

General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2). The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in Section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2025. 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 it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 13, 2025.

Martha Guzman Aceves,
Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0055; FRL–11687–02–R5]

Air Plan Approval; Ohio; Withdrawal of Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to correct a November 19, 2020, rulemaking removing the Air Nuisance Rule (ANR) from the Ohio State Implementation Plan (SIP). This action is in response to a February 10, 2023, decision by the United States Court of Appeals for the Sixth Circuit (Sixth

Circuit or Court) to remand without vacatur EPA’s removal of the ANR from the Ohio SIP. Because the Court did not vacate EPA’s removal of the ANR, the ANR is currently not in Ohio’s SIP. After reevaluating EPA’s November 19, 2020, rulemaking, upon remand, EPA proposed to determine that its November 2020 final action was in error, and to correct that action by reinstating the ANR as part of the Ohio SIP. EPA proposed to take this action on February 22, 2024 and received both supportive and adverse comments. EPA is finalizing this action as proposed, and upon the effective date of this action, the ANR will be reinstated into the Ohio SIP.

DATES: This final rule is effective on February 20, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2020–0055. 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, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 <https://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. We recommend that you telephone Christos Panos, at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us” or “our” is used, we mean EPA.

I. Background

A detailed history of this matter is provided in EPA’s February 22, 2024, 89 FR 13304, notice of proposed rulemaking (February 2024 Proposed Rule). It includes a discussion of EPA’s previous rulemaking action to remove the ANR, OAC 3745–15–07, from the Ohio SIP, which EPA proposed on

March 23, 2020, 85 FR 16309 (March 2020 Proposed Rule) and finalized on November 19, 2020, 85 FR 73636 (November 2020 Final Rule). That action relied on EPA’s error-correction authority under Clean Air Act (CAA or Act) section 110(k)(6). In that action, EPA concluded that we had erred by approving the ANR into Ohio’s SIP because we determined that the ANR was not relied upon by Ohio to demonstrate the implementation, maintenance, attainment, or enforcement of any National Ambient Air Quality Standard (NAAQS).

During the public comment period for the March 2020 Proposed Rule to remove the ANR from the Ohio SIP, EPA received comments from the Sierra Club and other environmental groups,¹ referred to in this action collectively as “Environmental Commenters,” asserting that EPA’s approval of the ANR as part of the SIP was not an error and that EPA’s use of its error correction authority to remove the ANR from Ohio’s SIP was unlawful. These comments stated that the ANR was an “important regulatory tool in achieving and maintaining the NAAQS,” and that its removal from the SIP “ignored the role of citizen suits in CAA enforcement.” Further, these comments identified procedural concerns with EPA’s error correction, and stated that EPA was required to adhere to the SIP revision process to remove the ANR from Ohio’s SIP, which would include addressing the requirements of section 193 of the CAA to demonstrate that no backsliding would result from this change. Additionally, these comments addressed the use of the ANR in enforcement actions.² These comments asserted that EPA had failed to consider the impact of eliminating the only available pathway for Ohio residents to enforce the ANR. Therefore, the commenters maintained, removing the ANR from the SIP prevents local governments and non-governmental organizations, as well as affected Ohio communities, from directly enforcing

¹ EPA received comments opposing the removal of the ANR from the Sierra Club, the Ohio Environmental Council, Ohio Citizen Action, Altman Newman Co. LPA, the National Resources Defense Council, and more than 1800 individual commenters who submitted their comments as part of a letter-writing campaign. See Docket ID No. EPA–R05–OAR–2020–0055. All documents in the docket are listed on the www.regulations.gov website.

² See “Sierra Club, Ohio Environmental Council, Ohio Citizen Action, Altman Newman Co. LPA, and Natural Resources Defense Council Comments Regarding EPA Proposed Removal of the Air Pollution Nuisance Rule from the Ohio State Implementation Plan (SIP),” Docket ID No. EPA–R05–OAR–2020–0055. All documents in the docket are listed on the www.regulations.gov website.

the ANR where necessary to protect Ohioans' health, welfare and property. The commenters further contended that individual Ohioans (as well as local governments) had relied, and were relying at the time of the March 2020 Proposed Rule, on the nuisance provision for Federal enforcement of citizen suits under section 304 of the CAA to address highly localized emissions.

Notwithstanding the Environmental Commenters' concerns as articulated in their comments on the March 2020 Proposed Rule, EPA finalized the removal of the ANR from the Ohio SIP in November 2020. The Environmental Commenters then raised many of these same concerns in the United States Court of Appeals for the Sixth Circuit in petitioning for review of EPA's ANR removal action, alongside other environmental groups and private citizens. See *Sierra Club v. EPA*, 60 F.4th 1008 (6th Cir. 2023).

During that litigation in the Sixth Circuit, the State of Ohio submitted a letter to the Court³ acknowledging that it had relied on the ANR as recently as July 2021, when it brought a lawsuit against an iron and steel manufacturing facility that cited exceedances of the NAAQS as evidence of nuisance under the ANR. See *State of Ohio v. Republic Steel*, Case No. 2021VC000949 (Sark County, Ohio July 2, 2021).

Ultimately, the Sixth Circuit granted EPA's request for a voluntary remand of EPA's removal of the ANR back to the Agency for further review. In so doing, the Sixth Circuit cited several cases in which parties could and did bring enforcement actions for violations of the ANR (prior to EPA removing the rule from the Ohio SIP). See *Sierra Club*, 60 F.4th at 1014 (citing *Fisher v. Perma-Fix of Dayton, Inc.* No., 3:04-C-V-418, 2006 WL 212076 (S.D. Ohio. Jan. 27, 2006); *Sampson v. SunCoke Energy*, No. 1:17-cv-00658 (S.D. Ohio)). The Court also noted Petitioners' past reliance on the ANR apart from actually bringing CAA litigation (*i.e.*, filing notices of intent to sue under the CAA). *Id.* While the Court acknowledged EPA's statement in its proposal that it had found "no information" indicating the State had relied or intended to rely on the ANR for attainment or maintenance of the NAAQS, the Court noted that there was nothing in EPA's proposal or EPA's January 2020 email exchange with the Ohio EPA official that discussed whether the ANR had a role in NAAQS

enforcement. *Sierra Club*, 60 F.4th at 1015 (emphasis in original).

After a careful reevaluation of the November 2020 Final Rule in accordance with the Sixth Circuit's decision, EPA proposed in February 2024 that EPA's November 2020 action removing the ANR from the Ohio SIP was deficient and in error. Consequently, in February 2024, EPA also proposed to reverse its removal and reinstate the ANR into the Ohio SIP. EPA received both adverse and supportive comments on this proposed action. The adverse comments are addressed in Section II. of this preamble.

EPA received comments in support of the proposed rule from more than 600 individual commenters who submitted their comments as part of a letter-writing campaign. The supportive commenters also included Sierra Club, the Ohio Environmental Council, AltmanNewman Co. LPA, the FreshWater Accountability Project, the Case Western Reserve University School of Law Environmental Law Clinic, Communities United for Action, Mom's Clean Air Force (Ohio), and the Athens County Future Action Network. Several of these commenters had previously expressed disagreement with EPA's March 2020 Proposed Rule to remove the ANR from the SIP. Many of these supportive comments reinforced several comments on the March 2020 Proposed Rule, stating that the ANR's inclusion in the SIP is appropriate under the CAA as it provides for the implementation, maintenance, and enforcement of the NAAQS. The supportive commenters agreed with EPA's current position, and referenced the Sixth Circuit's acknowledgement, that the ANR has been used to limit emissions of criteria pollutants under the CAA, and that the CAA gives states wide discretion to design appropriate regulations to attain and maintain the NAAQS. The supportive commenters also reiterated that the ANR has been used in multiple CAA enforcement actions, and agreed with EPA that citizen suits under the CAA serve as a crucial implementation and enforcement mechanism. The supportive commenters also agreed with EPA's acknowledgement that, under CAA section 193, EPA was required to perform an anti-backsliding analysis before removing the ANR from the SIP in the November 2020 Final Rule, because the ANR is considered a control requirement, and EPA could not have properly used its error correction authority under CAA section 110(k)(6) to remove the ANR unless the removal would ensure equivalent or greater

emission reductions under CAA section 193.

II. Response to Comments

All of the comments received on the February 2024 Proposed Rule are included in the docket for this action. Relevant supportive comments were summarized in Section I. of this preamble. EPA received adverse comments from a group of Ohio trade associations, the Ohio Attorney General, and the Ohio Environmental Protection Agency (Ohio EPA). The relevant comment summaries are summarized and addressed below.

