

**POSTAL SERVICE****39 CFR Part 265****Procedures for Disclosure of Records Under the Freedom of Information Act****AGENCY:** Postal Service™.**ACTION:** Final rule.

**SUMMARY:** In August 2019, the Postal Service proposed to amend its Freedom of Information Act ("FOIA") regulations regarding fee waivers. These changes would improve clarity and more closely align the regulations with both the relevant guidance from the Department of Justice's Office of Information Policy and the relevant statute. The Postal Service did not receive any comments.

**DATES:** This rule is effective as of November 21, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joshua J. Hofer, Attorney, Federal Compliance, [joshua.hofer@usps.gov](mailto:joshua.hofer@usps.gov), 202-268-6704.

**SUPPLEMENTARY INFORMATION:** In August 2019, the Postal Service proposed to amend 39 CFR part 265 (84 FR 44565). The purpose of the changes is to improve clarity and to more closely align the regulations with both the relevant guidance from the Department of Justice's Office of Information Policy and the relevant statute, 5 U.S.C. 552(a)(4)(A)(iii). The portion of the regulations being amended concerns fee waivers. Generally speaking, fees for a FOIA request will be waived "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii). The guidance from the Department of Justice elucidates a six-factor test from this rule—two of which of which relate to the commercial interest of the requester. The amendment to 39 CFR 265.9(j)(3)(i) clarifies that the first commercial interest factor is to determine whether a commercial interest exists. The amendment to 39 CFR 265.9(j)(3)(ii) incorporates the balancing test from the statute as the second part of the commercial interest factor, along with adding a presumption concerning news media requesters. No comments were received in response to the proposed changes.

**List of Subjects in 39 CFR Part 265**

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

**PART 265—[AMENDED]**

■ 1. The authority citation for part 265 continues to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114-185.

■ 2. Amend § 265.9 by revising paragraphs (j)(3)(i) and (ii) to read as follows:

**§ 265.9 Fees.**

\* \* \* \* \*

(j) \* \* \*

(3) \* \* \*

(i) Whether there is a commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. If so, then the requester will be given an opportunity to provide explanatory information regarding this consideration.

(ii) Whether any identified commercial interest of the requester in disclosure outweighs the public interest, as defined in paragraph (j)(1)(i) of this section, in disclosure. If so, then the disclosure is primarily in the commercial interest of the requester. The component ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by the requested disclosure. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

\* \* \* \* \*

**Joshua Hofer,**  
*Attorney, Federal Compliance.*

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

[EPA-R03-OAR-2019-0044; EPA-R05-OAR-2015-0699; FRL-10001-26-Region 5]

**Approval of Air Quality Implementation Plans; Ohio and West Virginia; Attainment Plans for the Steubenville, Ohio-West Virginia 2010 Sulfur Dioxide Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), two State Implementation Plan (SIP) revision submittals, submitted by Ohio and West Virginia, respectively. The Ohio and West Virginia submittals include each State's attainment demonstration for the Steubenville Ohio-West Virginia sulfur dioxide (SO<sub>2</sub>) nonattainment area (hereinafter "Steubenville Area" or "Area"). Each SIP contains an attainment demonstration, enforceable emission limits, control measures and other elements required under the CAA to address the nonattainment area requirements for the Steubenville Area. EPA concludes that the Ohio and West Virginia attainment plan submittals demonstrate that the provisions in the respective SIPs provide for attainment of the 2010 primary SO<sub>2</sub> national ambient air quality standard (NAAQS) in the entire Steubenville Area and meet the requirements of the CAA. EPA is also approving into the West Virginia SIP new emissions limits, operational restrictions, and associated compliance requirements for Mountain State Carbon, and approving into the Ohio SIP the limits on emissions from Mingo Junction Energy Center, JSW Steel, and the Cardinal Power Plant.

**DATES:** This final rule is effective on November 21, 2019.

**ADDRESSES:** EPA has established dockets for this action under Docket ID Nos. EPA-R03-OAR-2019-0044 and EPA-R05-OAR-2015-0699. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the applicable Region III or Region V person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers at EPA Region III, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814-2308, [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov). John Summerhays at EPA Region V, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency,

Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this preamble.

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### I. Summary of EPA's Notice of Proposed Rulemaking

Following the promulgation in 2010 of a 1-hour primary SO<sub>2</sub> NAAQS, EPA designated a two-State Steubenville, Ohio-West Virginia area (among other areas) as nonattainment for this NAAQS. Ohio and West Virginia submitted SIP revision requests to address the attainment planning requirements that then applied for this area. Ohio's requested SIP revision was submitted to EPA through the Ohio Environmental Protection Agency (OEPA) on April 1, 2015 with supplemental submissions on October 13, 2015, March 25, 2019, and June 25, 2019. West Virginia's requested SIP revision was submitted to EPA through the West Virginia Department of Environmental Protection (WVDEP) on April 25, 2016, with a supplemental submission from WVDEP on November 27, 2017 and a clarification letter on May 1, 2019.

