



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2025-1611; FRL-13365-01-R5]

Air Plan Approval; Ohio; Removal of Air Nuisance Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to act in accordance with Ohio EPA's November 14, 2025, request to remove the air pollution nuisance rule (ANR) from the Ohio State Implementation Plan (SIP). The EPA is proposing to find that the Ohio SIP contains adequate control requirements and enforcement measures to maintain air quality in the State without the ANR. This proposed action will not interfere with the National Ambient Air Quality Standards (NAAQS) and meets all applicable requirements under the Clean Air Act (CAA).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2025-1611 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be

Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mayesha Choudhury, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number: (312) 886-5909, email address: choudhury.mayesha@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA.

I. Background of Action

The Air Nuisance Rule has been part of the Ohio SIP since 1974 (Ohio rule AP-2-07). The EPA approved an amended rule, Ohio Administrative Code (OAC) 3745-15-07, into the SIP on August 13, 1984 (49 FR 32182). The ANR prohibits the "emission

or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances, in such manner or in health, safety or welfare of the public, or cause unreasonable injury or damage to property.”

In a final rule published on November 19, 2020 (85 FR 73636), the EPA removed the ANR from Ohio’s SIP using the EPA’s error correction authority under section 110(k)(6) of the CAA. On January 19, 2021, environmental groups and private citizens petitioned the United States Court of Appeals for the Sixth Circuit for review of the EPA’s removal of the ANR.¹ On February 10, 2023, the Sixth Circuit granted the EPA’s request for a voluntary remand to reevaluate its November 2020 removal of the ANR.² On January 21, 2025 (90 FR 6811), the EPA determined that its November 2020 removal of the ANR was deficient and in error. Consequently, the EPA reversed the November 2020 removal and reinstated the ANR into Ohio’s SIP. (January 2025 Reinstatement).

In June 2025, the Governor of Ohio signed the State’s 2026-2027 operating budget, which includes a provision requiring the Director of the Ohio EPA to take necessary steps to remove any “air nuisance rules” from the Ohio SIP. It also stipulates that, upon the effective date of the legislation (which was October 1, 2025), the Ohio EPA Director “shall not include an air nuisance rule in the state implementation plan or rely upon

¹ *Sierra Club v. EPA*, 60 F.4th 1008 (6th Cir. 2023).

² *Id.*

an air nuisance rule to implement or enforce ambient air quality standards adopted pursuant to the federal Clean Air Act.”³ On November 14, 2025, Ohio EPA submitted a request to the EPA to revise the Ohio SIP and remove the ANR.

II. Legal Requirements

Title I of the CAA imposes requirements on the EPA’s evaluation of a State’s SIP revision request, including analyzing the requirements a State may decide to include in its SIP, and submit to the EPA for approval, to achieve or maintain the NAAQS. In evaluating whether a SIP revision would interfere with attainment or maintenance of the NAAQS, the EPA considers whether the SIP revision will allow for an increase in emissions as compared to what is allowed under the existing SIP condition(s), also known as an anti-backsliding analysis. These requirements are found in two sections of the CAA. Section 110(1) of the CAA states that the EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS, or any other applicable requirement of the CAA. Section 193 of the CAA, also known as the General Savings Clause, provides, in relevant part, that “no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air

³ See State Operating Appropriations for FY 2026-27, Ohio H.B. 96, 136th General Assembly (2025) at 1448, available at https://search-prod.lis.state.oh.us/api/v2/general_assembly_136/legislation/hb96/07_EN/pdf/.

pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

III. Summary of Ohio EPA's Submittal

To satisfy requirements under sections 110(1) and 193 of the CAA, Ohio submitted an anti-backsliding analysis to demonstrate that removal of the ANR from the Ohio SIP would not result in an increase of potential criteria pollutant emissions, contribute to exceedances or violations of the NAAQS, or interfere with other applicable requirements of the CAA.