Comment: The commenter contends that EPA may not withdraw its 2020 final rule and reinstate the ANR in the Ohio SIP through its error correction authority under CAA section 110(k)(6). The commenter states that the 2020 Final Rule was not an action "approving, disapproving, or promulgating any plan or plan revision" as required by CAA section 110(k)(6). In addition, the commenter alleges that the 2020 Final Rule was not a "plan revision"; it was a revision to EPA's final action approving the ANR's inclusion in the Ohio SIP in 1974. The commenter states that EPA is not proposing to correct an error it made when it originally approved Ohio's SIP, or any part of the SIP; it is proposing to reverse a prior correction made in 2020. The commenter claims that EPA's error correction authority would not apply to EPA's 2020 correction, only to errors that existed in the SIP at the time the SIP was originally approved.

Response: As discussed in EPA's February 2024 Proposed Rule, the language in CAA section 110(k)(6) provides EPA authority to issue an error correction action whenever EPA "determines that [its] action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error." Once EPA has made a determination that it erred, it "may in the same manner as the approval, disapproval, or promulgation, revise such action as appropriate without requiring any further submission from the State." *Ala. Envtl. Council v. EPA*, 711 F.3d 1277 (11th Cir. 2013). As recognized by courts, EPA has broad authority to issue error corrections under CAA section 110(k)(6), which has been interpreted as a "broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision." *Assoc. of Irrigated Residents v. EPA*, 79 F.3d 934, 948 (9th Cir. 2015).

³ See "Notice of additional information in *Sierra Club, et al. v. United States Environmental Protection Agency*, No. 21-3057," *Sierra Club v. EPA*, No. 21-3057 (6th Cir. Oct. 18, 2022).

As explained in our February 2024 Proposed Rule, EPA's decision to correct its November 2020 Final Rule is based on a determination that our original action to remove the ANR from Ohio's SIP was in error, because that prior determination was deficient for two reasons: (1) because EPA failed to adequately consider the ANR's use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA.

With respect to the commenter's assertion that EPA's November 2020 Final Rule was not "approving, disapproving, or promulgating any plan or plan revision," and that therefore EPA cannot correct the November 2020 Final Rule under section 110(k)(6), we disagree. In the November 2020 Final Rule, EPA clearly stated that "[u]pon the effective date of this action, the nuisance rule will no longer be part of the Ohio SIP."⁴ In other words, by that action, EPA revised the Ohio SIP to no longer include the ANR. This clearly qualifies as EPA "promulgating any . . . plan revision," and therefore falls within the authority of EPA to correct under CAA section 110(k)(6). EPA further disagrees with the commenter's contention that CAA section 110(k)(6) can be used only to correct errors that existed in the SIP at the time the SIP was originally approved. This limitation on the scope of CAA section 110(k)(6) authority is not present in the text of the CAA and is not clearly inferable from it. The text authorizes EPA to make corrections to actions that EPA has taken in the past, and the commenter has not provided any statutory basis to support the claim that section 110(k)(6) may only be used to correct original SIP approvals. The only support that the commenter cites is an out of context statement from a dissenting opinion in a D.C. Circuit decision that, even if controlling, would not undermine EPA's action here.⁵

Comment: The commenter contends that EPA may not reverse its 2020 final rule and reinstate the ANR in the Ohio SIP through its inherent authority. The commenter alleges that this is because inherent reconsideration does not apply

where Congress has spoken, and the CAA carefully prescribes how SIPs may be amended. Congress authorized reconsideration of SIP-related final actions in sections 307(d)(7) and 110(k)(6) of the CAA and the agency cannot rely on its inherent authority to circumvent those express requirements. The commenter further states that even if EPA had reconsideration authority, the exercise of that authority is barred as untimely because an agency's inherent authority to reconsider a prior decision is proper only when "such reconsideration occurs within a reasonable time after the first decision" [citations omitted]. Here, EPA's reconsideration comes nearly four years after its original decision, which the commenter claims is not within a reasonable amount of time.

Response: As explained in our February 2024 Proposed Rule, an agency's authority to reconsider past decisions derives from its statutory authority to make those decisions in the first instance. See *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.") (citing *Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950)). See 621 F.2d at 1088 ("The authority to reconsider may result in some instances, as it did here, in a totally new and different determination."). In other words, EPA's authority to reconsider its November 2020 Final Rule derives from our statutory authority under CAA section 110(k)(6) that we relied on to take that action in the first instance. Thus, with respect to the commenter's assertion that the agency cannot "circumvent" the express requirements of sections 307(d)(7) or 110(k)(6) and rely instead on its inherent reconsideration authority, the commenter misunderstands the basis for this action as articulated in our proposed rule. In this final action, EPA is relying both on its authority under CAA section 110(k)(6) as well as its inherent reconsideration authority to determine that our November 2020 Final Rule was in error. EPA notes that section 307(d)(7) is not applicable to the current action.

Further, EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (an agency may revise its policy, but must demonstrate that the new policy is permissible under the statute

and is supported by good reasons, taking into account the record of the previous rule).

With respect to the commenter's assertion that EPA's reconsideration is barred because it did not occur within a "reasonable" amount of time, EPA notes that the commenter cites to a Sixth Circuit case stating that "[w]hat is a short and reasonable time period will vary with each case, but absent unusual circumstances, the time period would be measured in weeks, not years." *Belville Min. Co. v. United States*, 999 F.2d 989, 1000 (6th Cir. 1993). However, EPA further notes that its reconsideration process did not actually begin until the Sixth Circuit issued its February 10, 2023, decision granting EPA's request for voluntary remand of the November 2020 action. To summarize the timeline, EPA's November 2020 Final Rule removing the ANR was challenged almost immediately, both through a Petition for Reconsideration submitted on January 18, 2021, and then a Petition for Review in the Sixth Circuit filed on January 19, 2021. The Sixth Circuit litigation continued until February 10, 2023, when the Court granted EPA's request for voluntary remand. The Agency represented to the Court, and the Court acknowledged in its opinion, that the Agency would "complete its reevaluation of the ANR within twelve months of remand," *Sierra Club*, 60 F.4th at 1020. EPA accordingly reconsidered its November 2020 Final Rule for approximately twelve months, culminating in the February 2024 Proposed Rule at issue here. EPA's action here is therefore timely given the litigation and the Court's express acknowledgement of a twelve-month period to reconsider the ANR's removal. The commenter is incorrect to assert that the reconsideration process occurred over four years, where the majority of that time was spent litigating the original November 2020 Final Rule.

Comment: The commenter contends reinstating the ANR in the Ohio SIP would be arbitrary and capricious, and thus unlawful pursuant to the Administrative Procedure Act and section 307(d) of the CAA (if deemed applicable). The commenter states that in at least 16 separate actions in 14 different states, EPA has removed air and odor nuisance rules from SIPs or declined to include them in SIPs when requested by states, citing an insufficient connection to attainment and maintenance of the NAAQS. Further, the commenter notes that EPA has removed several nuisance rules from SIPs, in some cases using the same provision, CAA section 110(k)(6), that

⁴ 85 FR 73636 (November 19, 2020).

⁵ The commenter cites to *Texas v. EPA*, 726 F.3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J., dissenting) for the proposition that EPA can use its error correction authority under section 110(k)(6) only if the error existed at the time the SIP was originally approved. The action in that case corrected a prior approval, so in context, this statement was intended to articulate a perceived temporal limitation on EPA's authority to correct errors, (i.e., that the error had to exist at the time of the prior action), not the types of actions that can be corrected—which are clearly delineated in the statutory text.

was used in the removal of the nuisance rule from the Ohio SIP. The ANR prohibits emissions “of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.” The commenter alleges that the generic categories of substances regulated by the ANR are unrelated to the NAAQS regulated pollutants, and the amounts prohibited bear no relation to compliance with the NAAQS standards. The commenter claims that reinstating the ANR into Ohio’s SIP would contradict EPA’s decades-long practice and policy toward other states, and that by proposing to reinstate the nuisance rule into the Ohio SIP, EPA is treating Ohio inconsistently with other states that no longer have a nuisance rule in the SIP. Further, the commenter notes that this can have a direct effect on facilities deciding in which location to expand or build, and claims that the ANR is not required to be part of the SIP as demonstrated by EPA’s removal of nuisance provisions in other SIPs.

Response: EPA acknowledges that it has declined to approve certain nuisance rules into state SIPs, approved certain state requests to remove nuisance provisions from the respective SIPs, and removed certain nuisance rules from SIPs using our error correction authority under CAA section 110(k)(6). However, EPA maintains that each of the actions the commenter cites requires a distinct analysis based on the nature of the nuisance rule at issue, as well as the facts surrounding the particular rule in the particular state. As the Supreme Court has plainly stated, “[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 has been adopted after public notice and hearing and if it meets eight specified criteria” in CAA section 110(a)(2). *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976). The criteria in section 110(a)(2) are broad, such as requiring the plan to “include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of this chapter,” and these criteria implement the overarching requirement in CAA section 110(a)(1) that states must have a SIP that “provides for implementation, maintenance, and enforcement of the NAAQS.”