On June 24, 2019, at 84 FR 29456, EPA published a notice of proposed rulemaking (NPRM) on Ohio's and West Virginia's plans for assuring that the Steubenville Area attains the 2010 SO<sub>2</sub> NAAQS. Because the Area includes

portions in both Ohio and West Virginia, each State was required to submit plans that in combination provided for attainment throughout the two-State area. EPA published a combined NPRM on the two States' submittals addressing whether these submittals satisfied applicable requirements throughout the Area. Ohio's submittal included proposed rules with a proposed emission limit for the Cardinal Power Plant. EPA's NPRM proposed to approve the two States' submittals contingent upon Ohio adopting and submitting these rules in final form.

The NPRM provided extensive discussion of EPA's rationale for proposing to approve the two States' submittals as meeting these requirements. The NPRM described the requirements that nonattainment plans are designed to meet. Notably, Ohio's plan included a 30-day average SO<sub>2</sub> emission limit for the Cardinal Power Plant (Cardinal), and the West Virginia plan included 24-hour average SO<sub>2</sub> emission limits for the Mountain State Carbon facility. The NPRM included an extensive discussion of EPA's guidance on the use of such longer term average emission limits, including a full discussion of EPA's rationale for concluding that properly set longer term average SO<sub>2</sub> emission limits (in particular, longer term emission limits that are comparably stringent to the 1-hour limits that would otherwise be established) can be effective in providing for attainment. The NPRM then described EPA's review of the modeling that the States submitted to demonstrate that the limits they adopted would provide for attainment of the 2010 SO<sub>2</sub> NAAQS and described EPA's

review of whether the submittals met other applicable requirements such as the requirements for an emissions inventory and for reasonably available control measures.

On this basis, EPA proposed to conclude that, in combination with the other limits in Ohio's and West Virginia's plans, these longer term average SO<sub>2</sub> emission limits assure attainment in the Steubenville Area. More generally, EPA proposed to approve Ohio's and West Virginia's SIP submittals as addressing the nonattainment planning requirements, provided Ohio adopted and submitted in final form its proposed rules limiting emissions from the Cardinal power plant.

### II. Comments and EPA's Responses

EPA received two comment letters on the NPRM, from owners of two of the facilities affected by these plans. JSW Steel provided brief comments supporting EPA's proposed action. Mountain State Carbon also expressed support for EPA's proposed action but identified various alleged factual errors in the NPRM that it sought to correct for the record. The following paragraph describes Mountain State Carbon's requested corrections and EPA's responses.

Mountain State Carbon identified several emission rates listed in the NPRM as inconsistent with the emissions reflected in Ohio's and West Virginia's plans. These claims are summarized in Table 1. For convenience, EPA's response is also listed in the table. In each case, EPA agrees with Mountain State Carbon's requested correction.

TABLE 1—EMISSION RATES IDENTIFIED AS BEING IN ERROR

[Abbreviations shown below]

Source	Unit(s)	NPRM value	Recommended value	Does EPA agree with MSC?
MJEC .....	4 units .....	20.34 lb/hr each .....	0.5 lb/hr each (total of 2 lb/hr)	Yes.
MSC .....	Battery #8 pushing, outage operation.	15.72 lb/hr .....	9.8 lb/hr .....	Yes.
MSC .....	Battery #1 combustion .....	241.5lb#/hr .....	76.8 lb/hr .....	Yes.
MSC .....	At issue* .....	Limit (1.32 g/s or 10.48 lb/hr) applies to power boilers.	Emission limit (correct value) applies to Battery 1/2/3 pushing baghouse.	Yes.

\* The commenter states that the NPRM (the footnote to Table 4) assigns a limit incorrectly, that the limit of 1.32 g/s (10.32 lb/hr) applies not to the power boilers but instead to the Battery 1/2/3 pushing baghouse. EPA agrees.

Abbreviations: MJEC—Mingo Junction Energy Center; MSC—Mountain State Carbon; NPRM Value—Value cited in NPRM; Recommended Value—Value that MSC cites as the correct value; lb/hr—pounds per hour; g/s—grams per second.

EPA is correcting the record accordingly. Mountain State Carbon states that it does not believe that its comments are material to the proposed approval of the SIP, and that it supports

EPA's action. Moreover, Mountain State Carbon explains that the corrected values are provided in West Virginia's submission. EPA agrees, and concludes that making these corrections, which

more accurately characterizes the emission rates in Ohio's and West Virginia's modeled attainment plans, and which in the aggregate reflect lower allowable emission rates than EPA had

presented in the NPRM, does not necessitate reconsidering the validity of the attainment demonstration.