A. Ohio EPA's Section 110(1) Demonstration

Ohio's anti-backsliding analysis states that the ANR is not "an element of 'a program to provide for the enforcement of the measures' adopted pursuant to § 7410(a)(2)(a), as required by 42 U.S.C. § 7410(a)(2)(c)." In other words, Ohio's position is that the ANR is "not an enforceable emission limitation or other control measure, means, or technique" and that "it does not 'enforce' the NAAQS." The State instead argues that it has developed additional requirements in its SIP since 1974 to achieve and maintain the NAAQS, as the purpose of these State plans is to implement, maintain, and enforce the Federal standards set for the criteria pollutants. The State, in essence, explains that it has targeted mechanisms in the SIP to maintain and achieve the NAAQS besides the ANR.

Ohio's anti-backsliding analysis goes on to provide that the Ohio SIP contains control measures relevant to each NAAQS in

the SIP to demonstrate how the State controls emissions through federally-approved control strategies, included in Table 1 of this preamble. The State also explains that the SIP includes a program to provide for the enforcement of the referenced control measures, and satisfies compliance requirements set by the CAA, "which makes any violation of Ohio's air statutes and regulations subject to enforcement in Ohio courts - regardless of whether they appear in Ohio's SIP" through Ohio Revised Code (ORC) section 3704.06.

Table 1. Ohio's SIP-approved emissions control measures and strategies

| POLLUTANT(S) | REGULATIONS IN OHIO ADMINISTRATIVE CODE |
|--|--|
| Ozone and Carbon Monoxide | Chapter 3745-26: I/M Program Rules and Regulations Chapter 3745-14: NOx Budget Program Chapter 3745-110: Nitrogen Oxides-Reasonably Available Control Technology Chapter 3745-112: Volatile Organic Compound Limits in Consumer Products Chapter 3745-21: Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards |
| Particulate Matter (PM ₁₀ and PM _{2.5}) | Chapter 3745-17: Particulate Matter Standards |
| Sulfur Dioxide | Chapter 3745-18: Sulfur Dioxide Regulations |
| Nitrogen Dioxide | Chapter 3745-23: Nitrogen Oxide Standards Chapter 3745-110: Nitrogen Oxides, Reasonably Available Control Technology |
| Lead | Addressed through individual SIP-approved permit requirements or Director's Final Findings and Orders |

Similarly, Ohio's permitting programs under the New Source Review (NSR) and major source Prevention of Significant Deterioration (PSD) rules contain requirements that ensure that the construction and modification of stationary sources do not cause or contribute to a violation of the criteria pollutants

NAAQS.⁴ Ohio's program requires new or modified sources to apply Best Available Technology (applicable to minor sources), or Best Available Control Technology (applicable to major sources).

Ohio also provides that, as required by the CAA and SIP-approved measures, the Ohio EPA Director has the authority to enforce emission limits and control measures found in the SIP.⁵ The State argues that ORC 3704.03 contains requirements for the Ohio EPA Director to implement and enforce Ohio's Federally approved permitting programs as well.

B. Ohio EPA's Section 193 Demonstration

As discussed in section II of this preamble, the General Savings Clause of section 193 of the CAA applies to "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990." As the ANR has resided in the Ohio SIP since 1974, Ohio EPA provided an analysis to demonstrate that the removal of the ANR from the SIP satisfies requirements under section 193. Ohio EPA explains that since the ANR does not set emissions limitations, its removal will not lead to an increase in emissions. The State refers to the control requirements in the SIP that are relevant to each NAAQS pollutant again, as explained in its analysis pursuant to section 110(1), to further explain how the SIP contains requirements to control emissions in nonattainment areas in absence of the ANR. Ohio EPA also provided a list of 23 areas

⁴ Ohio's NSR provisions are contained in OAC Chapter 3745-31.