Importantly, Congress “left to the States considerable latitude in

determining specifically how the [NAAQS] would be 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). This discretion also encompasses the flexibility that “[s]tates may submit [SIPs] more stringent than federal law requires” and the Supreme Court has instructed that EPA “must approve such plans if they meet the minimum requirements of § 110(a)(2).” *Union Elec.*, 427 U.S. at 265.

EPA therefore is responsible for evaluating state SIPs and approving those SIPs that meet the requirements of the CAA. With respect to evaluating a state’s SIP submission requesting to remove a nuisance provision from the state’s SIP, or EPA’s use of its error correction authority to remove a nuisance provision from a SIP, this would include an evaluation of the specific nuisance provision’s connection to the “implementation, maintenance, and enforcement” of the NAAQS. In some cases, such an evaluation could lead to the conclusion that the nuisance provision does not have a connection to the NAAQS, and a conclusion that therefore the state’s request to remove the relevant provision from the SIP, or that EPA’s prior approval of the provision into the SIP was in error, could be appropriate. In other cases, however, in which the record indicates that there is a connection between the nuisance provision and the “implementation, maintenance, and enforcement” of the NAAQS, *see* CAA section 110(a)(1), an EPA action to unilaterally remove that provision from the SIP would be contrary to respecting the state’s “considerable latitude in determining specifically how the [NAAQS] would be met.” *See Train*, 421 U.S. at 87.

In this case, the type of air pollution identified in the ANR—smoke, ashes, fumes, gases, and vapors—could have a nexus to several NAAQS, including particulate matter (PM), sulfur dioxide (SO₂), lead, and ozone. And as will be discussed at length in response to the next comment, the Ohio ANR has a demonstrated connection to the enforcement of the NAAQS. As acknowledged, the commenters have identified instances in which EPA has removed certain nuisance provisions from state SIPs. The commenters have not, however, identified any analogous situations in which EPA unilaterally removed a nuisance provision from a SIP notwithstanding a demonstrated connection between the nuisance provision and the attainment, maintenance, and enforcement of the

NAAQS. As discussed in the February 2024 Proposed Rule, EPA’s November 2020 Final Rule failed to consider information in the record demonstrating that the Ohio ANR had been used to enforce the NAAQS. Thus, the specific nature of Ohio’s nuisance rule and the facts surrounding its use within the state indicate that EPA did not have an adequate basis in its November 2020 Final Rule to interfere with the choice that Ohio made to include the ANR when originally submitted for incorporation into its SIP in 1974. With respect to Ohio’s position on this rulemaking, EPA notes that there is nothing to stop Ohio from undertaking the SIP revision process and exercising its “continuing authority to revise choices about the mix of emission limitations,” *see Train*, 421 U.S. at 87, included 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.

With respect to the commenter’s contention that reinstating the ANR into Ohio’s SIP would contradict EPA’s decades-long practice and policy toward other states, and that EPA is treating Ohio inconsistently with other states that no longer have a nuisance rule in the SIP, EPA disagrees with this characterization of this action. As noted, any EPA action to include or remove a nuisance provision in a state SIP should be based on a fact-specific inquiry with respect to whether that specific provision helps provide for the “implementation, maintenance, and enforcement” of the NAAQS in that particular state. Commenters have not identified a factually analogous situation in which EPA has removed a nuisance provision from a SIP that has a demonstrated connection to the enforcement of the NAAQS. With respect to the commenter’s contention that the inclusion of the ANR in the Ohio SIP impacts where facilities choose to build or expand, this is outside the scope of EPA’s evaluation of whether EPA’s action to remove the ANR from the SIP was in error. Again, we note that the State of Ohio has the discretion to submit a SIP revision to remove the ANR from its SIP at any time. In this action, EPA is not suggesting that the ANR must remain in Ohio’s SIP in perpetuity; EPA is merely determining that its November 2020 Final Rule to unilaterally remove it was an error due to procedural and substantive deficiencies.

Comment: The commenter contends the ANR is not an enforceable emission limitation or other control measure,

means, or technique. According to the commenter, nor does the ANR provide for the enforcement of such measures, so it is not a required element of Ohio's SIP. The commenter acknowledges that a state may, for its own purposes, however, have other regulations that have the effect of improving air quality but do not have NAAQS compliance implications. But the commenter contends that neither the Ohio EPA nor citizens use the ANR to enforce the NAAQS. In the proposed rule, EPA references three citizen suits and one Ohio EPA action as demonstrating where the ANR was used as a tool to enforce the NAAQS. The commenter claims that the three citizen suit actions cited by EPA did not use the ANR to enforce the NAAQS, they used the ANR solely to allege public nuisance impacts to property owners from nearby industrial operations. Further, the commenter states that nowhere in any of the Claims for Relief in the complaints associated with these citizen suits is there a reference to the NAAQS, any reference to ambient concentrations of criteria pollutants, or any reference to use of the ANR to reduce ambient concentrations of criteria pollutants to below a NAAQS standard. The commenter alleges that the NAAQS are only referenced in passing in the preliminary facts of the complaints in providing background on the CAA. With respect to Ohio EPA's action related to Republic Steel, *State of Ohio v. Republic Steel*, Case No. 2021VC00949 (Stark County, Ohio), the commenter claims that there is no evidence that Ohio used the ANR against Republic Steel as a means to attain or maintain the lead NAAQS in Stark County, Ohio. The commenter acknowledges that the action cited the ANR and the lead NAAQS, but claims that action did not use the ANR to enforce the NAAQS. Rather, the commenter states that it used exceedances of the NAAQS as evidence of noncompliance with the ANR. A NAAQS exceedance tied to a specific facility is relevant evidence under Ohio Evid. R. 401 tending to prove the existence of a nuisance under Ohio Adm. Code 3745-15-07. However, according to the commenter, a nuisance action is not a means of "enforcing" the NAAQS or ensuring attainment and maintenance of the NAAQS. In the *Republic Steel* case, the State alleged multiple additional facts beyond a NAAQS exceedance. However, the commenter states that a NAAQS exceedance does not automatically create a nuisance violation, and a nuisance violation is not dependent on having a NAAQS exceedance.

According to the commenter, Ohio considered the plant's impact on an air quality monitor that exceeded the NAAQS to be evidence of a threat to public health and therefore a nuisance, not that the NAAQS exceedance would be sufficiently addressed by a nuisance claim.

The commenter states that while the ANR may improve air quality, it does not "enforce" the NAAQS. The commenter acknowledges that it is possible that, while addressing a nuisance violation, a facility may reduce emissions of a criteria pollutant. According to the commenter, that coincidence of result is not the same as using the air nuisance rule for the purpose of "enforcing" or maintaining and achieving the NAAQS. The commenter states that EPA appears to conflate any improvement in air quality with "enforce[ment of] the NAAQS." According to the commenter, the result of this is that EPA looks at the improvement the ANR may make to air quality as "enforcing" the NAAQS. The commenter claims that the CAA and EPA's own regulations do not make such a loose connection between air improvement and the NAAQS, and that the use of a NAAQS violation is a far cry from EPA's claim that the nuisance rule is "used to enforce the NAAQS."

Response: As a threshold matter, EPA reiterates the nature of the current action. Ohio included the ANR for approval into its SIP in 1974, and has not gone through the requisite SIP revision process to request that EPA remove the ANR from the State's SIP. As previously stated, EPA is not responsible for determining the appropriate "mix of emission limitations," *Train*, 421 U.S. at 87, in the Ohio SIP to provide for attainment, maintenance, and enforcement of the NAAQS. Rather, EPA is tasked with evaluating whether Ohio's choices meet the CAA requirements. In this action, EPA is determining that our November 2020 Final Rule was deficient for multiple reasons. As relevant to this comment, one of those reasons is that EPA failed to adequately consider comments on the March 2020 Proposed Rule indicating the reliance on the ANR to enforce the NAAQS. Had we considered those comments, EPA would not have stated in the November 2020 Final Rule that "the Ohio nuisance rule is not associated with the implementation, maintenance, or enforcement of the NAAQS."⁶ For the reasons explained in our February 2024 Proposed Rule and this final rule and response to comments, EPA now

acknowledges that the Ohio ANR does have a demonstrated connection to the implementation, maintenance, and enforcement of the NAAQS. Accordingly, our previous action to unilaterally remove it from Ohio's SIP was in error.