### III. EPA's Final Action

EPA is approving two SIP revision submittals, one submitted by the State of Ohio on April 1, 2015, which Ohio supplemented on October 13, 2015, March 25, 2019, and June 25, 2019, and the other submitted by the State of West Virginia on April 25, 2016, which West Virginia supplemented on November 27, 2017, with a clarification letter submitted on May 1, 2019. The proposed approval was contingent on Ohio adopting and submitting in final form the limit for Cardinal that it submitted in proposed form on March 25, 2019. Ohio has adopted the limit it had proposed, effective July 5, 2019, and submitted this limit to EPA on June 25, 2019.<sup>1</sup>

Ohio's and West Virginia's submittals represent their plans for attaining the 2010 SO<sub>2</sub> NAAQS and how they are meeting other nonattainment area planning requirements. EPA is approving the attainment demonstrations, emissions limitations and control measures, the base year emissions inventory, nonattainment new source review program, reasonable further progress, and reasonably available control technology/reasonably available control measures, and contingency measures submitted by Ohio and West Virginia for the Steubenville Area. In the West Virginia SIP, EPA is approving the consent order between West Virginia and Mountain State Carbon identified as CO-SIP-C-2017-9, effective September 29, 2017, containing emission limits and other measures for Mountain State Carbon, including operational restrictions and sulfur content limits during the periods in which the desulfurization unit for Mountain State Carbon is shut down for maintenance purposes, and their associated compliance requirements. In the Ohio SIP, EPA is approving OAC Rule 3745-18-03, the pertinent sections of 3745-18-04,<sup>2</sup> and 3745-18-47.

<sup>1</sup> In conjunction with the newly adopted limit for Cardinal and resubmitted limits for other Ohio sources, in Ohio Administrative Code (OAC) 3745-18-47, Ohio also adopted and submitted associated compliance deadlines and compliance determination procedures, in OAC 3745-18-03 and 3745-18-04, respectively.

<sup>2</sup> EPA has historically not taken action on several paragraphs of OAC 3745-18-04. Ohio requested that EPA approve "the revisions to . . . 3745-18-04 . . . , with the exception of [several listed portions of OAC 3745-18-04 that mostly have not previously been approved]." Although Ohio's rulemaking for this submittal only revised paragraph (D)(11) of this rule, for administrative convenience EPA is reapproving all of OAC 3745-18-04 except for the listed paragraphs.

### IV. Incorporation by Reference

In this rule, EPA is finalizing 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 and West Virginia Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region III and Region V Offices (please contact the applicable 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 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.<sup>3</sup>

### 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 December 23, 2019. 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

<sup>3</sup> 62 FR 27968 (May 22, 1997).

shall not postpone the effectiveness of such rule or action.

This action to approve the Steubenville Area attainment plans for Ohio and West Virginia 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, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 23, 2019  
**Cosmo Servidio**,  
*Regional Administrator, Region III.*  
Dated: October 7, 2019  
**Cathy Stepp**,  
*Regional Administrator, Region V.*

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. Section 52.1870 is amended:

#### EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
<b>Chapter 3745–18 Sulfur Dioxide Regulations</b>				
3745–18–03 .....	Compliance Time Schedules.	7/5/2019	10/22/2019, [insert <b>Federal Register</b> citation].	*
3745–18–04 .....	Measurement Methods and Procedures.	7/5/2019	10/22/2019, [insert <b>Federal Register</b> citation].	Except (D)(2), (D)(3), (D)(5), (D)(6), (D)(9)(c), (E)(2), (E)(3), and (E)(4).
3745–18–47 .....	Jefferson County Emission Limits.	7/5/2019	10/22/2019, [insert <b>Federal Register</b> citation].	*
*	*	*	*	*

\* \* \* \* \*

#### EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
<b>Summary of Criteria Pollutant Attainment Plans</b>				
SO <sub>2</sub> (2010) .....	Steubenville .....	6/25/19	10/22/2019, [insert <b>Federal Register</b> citation].	*
*	*	*	*	*

\* \* \* \* \*

■ 3. Section 52.2520 is amended:

■ a. In the table in paragraph (d) by adding an entry at the end of the table for “Mountain State Carbon”; and

■ b. In the table in paragraph (e) by adding an entry at the end of the table for “2010 Sulfur Dioxide Attainment Plan”.

The additions read as follows:

■ a. In the table in paragraph (c), under “Chapter 3745–18 Sulfur Dioxide Regulations,” by revising the entries for “3745–18–03”, “3745–18–04” (with a State effective date of 2/16/2017), and “3745–18–47”; and  
■ b. In the table in paragraph (e), under the heading “Summary of Criteria Pollutant Attainment Plans,” by adding a second entry for “SO<sub>2</sub> (2010)” (with a State date of 2/16/2017).

The revisions and additions read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### § 52.2520 Identification of plan.

\* \* \* \* \*

(d) \* \* \*

## EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
* Mountain State Carbon.	* Consent Order CO-SIP-C-2017-9.	* 9/29/17	* 10/22/2019, [insert <b>Federal Register</b> citation].	* *

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographical area	State submittal date	EPA approval date	Additional explanation
* 2010 Sulfur Dioxide Attainment Plan.	* Steubenville Area (Brooke County).	* 4/25/16	* 10/22/2019, [insert <b>Federal Register</b> citation].	* 52.2525(c).

■ 4. Section 52.2525 is amended by adding paragraph (c) to read as follows:

§ 52.2525 **Control strategy: Sulfur dioxide.**

\* \* \* \* \*

(c) EPA approves the attainment plan for Brooke County, West Virginia, submitted by the Department of Environmental Protection on April 25, 2016, supplemented on November 27,

2017, and with a clarification letter submitted on May 1, 2019.

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