⁵ See ORC 3704.03(R)

in the State that were designated as nonattainment for a criteria pollutant prior to November of 1990, when the General Savings Clause was codified into law.⁶ Ohio explains that all of these areas have since been redesignated to maintenance areas, and that there are no longer any nonattainment areas currently subject to the Savings Clause. Table A in the Technical Support Document for this preamble lists the 23 areas that the State included in its analysis.⁷

III. The EPA's Evaluation of Ohio EPA's Submittal

For the reasons described in greater detail below, the EPA is proposing to find that the removal of the ANR from the Ohio SIP will not interfere with attainment or reasonable further progress of the NAAQS, or contribute to greater emissions of the criteria pollutants.

A. The EPA's Evaluation of Ohio EPA's 110(1) Demonstration

i. The EPA's Evaluation of State-Submitted Control Measures

CAA sections 110(a)(1)-(2) provide, in part, that each State shall adopt a SIP that "provides for implementation, maintenance, and enforcement" of the NAAQS and includes a program that enforces "emission limitations and other control measures, means, or techniques" that are necessary to meet the applicable requirements of the CAA. The United States Supreme Court affirmed that Congress "left to the States considerable latitude in determining specifically how the [NAAQS] would be

⁶ Attachment C of Ohio EPA Submittal at 6-7.

⁷ The Technical Support Document is found in the rulemaking docket for this action. Docket ID: EPA-R05-OAR-2025-1611.

met. This discretion includes the continuing authority to revise choices about the mix of emission limitations." *Train v. Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 87 (1975). A year later, the Court ruled that "[e]ach State is given wide discretion in formulating its [SIP], and the Act provides that the [EPA] 'shall approve' the proposed plan" if it meets specific requirements under CAA section 110(a)(2). *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976).

The EPA has considered the control measures and enforcement methods which the State argues will uphold and preserve air quality in absence of the ANR.⁸ The adopted measures and regulations place limits on emissions for each criteria pollutant (including by source category), and require pollutant-specific monitoring methods and procedures for recordkeeping and reporting of emissions to the State. These current measures meet the requirements for SIPs to contain provisions to enforce and implement the NAAQS under section 110(a) of the CAA. Further, the EPA finds these presently SIP-approved control measures, when complied with by relevant sources and properly enforced by the State, are mechanisms the State can use to ensure that criteria pollutant emissions do not cause interference with attainment or maintenance of the NAAQS. The EPA also finds that the State has demonstrated that implementation of these SIP-approved requirements will control

⁸ The EPA's descriptions of the SIP-approved control measures, submitted by the State, are included in Table B of the Technical Support Document for this action.

for emissions in the State without the ANR residing in the SIP.

ii. The EPA's Evaluation of Ohio's Permitting Programs

The EPA also finds that Ohio's permitting programs contain requirements necessary to control for potential emissions from sources of pollution. Under the CAA, SIPs should include statutes and regulations that provide for the enforcement of emissions limits and control measures relevant to each NAAQS as identified pursuant to section 110(a)(2)(A).⁹ SIPs should also contain requirements that implement a PSD permit program that satisfies part C of title I of the CAA, which is applicable to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the NAAQS. Part D of title I of the CAA contains requirements for a State's major nonattainment NSR (NNSR) program, which applies to new major sources and major modifications of existing major sources for which an area is designated as nonattainment. 42 U.S.C. 7501-7515.¹⁰

The EPA has approved Ohio's PSD, NNSR, and minor NSR programs as part of its SIP. OAC 3745-31, 40 CFR 52.1870(c). As part of its approval, the EPA determined that Ohio's preconstruction permitting programs contain the necessary

⁹ Section 110(a)(2)(c) of the CAA contains requirements for enforcement methods, the state-wide regulation of new or modified minor sources of air pollution and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a particular NAAQS (also known as the major source Prevention of Significant Deterioration program).