As a number of courts have recognized, Congress intended citizen suits under the CAA to be an important enforcement mechanism within the broader protective scheme of the CAA. "The legislative history of the Clean Air Act Amendments reveals that the citizen suits provision reflected a deliberate choice by Congress to widen citizen access to the courts, as a supplemental and effective assurance that the Act would be implemented and enforced." *NRDC v. Train*, 510 F.2d 692, 700 (D.C. Cir. 1974). As noted by the Sixth Circuit, the petitioners in the *Sierra Club* case, and in comments on the March 2020 and February 2024 Proposed Rules, the ANR has been relied on in multiple CAA enforcement actions, including citizen suit enforcement cases.

Environmental Commenters' comments on the March 2020 Proposed Rule identified specific CAA citizen suits that relied on the ANR as a tool to enforce the NAAQS. As one example, Environmental Commenters pointed to a case in which an individual resident invoked the Ohio ANR to seek relief from numerous airborne pollutants emitted from a nearby waste treatment facility; the district court held, over the defendant's argument to the contrary, that the nuisance provision was federally enforceable. *See Fisher v. Perma-Fix of Dayton, Inc.*, No. 3:04-CV-418, 2006 WL 212076, at *5 (S.D. Ohio Jan. 27, 2006). That suit prompted intervention by EPA, which obtained a consent decree citing to the violation of the Ohio ANR as part of the Ohio SIP.⁷ EPA notes that the terms of that consent decree included requirements for the facility to, among other things, install controls to limit emissions of Volatile Organic Compounds (VOCs), which are precursors to the formation of both ozone and PM. Ozone and PM are both criteria pollutants that are regulated by the NAAQS, and EPA further notes that Ohio currently has multiple nonattainment and maintenance areas for the ozone and PM NAAQS.

Local governments have also relied on the ANR to halt harmful air pollution and enforce the CAA. *See City of Ashtabula v. Norfolk S. Corp.*, 633 F. Supp. 2d 519, 528-29 (N.D. Ohio 2009). In that case, the Ohio Northern District

⁷ *See Fisher*, "Consent Decree" (September 14, 2017), at 1.

⁶ 85 FR 73636 at 73638 (November 19, 2020).

Court determined that the ANR is an emission limitation as defined in CAA section 302(k).⁸ The defendant, owner and operator of a Coal Dock facility, moved to dismiss the claim brought under the citizen suit provision of the CAA (section 304), arguing that the ANR was precluded from citizen suit enforcement because it does not establish an emission limitation or standard under CAA section 302(k) given that it does not provide any identifiable limitation on the “quantity, rate or concentration” of a pollutant.⁹ The court disagreed and denied the motion to dismiss, stating that:

[Defendant’s argument] must be rejected based upon an examination of the plain language of CAA § [302(k)] and OAC Rule 3745–15–07. OAC Rule 3745–15–07 finds the emission of pollutants “in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property” to be a public nuisance and therefore unlawful. *Id.* (emphasis added by the court). While a numerical value is not explicitly stated, pollutants are limited to a quantity that doesn’t endanger the public or cause unreasonable injury or damage to property. Because OAC Rule 3745–15–07 “limits the quantity . . . of air pollutants[,]” it qualifies as an emission standard or limitation under § [302(k)] of the CAA. Plaintiff can therefore bring Count Four under a CAA citizen suit.¹⁰

In their comments, Environmental Commenters also pointed to a case that was pending in the Southern District of Ohio at the time EPA finalized our November 2020 Final Rule to remove the ANR from Ohio’s SIP. In that case, *Sampson v. SunCoke Energy*, 1:17–cv–00658–MRB (S.D. Ohio, filed in 2017), the plaintiffs alleged that numerous noxious and hazardous substances had previously been and continued to be released from the Haverhill Coke Company plant into the environment—that list included PM, PM₁₀, PM_{2.5}, nitrogen oxides (NO_x), VOCs, SO₂, and carbon monoxide, among many others.¹¹ EPA has established NAAQS for PM₁₀, PM_{2.5}, SO₂, and carbon monoxide; and NO_x and VOCs are precursors of both PM and ozone, which is another criteria pollutant. Thus, this case had a clear connection to the enforcement of the NAAQS. A motion to dismiss filed by defendants in 2018 alleged that many of the citizen suit claims overlapped with an ongoing

Federal enforcement action, and the case was ultimately settled in 2021.¹² This case thus provides another example of how citizen suits can use the ANR as a tool to help limit emissions of NAAQS criteria pollutants and their precursors, contrary to the commenter’s suggestions that citizen enforcement actions relying on the ANR are not used to enforce the NAAQS.

The commenters acknowledge that the ANR may improve air quality, but claim that such improvements do not equate to enforcing, achieving, or maintaining the NAAQS. They allege that EPA appears to conflate any improvement in air quality with enforcement of the NAAQS. EPA disagrees with the commenters’ narrow reading of the CAA. As stated at the outset of this response, it is not EPA’s responsibility to determine what mix of emission limitations the State should impose in its SIP to improve air quality and ultimately attain and maintain the NAAQS. *See Train*, 421 U.S. at 87. Furthermore, EPA reiterates that the Northern District of Ohio affirmatively determined that the ANR is an emissions limitation as defined by CAA section 302(k).¹³ Imposing emission limitations on sources of pollution is a primary method that states utilize in constructing SIPs that demonstrate how they will attain and maintain the NAAQS, and, contrary to the commenter’s suggestion, a particular emissions limitation need not demonstrate how it would directly lower the concentration of a specific criteria pollutant as a prerequisite for approval into the SIP. In this action, EPA is merely determining that our prior determination that the ANR was “not associated with the implementation, maintenance, or enforcement of the NAAQS” was incorrect. Our unilateral removal of the ANR from Ohio’s SIP was contrary to giving the State “considerable latitude in determining specifically how the [NAAQS] would be met”¹⁴ where the Ohio ANR has a clear connection to the implementation, maintenance, and enforcement of the NAAQS. Even if the ANR were not considered to be an emissions limitation under the definition of that term in CAA section 302(k), it would still squarely fall into the category of “other control measures,

means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.” CAA section 110(a)(2)(A). Unlike “emissions limitations,” which is a term with a specific definition under CAA section 302(k), the CAA does not specifically define “control measures, means, or techniques.” EPA notes that these are inherently capacious terms, and in the absence of a specific statutory definition, there is nothing about these terms that would preclude the ANR from being characterized as falling within their broad meanings. EPA therefore interprets these terms broadly in accordance with their plain meanings, *i.e.*, that they refer to any “measures, means, or techniques” that impose some form of “control” with respect to any of the NAAQS pollutants. The plain meaning of measure, in this context, could include any requirement that imposes some sort of control that may be necessary or appropriate to meet the applicable requirements of the CAA. Similarly, a means or technique in this context could include any sort of method or procedure for imposing controls as may be necessary or appropriate to meet CAA requirements. As illustrated by the specific examples in this response, the ANR has been invoked on multiple occasions with the goal and ultimate outcome of limiting emissions of criteria pollutants and their precursors. Thus, the ANR has been used as a measure, means, or technique, to control relevant emissions as may be necessary or appropriate to meet CAA requirements.

With respect to the commenter’s specific assertions regarding the *Republic Steel* case,¹⁵ EPA disagrees with commenters’ characterization of that case as being irrelevant to an evaluation of whether the ANR is used to enforce the NAAQS. The commenters acknowledge that the Republic Steel facility’s NAAQS exceedances can be evidence of a nuisance claim, but allege that this is distinguishable from using the ANR to enforce the NAAQS. However, the complaint filed by the State of Ohio (“Complaint”), as well as the consent order and final judgment (“Consent Order”), provide important context and details with respect to the relationship of this case to the State’s enforcement of the lead NAAQS.

First, the Complaint states the “Republic Steel is the *only* known source of lead in the vicinity of the Georgetown Rd. lead monitoring site”

⁸ *Ashtabula*, 633 F. Supp. 2d at 528.

⁹ *Id.* The CAA citizen suit provision allows a person to commence a civil action on his own behalf “against any person . . . who is alleged to have violated . . . an emission standard or limitation under this chapter.” CAA section 304(a).

¹⁰ *Id.* At 528–29.

¹¹ *See Sampson*, “Complaint and Demand for a Jury Trial” (September 29, 2017), at ¶ 1.

¹² *See Sampson*, “Defendants’ Memorandum in Support of Motion to Dismiss Counts Four (in part), Five, Seven, Ten, Fifteen, Sixteen, Eighteen, Nineteen, Twenty-Two, Twenty-Three, Twenty-Four (in part), Thirty and Thirty-Two of Plaintiffs’ Complaint” (April 6, 2018), at 1; *see also Sampson*, “Order” (September 30, 2021).

¹³ *Ashtabula*, 633 F. Supp. 2d at 528.

¹⁴ *Train*, 421 U.S. at 87.

¹⁵ *State of Ohio v. Republic Steel*, Case No. 2021CV00949 (Stark County, Ohio).

