment area voluntarily opted into the RFG program. The 10-county DFW area includes counties with federal RFG and counties with Texas Regional Low RVP. The four counties with RFG are: Collin, Dallas, Denton, and Tarrant. The six counties with Texas Regional Low RVP are: Ellis, Johnson, Kaufman, Parker, Rockwall and Wise.

be both prospective and conditional. Thus, we must propose to disapprove the contingency measure element of the May 13, 2020, SIP submissions with respect to the contingency measures requirement for the HBG and DWF areas for purposes of the 2008 ozone NAAQS. EPA notes that this proposed action concerning contingency measures will have no impact upon EPA's prior determinations with respect to RFP or other nonattainment plan requirements for these areas and this NAAQS.

### III. Proposed Action

In light of the decision in *Sierra Club, et al. v. EPA*, we are proposing to disapprove the contingency measure element of the May 13, 2020, Texas SIP revisions for Serious nonattainment areas under the 2008 8-hour ozone NAAQS. EPA proposes this disapproval with respect to the contingency measure requirements under CAA section 172(c)(9) and 182(c)(9) for the reasons discussed above.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA starts sanctions clocks. The May 13, 2020, SIP revision submissions, including the contingency measures element for the DFW and HGB 2008 ozone NAAQS serious nonattainment areas, do address requirements of part D, and thus if the EPA finalizes this proposed disapproval, sanction clocks would start on the effective date of the final action.<sup>14</sup> The state would be eligible for a protective finding for the DFW and HGB areas under the transportation conformity rule because the EPA has separately approved or will approve each area's RFP demonstration element of the May 13, 2020, SIP submission, which reflects adopted control measures and contains enforceable commitments that fully satisfy the emissions reductions requirements for RFP for the 2008 ozone NAAQS for each area.<sup>15</sup>

<sup>14</sup> Under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after the effective date of that final disapproval action, and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction. Sanction would not be imposed if the EPA determined that a subsequent SIP submission corrected the identified deficiencies before the applicable deadlines.

<sup>15</sup> 40 CFR 93.120(a)(3). Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate

and therefore are not currently known, but would be expected to contribute to improved air quality in these areas and there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

Additionally, finalizing the proposed disapproval of the contingency measure element would require that the EPA promulgate a Federal implementation plan under section 110(c) unless we approve a subsequent SIP submission or submissions from the state that correct the deficiencies that are the basis for the disapproval within 24 months.

### IV. Environmental Justice Considerations

The EPA is soliciting public comments on the proposed disapproval discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

For this proposed action, the EPA conducted screening analyses of the 10-county DFW and 8-county HGB Serious ozone nonattainment areas using EPA's EJScreen (Version 2.1) environmental justice (EJ) screening and mapping tool.<sup>16</sup> The results of these analyses are being provided for informational and transparency purposes, and the EJScreen analysis reports are available in the docket for this rulemaking.

This proposed action identifies deficiencies in the contingency measure element of the May 13, 2020, Texas SIP revisions for the DFW and HGB Serious nonattainment areas under the 2008 8-hour ozone NAAQS. EPA's disapproval of these contingency measures, if finalized, would require that Texas submit plans for the DFW and HGB areas containing prospective and conditional contingency measures consistent with the D.C. Circuit decision, which would help to improve air quality in the entire affected nonattainment area through ongoing reductions of ozone precursor emissions should those measures be triggered. Information on ozone and its relationship to negative health impacts can be found at <https://www.epa.gov/ground-level-ozone-pollution>.<sup>17</sup>

As a result of EPA's full disapproval action, if finalized, TCEQ will be required to undertake additional actions to ensure that the DFW and HGB 2008 8-hour ozone NAAQS nonattainment areas meet CAA nonattainment area planning requirements. These corrective actions are within the state's discretion

pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, the final disapproval of the contingency measures element would not result in a transportation conformity freeze in the DFW and HGB ozone nonattainment areas and the metropolitan planning organizations may continue to make transportation conformity determinations.

<sup>16</sup> See <https://www.epa.gov/ejscreen>.

<sup>17</sup> See, also, 80 FR 65292 (October 26, 2015).

### V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www2.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 proposed 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 proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove 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 proposed SIP disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain 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 proposes to disapprove certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, 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: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where 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*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain 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 EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. 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 TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: April 17, 2023.

**Earthea Nance,**

*Regional Administrator, Region 6.*

[FR Doc. 2023–08498 Filed 4–20–23; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Parts 309 and 310**

**RIN 0970–AC99**

**Elimination of the Tribal Non-Federal Share Requirement**

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OCSE proposes to eliminate the non-Federal share of program expenditures requirement for Tribal child support enforcement programs including the 90/10 and 80/20 cost sharing rates. Based upon the experiences of and consultations with Tribes and Tribal organizations, we have determined that the non-Federal share requirement limits growth, causes disruptions, and creates instability.

**DATES:** Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before June 20, 2023.

**ADDRESSES:** You may submit comments, identified by [docket number and/or Regulatory Information Number (RIN) number], by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, Attention: Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Chad Sawyer, Senior Policy Specialist, OCSE Division of Policy and Training, at [ocse.dpt@acf.hhs.gov](mailto:ocse.dpt@acf.hhs.gov) or (202) 774–2323. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**Submission of Comments**

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or