¹⁰ 40 CFR 51.66 houses the requirements that State PSD programs must meet for SIP approval. 40 CFR 51.165 houses the requirements for State nonattainment NSR programs.

enforcement and control requirements sufficient, by Federal standards, to control for, and enforce, emissions of criteria pollutants.¹¹ The enforcement measures contained within the permitting requirements also stipulate that the Ohio EPA will not issue a construction permit to a source if it cannot demonstrate that the installation or modification will “not prevent or interfere with the attainment or maintenance of applicable [NAAQS]” and “not result in a violation of any applicable laws” which includes: “[e]mission standards adopted by the Ohio [EPA],” “[f]ederal standards of performance for new stationary sources adopted by the [EPA] pursuant to Section 111 of the [CAA] and the regulations promulgated thereunder;” “[r]equirements pertaining to installation of major stationary sources or major modifications in attainment and nonattainment areas as contained in rules 3745-31-10 to 3745-31-27 of the [OAC];” and “[n]ational emission standards for hazardous air pollutants adopted by the [EPA] pursuant to Section 112 of the [CAA] and the regulations promulgated thereunder (including 40 CFR part 61 and 40 CFR part 63).” OAC Chapter 3745-31-05(A).¹² The EPA understands this part of Ohio’s pre-construction permitting program to require sources to comply with the EPA’s pollution control standards under the New Source Performance Standards (section 111 of the CAA), National Emission Standards

¹¹ The EPA fully approved Ohio’s NNSR and PSD programs in 2003. See 68 FR 1366 (January 10, 2003) and 68 FR 2909 (January 22, 2003).

¹² The EPA finds that OAC 3745-31-10 contains Ohio’s rules for “NSR projects at existing emissions units at a major stationary source.” OAC 3745-31-27 contains Ohio’s rules for “Nonattainment provisions - administrative procedures for emission offsets.”

for Hazardous Pollutants (section 112 of the CAA), and Maximum Available Control Technology standards (40 CFR part 63). These are the EPA's stringent technological standards, with each standard controlling for, and enforcing limits of, emissions from particular sources of pollution.

Through this review of Ohio's pre-construction permitting programs, the EPA finds that the State's permitting programs contain requirements for the State and sources to comply with Federal emissions limits and to control for potential emissions from the construction or modification of sources. As with the federally enforceable control measures previously referenced, the EPA reiterates that these are practical and enforceable measures that can control for emissions without the ANR in the SIP if these requirements are properly enforced by the State (and complied with by relevant sources). Further, the EPA finds that Ohio's pre-construction permitting programs do not include or classify the ANR as a control mechanism or emissions limit, nor does it include enforcement of the ANR as a stipulation which the State can utilize as part of its ability to issue or deny permit under State and Federal rules.¹³

iii. The EPA's Evaluation of the State's Enforcement Authority

In Ohio's anti-backsliding demonstration, the State explained that ORC 3704.03 provides the Director of the Ohio EPA the authority to "enforce those emission limits and control measures necessary to satisfy" Ohio's NSR requirements. The EPA

¹³ Ohio EPA's permit approval discretion is approved into the SIP at 40 CFR 52.1894(c) (156) (i) (F).

finds that ORC 3704.03(F) stipulates that Ohio EPA will not issue an installation permit unless a source complies with Ohio's requirements for construction permits, which includes a requirement that "applications for installation permits shall be accompanied by plans, specifications, construction schedules, and such other pertinent information and data, including data on ambient air quality impact and a demonstration of best available technology, as the director may require." ORC 3704.03(F).

Section 3704.03(R) allows Ohio EPA to "[i]ssue, modify, or revoke orders requiring abatement of or prohibiting emissions that violate applicable emission standards or other requirements of [Chapter 3704 Air Pollution Control] and rules adopted thereunder, or requiring emission control devices or measures in order to comply with applicable emission standards or other requirements of [Chapter 3704 Air Pollution Control]." Further, "[a]ny such order shall require compliance with applicable emission standards by a specified date and shall not conflict with any requirement of the Federal Clean Air Act." *Id.* Such orders include "Director's Final Findings and Orders" (DFFOs), through which Ohio EPA can enforce violations of Ohio's air pollution control laws.