(emphasis added).¹⁶ Second, the Complaint states that ambient air monitoring results from the Georgetown Rd. monitoring site measured 0.25 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) from March 2018 through May 2018, and 0.167 $\mu\text{g}/\text{m}^3$ from January 2019 through March 2019, while noting that the lead NAAQS is 0.15 $\mu\text{g}/\text{m}^3$.¹⁷ Third, the Complaint details how the Ohio EPA Director issued “Final Findings and Orders” to the defendant (Republic Steel), ordering the defendant “to alleviate the excess lead emissions at the Facility,” to include ceasing operation during times of high lead emissions or until corrective actions were taken.¹⁸ Notwithstanding those Orders, the defendant then emitted levels of lead in the amounts of 1.69, 2.6, and 2.26 $\mu\text{g}/\text{m}^3$ on May 7, 9, and 13 of 2021, respectively.¹⁹

In light of these facts, the State of Ohio brought the nuisance claim based on the Ohio ANR as the sole count in the original Complaint.²⁰ Under this count, the Complaint states: “[o]n numerous occasions since at least May 2018, Defendant has caused or allowed lead emissions to emit from the Facility that led to exceedances of the lead NAAQS three month average and thus endangered the health, safety or welfare of the public and/or caused unreasonable injury or damage to property” (emphasis added).²¹ In other words, the Complaint did not merely point to NAAQS exceedances as evidence of a nuisance; instead, the complaint alleged that the lead emissions from the facility—the sole known source of lead emissions in the vicinity of the relevant air monitor—caused these NAAQS exceedances. And the State of Ohio used this action, relying on the ANR, to obtain permanent injunctive relief (as entered in the Consent Order) that requires the Republic Steel facility to “provide Ohio EPA and CAPC [Canton City Public Health Air Pollution Control Division] staff access to the air monitoring platform associated with the Fenceline Monitor,” explaining that “[t]he purpose of the source-oriented monitor pursuant to 40 CFR 58.10(a)(4) is to determine compliance with the NAAQS

for lead.”²² Further, the Consent Order requires that the facility either comply with the lead NAAQS (as demonstrated by the required monitoring), or “immediately cease activities that are creating or could possibly be contributing to the NAAQS exceedance.”²³

In short, the State of Ohio relied on the ANR to address excess lead emissions from the Republic Steel facility that were causing consistent NAAQS exceedances despite the Ohio EPA’s attempts to address such excess emissions through another avenue (Director Final Findings and Orders). Ultimately, the State of Ohio secured injunctive relief to ensure that the facility either complies with the lead NAAQS, or ceases operations that could even possibly be contributing to the NAAQS exceedance (*i.e.*, anything contributing to excess lead emissions). This confirms that the State of Ohio used the ANR to ensure the Republic Steel Facility complies with the lead NAAQS—in other words, to enforce the lead NAAQS.

Comment: The commenter contends the ANR does not meet the CAA’s requirements for inclusion in a SIP. The commenter states that when the ANR was incorrectly included into the SIP that was approved in 1974, then-section 110(a)(2)(A) of the CAA (reworded and renumbered section 110(a)(2) in the 1990 CAA amendments) called for approval of a SIP if it “includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of [the NAAQS].” According to the commenter, the ANR fails that test. The commenter claims that Ohio has never relied on the ANR as a strategy for attaining or maintaining the NAAQS. Further, the commenter states that Ohio has never given notice and opportunity to comment on, or proposed or supported, the proposition that the ANR is necessary or appropriate to attain and maintain the NAAQS. The commenter contends that Ohio’s federally-approved NAAQS demonstrations, which rely exclusively upon enforceable numerical emission limitations and other control requirements applicable to existing stationary sources, do not rely on the ANR. The commenter notes that the ANR makes no reference to, and is not concerned with, criteria pollutants or NAAQS. The commenter states that EPA must consistently apply its

interpretation that nuisance provisions, odor provisions, and general prohibitions on air pollution do not belong in SIPs, because they do not have a reasonable connection to the NAAQS and/or are not designed to control NAAQS pollutants such that EPA could rely on them as a NAAQS attainment and maintenance strategy. According to the commenter, while the nuisance rule may have an impact on emissions, it is not a tool that measures Ohio’s compliance with the NAAQS as required by section 110(a)(2) of the CAA. The commenter alleges that the ANR is an inappropriate measure for attaining and enforcing the NAAQS, and claims that EPA would never approve it as a strategy for reducing emissions in a SIP. Further, the commenter states that EPA cannot use NAAQS attainment as a reason to reintroduce the ANR into the Ohio SIP, and that the ANR is too broad, vague, inchoate, and unpredictable in its application to and impact upon criteria pollutant emissions from existing stationary sources to be SIP approvable. In addition, the commenter states that the ANR was not designed or intended by Ohio to federalize “overkill” reductions of criteria pollutant emissions more stringent than necessary to attain and maintain the NAAQS. Further, the commenter claims that Ohio has not utilized the ANR for the SIP strategies for the 2015 ozone standards, the 2012 p.m. standard, and the “bump up” to moderate ozone nonattainment in the Cleveland area. In the upcoming Canton lead submittal to address the SIP call, according to the commenter, Ohio EPA will not rely on the ANR for attainment of the NAAQS. The commenter further states that EPA dictates a rigorous methodology for the approval of a SIP to address a revised NAAQS or a violation of the NAAQS. For example, the commenter notes that the various steps in developing an attainment demonstration SIP are involved and lengthy, and claims that none of those steps were used by EPA when it proposed to reinstate the nuisance rule into the Ohio SIP.

Response: EPA disagrees with the commenter’s statement that the ANR is not appropriate for inclusion in the SIP because it fails the test for approval of a SIP, which in the CAA as it existed in 1974 was that the SIP “includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of [the NAAQS].”

The commenters misunderstand what the State is required to show to include a certain emissions limitation or control measure in its SIP. States are generally

¹⁶ *Republic Steel*, “Complaint for Injunctive Relief and Civil Penalties” (July 2, 2021), at ¶ 16.

¹⁷ *Id.* at ¶ 17, 19.

¹⁸ *Id.* at ¶ 18.

¹⁹ *Id.* at ¶ 19.

²⁰ EPA acknowledges that the State amended its original complaint to supplement it with additional counts. However, the original count relying on the ANR remained intact in the amended complaint. See *Republic Steel*, “Amended and Supplemental Complaint for Injunctive Relief and Civil Penalties” (Mar. 14, 2023), at ¶ 88.

²¹ Complaint at ¶ 35.

²² *Republic Steel*, “Final Consent Order and Final Judgment Entry” (December 12, 2023), at ¶ 16.

²³ *Id.* at ¶ 17.

not required under CAA section 110 to “rely upon” a measure to model attainment or maintenance of the NAAQS in order for that measure to be eligible for inclusion in the SIP. A certain subset of SIPs, namely nonattainment SIPs under part D of the CAA, do require certain technical analyses to demonstrate measures included in the nonattainment SIP will model attainment or maintenance of the NAAQS, but this is not a requirement for each and every SIP submission. Ohio itself has submitted a number of SIPs that do not include a demonstration that its measures model attainment or maintenance of the NAAQS.²⁴ As stated in previous comment responses, Congress “left to the States considerable latitude in determining specifically how the [NAAQS] would be met. This discretion includes the continuing authority to revise choices about the mix of emission limitations”²⁵ in order to ensure implementation, maintenance, and enforcement of the NAAQS.²⁶

Moreover, the ANR *does* have a demonstrated connection to implementation, maintenance, and enforcement of the NAAQS, and is therefore properly included in Ohio’s SIP. As described in a previous comment response, the Southern District of Ohio has confirmed that the ANR meets the definition of an emission limitation as defined under CAA section 302(k). Again, we note that the State has the discretion to revise its “choices about the mix of emission limitations” in its SIP at any time, *Train*, 421 U.S. at 87, and that EPA will approve such choices provided they are consistent

²⁴ EPA notes that Ohio has not always demonstrated attainment with certain NAAQS through modeling. The State has also demonstrated attainment with a particular standard by providing monitoring data, emissions inventories, and permanent and enforceable control measures responsible for the reduction in emissions. See EPA approvals of redesignations for the 1997 Ozone NAAQS standard in the Cincinnati-Hamilton Area [75 FR 26118 (May 11, 2010)], Cleveland-Akron-Lorain Area [74 FR 47414 (September 15, 2009)], Columbus Area [74 FR 47404 (September 15, 2009)], and the Dayton-Springfield Area [72 FR 45169 (August 13, 2007)]; the 1997 annual and 2006 24-hour PM_{2.5} NAAQS standards in the Cleveland-Akron-Lorain Area [78 FR 57270 (September 18, 2013)]; the 2008 Ozone NAAQS standard in the Cincinnati Area [81 FR 91035 (December 16, 2016)] and the Columbus Area [81 FR 93631 (December 21, 2016)]; and the 2015 Ozone NAAQS standard in the Cincinnati area [87 FR 35104 (June 9, 2022)] and the Columbus area [84 FR 43508 (August 21, 2019)].

