



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2017-0340; FRL-9974-47-Region 2]

Approval and Revision of Air Quality Implementation Plans; State of New York; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a source-specific revision to the New York State Implementation Plan (SIP). The SIP revision establishes Best Available Retrofit Technology (BART) emission limits for sulfur dioxide that are identical to those set by the EPA's Federal Implementation Plan (FIP) for the Roseton Generating Station, Units 1 and 2, which was promulgated in an action taken on August 28, 2012. The EPA finds that the SIP revision fulfills the requirements of the Clean Air Act and the EPA's Regional Haze Rule for Roseton Units 1 and 2. In conjunction with this approval, the EPA is withdrawing the FIP that addresses BART for Roseton Units 1 and 2.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2017-0340. All documents in the docket are listed on the www.regulations.gov web site. 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 www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional available information.

FOR FURTHER INFORMATION CONTACT: Irene B. Nielson, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 10007-1866 at 212-637-3586 or by email at nielson.irene@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. What Action is the EPA taking today?

The EPA is approving a source-specific State Implementation Plan (SIP) revision for Units 1 and 2 of the Roseton Generating Station submitted by the New York State Department of Environmental Conservation (NYSDEC) on April 18, 2017. The EPA is approving emission limits for sulfur dioxide (SO₂) for Roseton Units 1 and 2 that are equivalent to the emission limits established by the EPA's Federal Implementation Plan (FIP), which was promulgated on August 28, 2012 (77 FR 51915).

In its submittal, the NYSDEC included the following BART emission limits for Roseton Units 1 and 2: 0.55 pounds of SO₂ per million British thermal unit (lb SO₂/MMBtu) calculated on a 24-hour average for each unit.¹ As a result of the EPA's approval, the EPA is withdrawing those portions of the FIP that address BART for Roseton Units 1 and 2. The reader is referred to the EPA's proposal, 82 FR 48942 (October 23, 2017), for a detailed discussion of this SIP revision.

II. What significant comments were received in response to the EPA's proposed action?

During the public comment period, three interested parties submitted comments on the EPA's proposal. Two comments expressed support of this action. A third commenter expressed support for the benefits of reduced sulfur for public health and raised the following two additional comments.

Comment 1: The commenter questioned the need for the SIP revision since the FIP was already in place.

¹ In the SIP submittal and in subsequent correspondence with the EPA, NYSDEC notes the oxides of nitrogen (NO_x) and Particulate Matter (PM) limits for Roseton Generating Station Units 1 and 2, which were not subject to the FIP and are not part of this SIP action, are consistent with BART limits approved by EPA in its August 28, 2012 Final Action on New York's Regional Haze SIP (77 FR 51915).

Response: The Clean Air Act (CAA) obligates the EPA to act on a State's SIP submittal or revision, provided the submittal meets minimum completeness criteria. CAA section 110(k) (1); 40 CFR part 51, appendix V. Because the SIP revision meets CAA requirements, we are required to approve it. See CAA section 110(k)(3), (l).

Comment 2: The commenter suggested that the State should submit new or updated enforcement rules.

Response: It is unclear what the commenter means by "new or updated enforcement rules."

NYSDEC submitted a SIP revision to address the BART requirements for Roseton Units 1 and 2. The commenter has not identified any issues with the SIP revision that would warrant a change in the EPA's proposal to approve it.

III. What are the EPA's conclusions?

The EPA has evaluated the Roseton SIP Revision and is determining that it meets the requirements of the CAA and the Regional Haze Rule. Therefore, the EPA is approving the BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping, and reporting requirements) for Roseton Units 1 and 2, which are identical to those contained in the EPA's 2012 FIP: 0.55 pounds of SO₂ per million British thermal unit (lb SO₂/MMBtu) calculated on a 24-hour average for each unit (Units 1 and 2). Consequently, the EPA is withdrawing those portions of the 2012 FIP that address BART for Roseton Units 1 and 2.

At the time of the proposal, Roseton and Danskammer were the only two sources in New York State subject to the Regional Haze FIP (77 FR 51915). In a separate action, effective January 3, 2018, the EPA withdrew the FIP requirements for Danskammer after approving a source-specific SIP (82 FR 57126). In this action, the EPA is similarly approving a source-specific SIP for Roseton and withdrawing the FIP requirements for that facility. Upon the effective date of the Federal Register notice, the requirements in the approved SIP for Roseton Generating Station Units 1 and 2 will apply, the FIP requirements for Roseton Generating Station Units 1 and 2 will be withdrawn, and the Regional Haze FIP, 40 CFR 52.1686, will be removed in its entirety.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of a single-source SIP revision, dated April 18, 2017, for Roseton Units 1 and 2 (Facility DEC ID 3334600075), including Title V permit conditions (permit ID 3-3346-00075/0008) that include BART emission limits for SO₂. The summary of emission limits and other enforceable requirements in this SIP revision are included in section I of this notice. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 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 the EPA for inclusion in the SIP, have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by the Director of the Federal Register in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is exempt from review by the Office of Management and Budget (OMB) because it will result in the approval of a SIP submitted by the NYSDEC for Roseton Units 1 and 2. Approval of SIPs falls within a category of actions that is exempt from review by OMB. It was therefore not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action falls within the category of actions that OMB has exempted from review. This action specifically is an approval of a SIP.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).³ Because this final rule has identical recordkeeping and reporting requirements to the EPA's 2012 FIP, the PRA does not apply.

D. Regulatory Flexibility Act

² 62 FR 27968 (May 22, 1997)

³ 44 U.S.C. 3501 *et seq.*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Because this final rule has identical BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping and reporting requirements) to the EPA’s 2012 FIP, this final rule is not subject to the requirements of sections 202 or 205 of UMRA. This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern

environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As explained previously, the SIP revision being approved in this action includes identical BART emission limits and related administrative requirements (i.e., monitoring, recordkeeping and reporting requirements) to the EPA’s 2012 FIP.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 8, 2018.

E. Scott Pruitt, Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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.

Subpart HH—New York

2. In §52.1670, the table in paragraph (d) is amended by revising the entry “Roseton Generating Station-Dynegey” to read as follows:

§52.1670 Identification of plan.

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(d) * * *

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier No.	State effective date	EPA approval date	Comments
**	**	*	*	*
Roseton Generating Station	NYSDEC Facility No. 33346000075	12/5/2016	[insert date of publication in the Federal Register]	Best Available Retrofit Technology (BART) emission limits for SO ₂ pursuant to 6 NYCRR part 249 for Units 1 and 2.
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§52.1686 [Removed and Reserved]

3. Section 52.1686 is removed and reserved.

[FR Doc. 2018-03192 Filed: 2/15/2018 8:45 am; Publication Date: 2/16/2018]