Ohio can request the EPA to incorporate DFFOs into the State SIP, thereby making these source-specific requirements Federally enforceable. The EPA finds that Ohio has used the DFFO process to establish control and enforcement requirements for various sources and CAA programs, and continues to maintain

an effective enforcement program to ensure sources are in compliance with the NAAQS.¹⁴ The EPA also finds that the State has not included the ANR as an enforcement mechanism or control measure in its federally-approved DFFO's.

The EPA also finds that Ohio's permitting programs contain certain enforcement requirements that provide crucial control of emissions increases. As presented in the State's demonstration to satisfy requirements under CAA section 110(1), ORC rule 3704.06, "Prosecution by attorney general - injunction - civil penalties," stipulates that the Ohio EPA Director can request the Ohio Attorney General to prosecute any person who violates ORC sections 3704.05, ("Prohibited acts") or 3704.16 ("Prohibiting tampering with motor vehicle emission control systems"). The EPA finds that ORC rule 3704.05 - Prohibited acts - prohibits emissions of air contaminants in violation of any Ohio EPA rules or State-issued variance agreements, and requires timely and accurate monitoring, recordkeeping, and reporting practices (as also required in ORC rule 3704.03(I) and also pursuant to the CAA). Should a person violate any rule under ORC rule 3704.05, including violating an air permit issued under ORC rule 3704.03(F) as previously explained, ORC rule 3704.06 contains provisions for the attorney general (upon request of the Ohio EPA Director) to bring a civil penalty or "any other appropriate proceedings in any court of competent jurisdiction against any person violating or threatening to

¹⁴ See 40 CFR 52.1870(d) for Ohio's EPA-approved DFFOs.

violate section 3704.05 or 3704.16 of the Revised Code.”¹⁵

Upon evaluation of the State’s anti-backsliding analysis under section 110(1) of the CAA, including its explanation of control measures and enforcement mechanisms in place at the State and Federal level that control for criteria pollutant emissions, the EPA agrees that Ohio has demonstrated that removal of the ANR will not interfere with attainment or maintenance of the NAAQS or any other applicable requirement of the CAA. Removal will not interfere with reasonable further progress towards attainment of the NAAQS as well. The EPA finds that Ohio has demonstrated that the ANR need not reside in the State SIP for purposes of controlling NAAQS-related pollutants since other, more actionable measures are in place for that purpose.

B. The EPA’s Evaluation of Ohio’s Section 193 Demonstration

The EPA explained in its January 2025 Reinstatement that the ANR is a “control requirement” as the term is used in CAA Section 193. 90 FR 6820.¹⁶ Thus, CAA section 193 prohibits the modification of the ANR “in any manner” unless there is a showing that the modification would result in equivalent or greater emissions reductions. The EPA also explained in its January 2025 Reinstatement that there is nothing to stop Ohio

¹⁵ The EPA also finds that ORC rule 3704.06(E) stipulates that, “[u]pon written complaint by any person, the director shall conduct such investigations and make such inquiries as are necessary to secure compliance with [Chapter 3704 Air Pollution Control]. The director, upon complaint or upon the director’s own initiative, may investigate or make inquiries into any alleged violation or act of air pollution.”

¹⁶ See also 90 FR 6815, citing *City of Ashtabula v. Norfolk Southern Co., et al.* 633 F. Supp. 2d 519 (N.D. Oh. 2009) (determining that the ANR is an emission limitation as defined in CAA section 302(k)).

from undertaking the SIP revision process and exercising its “continuing authority to revise choices about the mix of emissions limitations” in its SIP, should Ohio determine that the ANR is no longer appropriate for inclusion in its SIP and such SIP revision removing the ANR meets applicable CAA requirements, including CAA section 193. 90 FR 6814 (January 21, 2025), also citing *Train*, 421 U.S. at 87.