²⁵ *Train*, 421 U.S. at 87.

²⁶ EPA also notes that Ohio has submitted control measures for inclusion in its SIP that do not specifically quantify the amount of emissions reductions such measures would achieve, but that still contribute to implementation, maintenance, and enforcement of the NAAQS. See, e.g., EPA approval of Ohio’s Open Burning Rules [84 FR 29378 (June 24, 2019), originally approved into the SIP at 43 FR 4611 (Feb. 3, 1978)].

with all CAA requirements. The ANR has been used in a number of actions to enforce the NAAQS. As such, the State of Ohio properly included the ANR in its SIP, and EPA’s November 2020 Final Rule was in error.

With respect to specific attainment demonstrations related to SIP calls and relatively recently promulgated NAAQS cited by commenters, the State was not required to rely on the ANR in these attainment demonstrations in order to allow the ANR to remain in the SIP. As explained, states have wide discretion in how they implement the requirement to provide for “implementation, maintenance, and enforcement” of the NAAQS, and states can and do include control measures in their SIPs that are not cited in their modeled attainment demonstrations. Typically, emissions reductions that are modeled in the attainment demonstration are required for the state to attain the NAAQS by the applicable attainment date. But as discussed above, states’ discretion in crafting their SIPs also encompasses the flexibility that “[s]tates may submit implementation plans more stringent than federal law requires” and the Supreme Court has instructed that EPA “must approve such plans if they meet the minimum requirements of § 110(a)(2).”²⁷ Thus, the mere fact that Ohio has not included the ANR in recent attainment demonstration submissions and therefore is not relying on the ANR in those demonstrations to result in a certain quantity of emissions reductions required to attain the NAAQS, does not mean that the ANR is not an approvable control measure for inclusion in the SIP.

Comment: The commenter asserts that the nuisance rule cannot be modeled and does not contain numerical criteria, technical control measures, or specific compliance standards. According to the commenter, without extensive and technical parameters, the nuisance rule cannot be relied on in demonstrating that a state has an approvable SIP. The commenter claims that for this reason, EPA has been using the error-correction authority in removing nuisance and other odor provisions similar to the ANR from other SIPs. The commenter further claims that EPA does not have the technical support to reintroduce the ANR into the SIP, and that the ANR does not contain a demonstration of how the rule is used to address the NAAQS. According to the commenter, EPA is not able to quantify the amount of emission reductions attributable to the application of the ANR or illustrate how the nuisance provisions have an

²⁷ *Union Elec.*, 427 U.S. at 265.

impact on air quality through modeling. Without such analysis, the commenter claims that EPA fails to provide a justification that the ANR belongs in the SIP. The commenter states that it is clear that Ohio does not rely on the ANR to enforce the NAAQS because the applicability and emission impacts of the ANR are not known or knowable in advance and are not capable of pre-enforcement correlation with NAAQS attainment. The commenter alleges that the recent decision in the *Environmental Committee*²⁸ case illustrates the problem of EPA reintroducing the nuisance rule into the SIP because the nuisance rule is simply not a “necessary or appropriate” emissions limitation or other control strategy that is needed to be part of a SIP.

Response: As explained above, EPA is not responsible for quantifying the amount of emission reductions attributable to the application of the ANR, nor is EPA required to illustrate how the nuisance provisions have an impact on air quality through modeling or other technical justifications. Rather, the State is responsible for determining the appropriate mix of emissions limitations and control measures to ensure the SIP’s compliance with CAA requirements. And as emphasized previously, “[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 has been adopted after public notice and hearing and if it meets” the requirements of CAA section 110(a)(2).²⁹

As a general matter, EPA is tasked with evaluating SIP submissions for compliance with the CAA requirements, not with overriding state choices with respect to the appropriate mix of emissions limitations and control measures to meet those requirements.³⁰ And in this particular action, pursuant to the Sixth Circuit’s remand of our November 2020 Final Rule, EPA must evaluate whether that November 2020 Final Rule unilaterally removing the ANR from the Ohio SIP was a proper use of our authority under CAA section 110(k)(6). For the reasons explained at length in this action, EPA has

²⁸ See *Env’t Comm. of the Fla. Elec. Power Coordinating Grp., Inc. v. EPA*, 94 F.4th 77 (D.C. Cir. 2024).

²⁹ *Union Elec.*, 427 U.S. at 250.

³⁰ See, e.g., *Mich. v. EPA*, 213 F.3d 663, 687 (D.C. Cir. 2000) (“While the states have considerable latitude in fashioning SIPs, the CAA ‘nonetheless subjects the States to strict minimum compliance requirements’ and gives the EPA the authority to determine a state’s compliance with the requirements” (citing *Union Elec.*, 427 U.S. at 256–57)).

concluded that our November 2020 Final Rule revising the Ohio SIP was in error, and EPA has decided to reinstate the ANR into the SIP for those reasons.

Regarding the *Environmental Committee* decision, EPA disagrees with the commenter with respect to that decision's implications for the action here. That decision speaks to what is required for EPA to determine whether certain emissions limitations are substantially inadequate such that EPA could issue a SIP call under CAA section 110(k)(5) with respect to those emissions limitations.³¹ In this action, EPA is not required to make a finding as to whether a particular emissions limitation is necessary or appropriate to ensure compliance with CAA requirements. To the contrary, EPA is concluding that EPA improperly disregarded the ANR's role in enforcement of the NAAQS, and improperly took action to override the State's decision to include the ANR in its SIP by unilaterally removing it in our November 2020 Final Rule. Accordingly, EPA is correcting that error in this action.

Comment: The commenter alleges the ANR is not part of Ohio's infrastructure SIP, which provides for the enforcement of the NAAQS. The commenter states that the CAA mandates a program for enforcement of the NAAQS through the development of an infrastructure SIP for enforcement of the control measures relied upon to attain and maintain the NAAQS. The commenter notes that EPA's Infrastructure SIP guidance requires the SIP to specifically identify the "statutes, regulations, or other provisions . . . that provide for enforcement of those emission limits" that have been identified as being necessary for NAAQS attainment and maintenance. According to the commenter, a state's program to "enforce the NAAQS" is therefore an EPA-approved program of specifically identified statutes and rules, not an ad hoc collection of any rules that have the potential to impact air emissions. The commenter alleges that the only statutory or regulatory provision that Ohio EPA has identified in its infrastructure SIP for the purposes of enforcing the NAAQS is O.R.C. section 3704.03(R), and that EPA cannot broaden the infrastructure SIP by unilaterally adding the ANR.

Response: EPA has issued non-binding guidance on what EPA refers to as "infrastructure SIP submissions."³²

As stated in that guidance document, the "conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both."³³

The commenter seems to suggest that every provision in a state's SIP that is used to enforce the NAAQS must be included in the state's infrastructure SIP submission, and that if a provision that is used to enforce the NAAQS is not included in that SIP submission, it is somehow improper for the state to include it in the SIP at all. However, EPA does not apply such a rigid approach to SIP submissions, nor is the commenter's suggested approach mandated by the CAA. The CAA does not indicate that all SIP provisions intended to enforce the NAAQS must be included in the "infrastructure SIP submission"—in fact, the CAA does not mention "infrastructure SIP submissions" at all. EPA has created the structure and deadlines for states to submit what we refer to as infrastructure SIP submissions in order to ensure that states meet certain CAA requirements. And as mentioned, the purpose of that SIP submission is to ensure that the SIP "contains the necessary structural requirements" for a new or revised NAAQS.

EPA therefore does not take the position that every single provision that is ever used to enforce the NAAQS must be included in a state's infrastructure SIP. Infrastructure SIP submissions are distinct from nonattainment plan SIP submissions, which also contain emissions limitations and methods for enforcement, such as required monitoring, recordkeeping, and reporting requirements. Just because a state does not include a certain provision in its infrastructure SIP submission does not mean that it is improper for the state to then use that provision for enforcement purposes.

Moreover, the commenter alleges that EPA is impermissibly broadening the infrastructure SIP by reinstating the ANR into the SIP. EPA is not, and could not, unilaterally place the ANR into an infrastructure SIP submission that has already been submitted and approved by EPA. EPA is not broadening the infrastructure SIP, rather, it is merely

reinstating the ANR to the Ohio SIP as it existed prior to EPA's action in the November 2020 Final Rule, which for the reasons we have described in this action, we have determined was in error.