The Ohio EPA has demonstrated that current SIP-approved control measures and emissions limits relevant to each NAAQS, as explained in the State’s section 110(l) analysis and evaluated by the EPA, serve as practical and enforceable measures to control for criteria pollutant emissions. The EPA finds that, when implemented with Ohio’s enforcement authority (under Federal and State rules), current SIP-approved measures will continue to limit criteria pollutant emissions in absence of the ANR to at least an equivalent extent, therefore satisfying requirements under section 193 of the CAA.

The EPA also considered the requirements added to the SIP since 1974, such as limits on emissions of criteria pollutants, methods for monitoring for and controlling for emissions, Reasonably Available Control Technology standards, and Best Available Control Technology standards. These requirements are stringent, technical standards approved by the EPA to control emissions of many pollutants including those related to the NAAQS. In light of the demonstrated and quantifiable sources of emission reductions that have been implemented in the fifty plus

years since Ohio's ANR was approved into the SIP, the ANR today is an outmoded mechanism for controlling criteria pollutants.

The EPA also evaluated Ohio's analysis of 23 areas that were designated as nonattainment before November 15, 1990, but are now designated as maintenance areas. CAA section 107(d)(3), 42 U.S.C. 7407, prescribes the criteria and process for redesignating an area from nonattainment to maintenance.¹⁷ The EPA revisited its approvals of Ohio's requests, made under CAA section 107(d)(3), and found that the Agency considered Ohio's explanations that implementation of pollutant-specific control strategies and modeled emissions limits would ensure emissions reductions relevant to the pollutant for which the areas was deemed nonattainment. These strategies included reducing mobile source emissions through Federal programs and implementation of site-specific SIPs, or Federal permits, to require certain sources to control for high emissions. The EPA found that the State's demonstrations met the redesignation requirements in CAA section 107(d)(3)(E), and based its approval on the implementation of these pollutant-specific control measures and emissions limits. None of these approvals relied on

¹⁷ CAA section 107(D)(3) states that "The [EPA] may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless - (i) the [EPA] determines that the area has attained the national ambient air quality standard; (ii) the [EPA] has fully approved the applicable implementation plan for the area under section 7410(k) of [the CAA]; (iii) the [EPA] determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) the [EPA] has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of [the CAA]; and (v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter."

implementation of the ANR as a control strategy or emissions limit to ensure that an area would not exceed or violate the NAAQS. As to this current proposed action satisfying requirements under section 193 of the CAA, the EPA is proposing to determine that the removal of the ANR from Ohio's SIP will not cause a subsequent rise in criteria pollutant emissions or result in a NAAQS attainment area to revert to nonattainment. In other words, the EPA is proposing to determine that the Ohio SIP can still maintain status quo air quality without the ANR.

The EPA also considered Ohio's current nonattainment areas in context of section 193, and whether the removal of the ANR would have a negative effect on air quality in these areas. The Ohio areas currently designated nonattainment for a particular NAAQS are Cleveland (2015 8-Hour Ozone NAAQS) and Canton-Stark County (2008 Lead NAAQS). As of the date of this proposed rulemaking, the Ohio EPA has submitted requests to redesignate both of these areas to attainment: for the Cleveland area in December of 2025 and for Canton-Stark County in September of 2024. The EPA published its proposed approvals of the Canton-Stark County redesignation and Cleveland redesignation on April 10, 2026 (91 FR 18372 and 91 FR 18355, respectively). The Ohio EPA did not reference the ANR as a control strategy or emissions limit used to meet the NAAQS in either of these redesignation requests.