Comment: The commenter states that neither the Constitution nor the CAA permits EPA to delegate responsibility for establishing SIP emission control requirements to the Federal judiciary. The commenter alleges that the Proposed Rule is inconsistent with the CAA because it would give Federal district courts jurisdiction to decide, in CAA citizen suits, the source-specific controls needed to attain and maintain, and enforce, the NAAQS. The commenter states that the Constitution does not allow states to ordain and establish Federal judicial power, and the CAA should not be read to include any implicit delegation of that power to the states. In addition, the commenter notes that section 110 of the CAA gives each state primary authority to choose the mix of source-specific emission controls and associated monitoring, testing, and enforcement provisions that will suffice to attain and maintain the NAAQS. According to the commenter, including a nuisance rule in a SIP would effectively delegate state executive authority under section 110 to Federal judges. Finally, the commenter notes that section 307(b) of the CAA gives Federal circuit courts, not district courts, exclusive jurisdiction to review EPA actions to determine the approvability of state plans to achieve the NAAQS and state-promulgated SIP measures to enforce those plans.

Response: As stated throughout this action, EPA agrees with the commenter that section 110 of the CAA gives each state primary authority to choose the mix of source-specific emission controls and associated monitoring, testing, and enforcement provisions that will suffice to attain and maintain the NAAQS. To that end, in this action, EPA is restoring the ANR as Ohio had included it and as it had existed for more than four decades in the Ohio SIP prior to our erroneous action to remove it in November 2020.

With respect to the commenter's contention that Ohio's inclusion of the ANR in its SIP impermissibly delegates state authority to Federal judges, EPA observes that the CAA is structured around the principle of cooperative federalism. In other words, the CAA creates a system of shared state and Federal responsibility. With respect to enforcing the SIP, a state must provide "necessary assurances" that it has the authority to enforce SIP provisions as a prerequisite for EPA to approve those

³¹ See, e.g., *Env't Comm.*, 94 F.4th at 100.

³² See Stephen D. Page, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1)

and 110(a)(2)", September 13, 2013, available at https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf.

³³ *Id.* at 2.

provisions into the SIP. See CAA section 110(a)(2)(E). Once a provision is approved into the SIP, the state retains the authority to enforce it, and in addition, EPA has the authority to enforce it, see CAA section 113, as do members of the public, under the CAA section 304 citizen suit provision. Thus, Federal enforcement of SIP provisions is integral to the structure of the CAA, whether by EPA or by the public. The commenter is correct that this could result (and, has in the past resulted) in CAA citizen suit claims to enforce the ANR in Federal district courts. But this does not mean that the states are delegating or establishing power in the Federal judiciary. This is just the CAA's structure of cooperative federalism that Congress created. The ANR can be enforced in state court, and it can be enforced in Federal court because it is part of the federally-approved SIP. The same is true of any SIP provision in any state. To the extent the commenter has an issue with the CAA's cooperative federalism model, that is of course outside the scope of the current rulemaking.

Additionally, EPA agrees with the commenter that CAA section 307(b) gives Federal circuit courts, not district courts, exclusive jurisdiction to review EPA actions on SIPs. The commenter appears to be conflating enforcement of SIP provisions (which as mentioned, could occur through state or Federal court actions), with Federal circuit court review of EPA actions on SIP submissions. Nothing about this action indicates that EPA disagrees that Federal circuit court review is the appropriate forum for review of EPA actions on SIP submissions.

Comment: The commenter notes that EPA contends it should have first performed an anti-backsliding analysis before correcting the SIP. However, according to the commenter, SIP corrections do not require an anti-backsliding analysis. The commenter asserts that requirements under CAA section 193 would not apply to the removal of the ANR from Ohio's SIP for attainment areas because the ANR is not a "control requirement." The commenters further assert that, because the ANR's inclusion in the Ohio SIP was in error, it is not a "control requirement" triggering the need for an anti-backsliding analysis upon removal from the SIP under CAA section 193, 42 U.S.C. 7515.

The commenters also argue that EPA's interpretation of the anti-backsliding provision in CAA section 193 would conflict with EPA's SIP correction authority under CAA section 110(k)(6).

According to the commenters, if the ANR is not a necessary or appropriate element of a SIP, then removing it cannot be considered backsliding under CAA section 110(l), because an anti-backsliding analysis is only concerned with emissions of criteria pollutants in areas that are non-attainment for those pollutants. The commenters state that since emissions addressed by the ANR cannot be quantified, a backsliding analysis is not justified, and that given the State's position, engaging in a backsliding analysis does not make sense. The commenters also contend that even if an anti-backsliding analysis were required, EPA must conduct it before finalizing this rulemaking.

Response: EPA disagrees with the commenter's claim that an anti-backsliding analysis was not required for EPA's November 2020 Final Rule removing the ANR from the Ohio SIP. The plain language of CAA section 193 precludes this conclusion.

CAA section 193 provides, in relevant part, that no control requirement in effect before November 15, 1990, "in any area which is a nonattainment area for any air pollutant may be *modified* after November 15, 1990, *in any manner* unless the modification insures equivalent or greater emission reductions of such air pollutant" (emphasis added). The CAA does not specifically define what qualifies as a "control requirement" in the context of section 110 SIPs, and EPA therefore interprets the term broadly in accordance with its plain meaning, *i.e.*, that it refers to any "requirement" that imposes some form of "control" with respect to any of the NAAQS pollutants. The term "control requirement" is similar to the language in CAA section 110(a)(2)(A) referring to "emissions limitations and other control measures, means, or techniques." As explained and illustrated by the specific examples in a previous comment response, the ANR has been invoked on multiple occasions with the goal and ultimate outcome of limiting emissions of criteria pollutants and their precursors. Thus, the ANR has been used as a measure, means, or technique, to control relevant emissions, which means that it squarely falls within the definition of a "control requirement" as the term is used in CAA section 193.

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, which is commonly referred to as an anti-backsliding analysis. The plain meaning of "modify" is to make a change to something, and the qualifier

"in any manner" indicates that the requirement for an anti-backsliding analysis is triggered by *any* possible change to a control requirement that otherwise meets the requirements of this section. EPA does not see any statutory basis for concluding that an anti-backsliding analysis was not required for EPA's November 2020 Final Rule removing the ANR from Ohio's SIP. To the contrary, such an interpretation would directly undermine the plain language of section 193, which encompasses changes to the SIP made "in any manner."

For support, the commenter cites to a 1996 SIP action approving Arizona's contingency measures and withdrawing its Federal Implementation Plan (FIP) "contingency process," in which EPA took the position that CAA section 193 was not applicable. In the context of this action, EPA acknowledged that "the term 'control requirement' is not defined in the Act," and stated that "it is generally viewed as a discrete regulation directed at a specific source of pollution."³⁴ EPA distinguished this from the "contingency process" at issue in that action, which was not grounded in a statutory requirement and was based on 1982 guidance "designed to fill a perceived gap in the absence of a statutory requirement."³⁵ The 1982 guidance required "a list of planned transportation measures and projects that *may* adversely affect air quality and that will be delayed, while the SIP is being revised" (emphasis added), and "a description of the process that will be used to determine and implement additional transportation measures beneficial to air quality that will compensate for the unanticipated shortfalls in emission reduction." Further, in the 1996 action, EPA explained how the 1990 Amendments to the CAA filled the identified statutory gap by adding the section 172(c)(9) contingency measure requirement to the CAA, rendering EPA's pre-amendment 1982 guidance, and the "contingency process" implementing that guidance, "inconsistent with this new statutory scheme" and thus "ineffective under section 193."³⁶

In other words, EPA determined that the "contingency process" was not a control measure because "[a] list of highway projects that may be delayed and a description of actions that may occur at some later date are not control requirements," and because section 193 precluded the contingency process under the first part of that section,

³⁴ 61 FR 51999 at 51602 (October 3, 1996).

³⁵ *Id.*

³⁶ *Id.*

which reads: “Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator as in effect before November 15, 1990 shall remain in effect according to its terms, *except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator.*”³⁷ The ANR is distinguishable from the “contingency process” because (1) it can be considered a control requirement with demonstrated impacts on emissions, as explained at length in this action, and (2) it is not based on outdated guidance that has been superseded by the CAA Amendments of 1990.

With respect to the commenter’s assertions regarding the requirements of CAA section 110(l), EPA notes that we did not rely on CAA section 110(l) in our proposed rule as a basis for determining our prior November 2020 Final Rule was in error. As discussed elsewhere, EPA has concluded that an anti-backsliding analysis should have been conducted for the November 2020 Final Rule under section 193. While CAA section 110(l) was not a basis for EPA’s proposed rule, EPA disagrees with the commenter that if the ANR is not a necessary or appropriate element of a SIP, then removing it cannot be considered backsliding under CAA section 110(l). The commenter misstates the requirements of 110(l), which prohibits EPA from approving a SIP revision if it would interfere with any applicable requirement concerning attainment of the NAAQS, *or any other applicable requirement of the CAA.* Whether the ANR is a necessary or appropriate element of a SIP because the State has not relied on it for attainment of the NAAQS therefore is not the only relevant inquiry under CAA section 110(l). As CAA section 110(l) is not applicable to the present action, EPA need not consider whether we are prohibited under this provision from approving removal of the ANR from the SIP.

Finally, EPA disagrees with the commenter that EPA is required to conduct an anti-backsliding analysis for this action reinstating the ANR into the Ohio SIP. The commenter misstates the standard that section 193 applies in asserting that EPA must determine that removing the ANR from Ohio’s SIP would result in *lesser* reductions. Under section 193, the only requirement is that the modification must insure “equivalent or greater reductions.” The commenter identifies no basis for

concluding that reinstating the ANR does not provide for “equivalent or greater reductions,” *i.e.*, that it would increase emissions. As discussed at length in this action, the ANR has been used to enforce the NAAQS and has resulted in emissions reductions in the past. The ANR has also been deemed an emission limitation within the meaning of CAA section 302(k).³⁸ There is therefore no basis to conclude that reinstating the ANR into the SIP would result in increased emissions. There is reason to believe, based on the record, that having the ANR in the SIP will continue to result in emissions reductions. But even if that is not the case, the ANR would still result in at least “equivalent reductions” as would not including it in the SIP at all.

Comment: The commenter states that there are multiple mechanisms by which Ohio citizens can redress alleged air pollution at the state level regardless of whether the ANR is in the SIP. In contrast, according to the commenter, reinstating the ANR would harm Ohio businesses, with no corresponding benefit to the environment because potential citizen suits under the CAA could result in attorneys’ fees being awarded to prevailing parties.

Response: With respect to the commenter’s assertion that there are multiple mechanisms by which Ohio citizens can address air pollution regardless of whether the ANR is in the SIP, EPA wholeheartedly supports providing different mechanisms for the public to address air pollution. In this action, EPA is not making a determination as to whether the Ohio State system provides for adequate opportunities for the public to address air pollution. Instead, EPA is merely determining that its November 2020 Final Rule removing the ANR from the Ohio SIP was deficient because EPA failed to consider the ANR’s role in the enforcement of the NAAQS, and because EPA failed to conduct an anti-backsliding analysis under CAA section 193.

EPA understands the commenter’s assertion that reinstating the ANR into the SIP would harm Ohio businesses to suggest that the consequences of noncompliance with the ANR could be more severe in a CAA citizen suit brought in Federal court, because prevailing parties may be awarded attorney’s fees. While EPA acknowledges that this could be a consequence of noncompliance with the ANR, EPA does not find this a relevant consideration for this action. EPA is not obligated, and the commenter has not

identified any statutory or otherwise legal basis for such obligation, to consider the potential adverse consequences of noncompliance with the ANR for Ohio businesses in determining whether its November 2020 Final Rule was in error.

III. What action is EPA taking?

EPA has considered the comments received on its February 2024 Proposed Rule, and is finalizing its action as proposed, for the reasons described in the February 2024 Proposed Rule, this final rule, and the response to comments herein. EPA is taking this action to reverse its November 2020 removal of the ANR and to reinstate OAC 3745–15–07 into the Ohio SIP, under its authority in CAA section 110(k)(6) and its inherent reconsideration authority, and consistent with the requirements of CAA section 110(a)(2). EPA has determined that its prior action removing OAC 3745–15–07 from the Ohio SIP was deficient for two reasons: (1) because EPA failed to adequately consider the ANR’s use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA. EPA has determined that the ANR was appropriately included in the Ohio SIP as part of the State’s collection of “enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA].” See CAA section 110(a)(2). Accordingly, EPA is recodifying this reinstatement by revising the appropriate paragraph under 40 CFR part 52, subpart KK, § 52.1870 (Identification of Plan).

IV. Incorporation by Reference

In this action, EPA is reinstating regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in section III. of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of

³⁷ *Id.* (emphasis in original) (citing to CAA section 193).

³⁸ *Ashtabula*, 633 F. Supp. 2d at 528.

the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.³⁹

V. 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, 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 Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- 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 EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule 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).

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act, and 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).

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 March 24, 2025. 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 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: January 10, 2025.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended under the section entitled “Chapter 3745–15 General Provisions on Air Pollution Control” by adding an entry for “3745–15–07” after the entry for “3745–15–06” to read as follows:

§ 52.1870 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
Chapter 3745–15 General Provisions on Air Pollution Control				
*	*	*	*	*
3745–15–07	Air Pollution Nuisances Prohibited	5/17/1982	8/13/1984, 49 FR 32182	

³⁹ 62 FR 27968 (May 22, 1997).

EPA-APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
* * * * *				
[FR Doc. 2025–00968 Filed 1–17–25; 8:45 am] BILLING CODE 6560–50–P				
ENVIRONMENTAL PROTECTION AGENCY				
40 CFR Part 52				
[EPA–R09–OAR–2023–0448; FRL–11677–03–R9]				
Approval and Promulgation of Implementation Plans; State of California; Coachella Valley; Extreme Attainment Plan for 1997 8-Hour Ozone Standards	a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.			approve the entire VMT Offset Demonstration. Our proposed action contains more information on the two submittals and our evaluation.
AGENCY: Environmental Protection Agency (EPA).	FOR FURTHER INFORMATION CONTACT: Tom Kelly, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3856; or email: <i>kelly.thomas@epa.gov</i> .			On June 12, 2024, we finalized our proposed action on certain portions of the Coachella Valley Ozone Plan. ⁶ Specifically, we finalized approval of the reasonably available control measures demonstration, the attainment demonstration, and the State’s demonstration that it has satisfied the clean fuels for boilers requirement for the Coachella Valley nonattainment area. Our June 12, 2024, notice stated that we intended to take final action on the remaining VMT Offset Demonstration and RFP demonstration in a future rulemaking. We are finalizing approval of these elements in this notice.
ACTION: Final rule.	SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.			
SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submittal from the State of California to meet Clean Air Act (CAA) “Extreme” nonattainment area requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Riverside Co. (Coachella Valley), CA nonattainment area (“Coachella Valley”). We are specifically approving the reasonable further progress (RFP) demonstration and the vehicle miles traveled demonstration.	Table of Contents			B. Correction
DATES: This rule is effective February 20, 2025.	I. Proposed Action			In summarizing the State’s photochemical modeling and the associated control measures, the EPA’s proposed rule incorrectly stated that the Coachella Valley control strategy for the 1997 ozone NAAQS relies on aggregate emissions reduction commitments from the “Final 2016 Air Quality Management Plan” (“2016 AQMP”). ⁷ While the Coachella Valley Ozone Plan discusses rules addressing the area’s progress related to commitments needed for the area to meet the 2008 ozone NAAQS by 2026, the emissions reductions associated with these rules are not reflected in the area’s inventory, and the Plan does not rely on the commitments to attain the 1997 ozone NAAQS in 2023. ⁸
ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0448. 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 (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 through https://www.regulations.gov , or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information. If you need assistance in a language other than English or if you are a person with	II. Public Comments and the EPA’s Responses			II. Public Comments and the EPA’s Responses
	III. The EPA’s Action			The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from Air Law for All (ALFA), dated May 16, 2024. These comments relate to our proposed action on the RFP demonstration. No comments were received on other parts of the proposal. The comments are summarized and addressed below.
	IV. Statutory and Executive Order Reviews			
	I. Proposed Action			
	A. Summary			
	On April 16, 2024, ¹ the EPA proposed to approve two SIP submittals from the South Coast Air Quality Management District (SCAQMD or “District”) and the California Air Resources Board (CARB) addressing the Extreme area planning requirements for the 1997 ozone NAAQS in Coachella Valley. The first submittal, the “Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard” (“Coachella Valley Ozone Plan” or “Plan”), ² was prepared by the SCAQMD and submitted by CARB on December 29, 2020. ³ We proposed to approve all elements of the Plan except the reasonably available control technology (RACT) demonstration, which we plan to address in a subsequent rulemaking. The second submittal, the “2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration” (“VMT Offset Demonstration”), ⁴ was prepared by CARB and submitted on March 18, 2021. ⁵ We proposed to			Acting Regional Administrator, EPA Region 9 (submitted electronically March 18, 2021). ⁶ 89 FR 49815. ⁷ 89 FR 26817, 26826. ⁸ See Coachella Valley Ozone Plan, pp. 4–4 through 4–17.
	¹ 89 FR 26817.			
	² SCAQMD, “Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,” December 2020.			
	³ Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA Region 9 (submitted electronically December 29, 2020).			
	⁴ CARB, Staff Report, “2020 Coachella Valley Vehicle Miles Traveled Emissions Offset Demonstration,” release date January 22, 2021.			
	⁵ Letter dated March 15, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan,			