The EPA acknowledges, however, that Ohio cited the ANR in litigation regarding a source in the Canton-Stark County lead

nonattainment area. In July 2021, the State of Ohio filed a complaint against Republic Steel, whose Canton Plant was the only source of lead emissions near an ambient air monitor located south of the Canton Plant.¹⁸ The complaint alleged that lead emissions from the Canton Plant exceeded the lead NAAQS and thus endangered the health, safety or welfare of the public and/or caused unreasonable injury or damage to property, in violation of the ANR and the Canton Plant's air permits.¹⁹ In March 2023, the State amended its original complaint to supplement it with additional counts alleging that Republic Steel was violating numerous other requirements in the Canton Facility's air permits, including violations of specific permit requirements and limits tied to emissions units that were contributing to the lead NAAQS exceedances.²⁰

As discussed at length in this action, Ohio's SIP allows for the imposition of enforceable emission limits and other operating requirements in State air permits. Similarly, Ohio's SIP enforcement authorities allow the State to enforce noncompliance with these requirements. The State used evidence of lead emissions exceeding the NAAQS as an initial basis for asserting that the Canton Plant was causing a threat to human health and the environment and thus causing a public nuisance in violation of the ANR. However, the ANR itself was not a necessary tool in the State's enforcement efforts to address the

¹⁸ *State of Ohio v. Republic Steel*, Case No.2021CV00949 (Stark County, Ohio) "Complaint for Injunctive Relief and Civil Penalties" at ¶ 16 (July 2, 2021)

¹⁹ *Id.* at ¶ 35.

²⁰ *Republic Steel*, "Amended and Supplemental Complaint for Injunctive Relief and Civil Penalties" (March 14, 2023)

lead NAAQS exceedances. As demonstrated in the State's amended complaint, the NAAQS exceedances were addressed through claims alleging specific regulatory and permit violations, and none of these claims were contingent on a violation of the ANR.²¹ Furthermore, Ohio EPA and the Canton City Public Health Department terminated air permits associated with the Republic Steel facility, effective July 26, 2024, which was a requirement of a Final Consent Order agreed to by Republic Steel.²²

While lead emissions exceeding the NAAQS and causing a public nuisance was one factor in *Republic Steel*, the State's enforcement case demonstrates that the Ohio SIP has sufficient provisions to address NAAQS exceedances that are independent from and do not rely on the ANR. Indeed, Ohio's use of the ANR in the *Republic Steel* litigation occurred at a time when the ANR was not part of the State SIP, and the effectiveness of its use in the original 2021 complaint is unclear, given that the area was redesignated to nonattainment two years later.²³ On the whole, the record demonstrates that the ANR was not the primary mechanism for air quality improvements in the county. Instead,

²¹ *Id.* at ¶ 108-167. Specifically, Count Three: Permit Violation - Exceeding Lead Added Limits to Process Leaded Steel, ¶ 108-110; Count Four: Permit Violation - Exceeding Lead Emissions Limits, ¶ 111-113; Count Five: Permit Violation - Failure to Maintain Daily Record Keeping of Vacuum Tank Degasser, ¶ 115-118; Count Six: Permit Violation - Failure to Take Corrective Measures, ¶ 119-122; Count Seven: Permit Violation - Failure to Accurately Maintain Required Records, ¶ 123-132; Count Eight: Permit Violation - Failure to Report Monitoring Deviations, ¶ 133-142; Count Nine: Permit Violation - Violation of Permit Conditions at FlexCast Vacuum Tank Degasser, ¶ 143-150; Count Ten: Permit Violation and Violation of Director's Orders - Failure to Conduct Stack Testing on Emissions Unit P907, ¶ 151-161; Count Eleven: Violation of Director's Orders - Failure to Implement an Operations and Maintenance Plan, ¶ 162-167.

²² See *State of Ohio v. Republic Steel*, No. 21-CV-949, Final Consent Order and Final Judgment Entry (Ohio Stark Cnty. C.P., Dec 12, 2023).

²³ 88 FR 14920 (March 10, 2023).

the State relied on the other mechanisms described throughout this proposed rulemaking including the DFFO process, enforcement of permit conditions, and the implications of the EPA's 2023 redesignation of the area to nonattainment.

Based on the EPA's review, the EPA maintains that since Ohio's 1974 inclusion of the ANR in the State SIP, Ohio has incorporated new requirements into the SIP and the State's permitting and enforcement programs that are targeted and practically enforceable, and that they are better suited, legally and practically, for maintaining and implementing the NAAQS. In essence, the EPA finds it reasonable for Ohio to implement its SIP-approved control measures and emissions limits without the ANR, as removal will not interfere with attainment or maintenance of the NAAQS and applicable requirements of the CAA, nor cause a direct increase of emissions. The EPA also finds that measures in the SIP are practically enforceable regardless of the ANR's presence in the SIP.

C. Additional EPA Considerations

When evaluating the State's request to remove the ANR from Ohio's SIP, the EPA also considered the history, and role of, nuisance rules in State air plans. The EPA has previously discussed that, in the years following the passage of the CAA in 1970, State and local air agencies submitted thousands of regulations for incorporation into their SIPs. 85 FR 16309 (March 23, 2020). In some cases, States submitted entire regulatory air pollution programs, which included various

elements not required by the CAA, such as nuisance provisions. The EPA focused its review on the SIP requirements needed to address substantive requirements of the newly-passed CAA, and as a result, some SIPs have included requirements that the EPA would now deem as duplicative of more stringent emissions control requirements or limitations.

Since the mid 1990's, various States have requested to remove nuisance rules from their SIPs, and the EPA agreed with the requests on the basis that the requirements were not necessary for the SIP to rely on to reduce or control for emissions, given that updated Federal requirements also govern emissions from sources of air pollution.²⁴ The EPA's current action is consistent with previous Agency action's removing nuisance provisions from other State SIPs, and with applicable requirements under the CAA.

IV. What Action is the EPA Taking?

The EPA is proposing to remove Ohio's air nuisance rule from the Ohio SIP. Upon the submitted material for this SIP revision request, the EPA finds that Ohio has demonstrated that removal of the ANR from the SIP will not result in interference with attainment or maintenance of the NAAQS, nor will it cause an increase in emissions in nonattainment areas in the State.

²⁴ See removal of nuisance provisions from SIPs for Minnesota, 60 FR 27411 (May 24, 1995); New Hampshire, 83 FR 6972 (February 16, 2018); and Kentucky, 87 FR 12904 (March 8, 2022). See also analogous examples in the States of: Montana, 59 FR 2537 (January 18, 1994); Washington, 59 FR 44324 (August 29, 1994); Wyoming, 61 FR 47058 (September 6, 1996); Michigan, 64 FR 7790 (February 17, 1999); Nevada, 69 FR 54006 (September 7, 2004); Georgia, 71 FR 13551 (March 16, 2006); Arizona and Nevada, 74 FR 51795 (October 8, 2009); California, 83 FR 43576 (August 27, 2018); and Oregon, 83 FR 60386 (November 26, 2018).

The EPA has evaluated the State's menu of emissions control requirements and enforcement mechanisms, and finds that, if enforced and implemented, these State and Federally-approved regulations will maintain air quality in the State without the ANR in the SIP. The EPA's current action will remove the ANR from the Federal plan, but Ohio will still maintain the ANR as a State rule.

V. Incorporation by Reference.

In this rulemaking, the EPA is proposing to amend regulatory text that includes incorporation by reference. As discussed in section II of this preamble, the EPA is proposing to remove 3745-15-07 "Air Pollution Nuisances Prohibited" of the EPA-Approved Ohio Regulations from the Ohio SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. The EPA has made, and will continue to make, the SIP generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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 CAA 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 approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law

as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15

U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to 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. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: May 20, 2026.

Cheryl Newton,
Acting Regional Administrator, Region 5.

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