13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.902(b) to read as follows:

§ 165.902 Niagara River at Niagara Falls, New York—safety zone.

* * * * *

(b) The following is a safety zone—The United States waters of the Lower Niagara River, Niagara Falls, NY from a straight line drawn from position 43°07′10.70″ N., 079°04′02.32″ W. (NAD 83) and 43°07′09.41″ N., 079°04′05.41″ W. (NAD 83) just south of the whirlpool rapids from the east side of the river to the international border of the United States, to a straight line drawn from position 43°06′34.01″ N., 079°03′28.04″ W. (NAD 83) and 43°06′33.52″ N., 079°03′30.42″ W. (NAD 83) at the International Railroad Bridge.

Dated: June 15, 2016.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2016–14620 Filed 6–20–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0320; FRL–9947–96–Region 2]

Disapproval of Interstate Transport Requirements for the 2008 Ozone National Ambient Air Quality Standards; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove elements of New York's State Implementation Plan (SIP) submission regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

DATES: Comments must be received on or before July 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2016–0320 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3702, or by email at *Fradkin.Kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 110(a) of the CAA imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP because the SIP ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an ''interstate transport SIP.'' This rulemaking proposes action on the CAA section 110(a)(2)(D)(i) requirements of these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (commonly referred to as prong 1), or interfere with maintenance of the NAAQS in any other state (prong 2). Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state.

On March 12, 2008, EPA strengthened the NAAQS for ozone. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard,

including the interstate transport requirements, were due March 12, 2011. On April 4, 2013 the New York State Department of Environmental Conservation (NYSDEC) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 ozone NAAQS, including interstate transport.

This proposed action pertains only to the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(I)(prongs 1 and 2), and section 110(a)(2)(D)(i)(II)(prong 4). EPA will address the other portions of the April 4, 2013 infrastructure SIP submittal, including section 110(a)(2)(D)(i)(II)(prong 3), in another action.

II. EPA's Review

Section 110(a)(2)(D) of the Clean Air Act is divided into two subsections: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four ''prongs'' the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) require New York's SIP to contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). The two prongs in 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

Section 110(a)(2)(D)(i)(I)—Prongs 1 and 2

In its SIP submission with respect to section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 ozone NAAQS, New York cited various state rules including its nitrogen oxides (NO_X) Reasonably Available Control Technology (RACT) regulations to reduce emissions of NO_X from its major stationary sources; NO_X RACT Rules for Cement Plants, Glass Plants, Asphalt Production, and other general emission sources; volatile organic carbon (VOC) regulations that limit emissions from major and area sources; and the California low emission vehicle program provisions under CAA Section 177.

In its submittal, New York indicated that, based on preliminary emissions inventory work, the state would achieve significant NO_X and VOC reductions from existing emission reduction programs. New York estimated that, between 2007 and 2020, it will reduce NO_X emissions by 46.6% (from 579,471 tons to 328,457 tons). Specifically, New York estimated that NO_X RACT limitations will result in NO_X emission reductions of 28,796 tons per year, or 78.9 tons per day from 2007 levels. With regard to VOCs, New York estimates that, between 2007 and 2020, it will reduce VOC emissions by 20.8% (from 484,440 tons in 2007 down to 368,784 tons in 2020).

New York further cited preliminary screening modeling performed for the Ozone Transport Commission (OTC) Modeling Committee that assumed a 48–68% decrease in NO_X emissions and a 30% reduction in VOC emissions in New York by 2020. The modeling showed that the only monitors ''predicted'' to be nonattainment (outside the New York metropolitan nonattainment area) were located in the Philadelphia metropolitan area. New York asserted that the Philadelphia monitors would be most significantly affected by emissions from within Pennsylvania and other upwind states. New York indicated that they used the Community Multi-scale Air Quality (CMAQ) and the California Photochemical Grid (CALGRID) models for their analysis.

New York also noted that its participation in the NO_X trading programs promulgated in EPA's Clean Air Interstate Rule (CAIR) addressed interstate transport requirements with respect to the 1997 ozone NAAQS. Although the State acknowledges that CAIR was remanded by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), the State indicated that it could rely on CAIR emission reductions to address interstate transport requirements for the 2008 ozone NAAQS because EPA had not yet (at the time of the submittal) developed a valid replacement rule. New York notes that EPA's Cross State Air Pollution Rule (CSAPR),[1] which EPA intended to replace CAIR, was vacated by the D.C. Circuit in August 2012, and that court instructed EPA to continue implementation of CAIR until the EPA promulgates a valid replacement.[2] New York notes that CAIR imposed an effective emissions rate of 0.094 lbs NO_X/mmBTU on New York sources. New York also compares its 2011 ozone season emission NO_X rates with NO_X rates achieved in other states, noting that New York electric generating units (EGUs) operated at an actual NO_X rate of 0.088 lbs NO_X/mmBTU. For these reasons, New York concluded that it has satisfied its obligations pursuant to section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

Finally, New York's SIP submission acknowledges that the state has contributed to downwind nonattainment and maintenance problems in New Jersey, Connecticut, Maryland, Massachusetts, Pennsylvania, Rhode Island, Virginia, and the District of Columbia, citing contribution analysis conducted when the EPA promulgated CSAPR. New York contends that because it shares nonattainment areas with New Jersey and Connecticut, and because the other states to which it has been linked are members of the Ozone Transport Commission, the state will address its obligations with respect to its contribution to nonattainment and interference with maintenance of the NAAQS in these states through the other statutory processes.

Although New York's analysis claims that there will be substantial emission reductions from existing programs from 2007 to 2020, New York admits that those reductions are based on preliminary estimates that have not been updated since New York's March 2013 submission. Nor has the state demonstrated that the emission rates at which EGUs in the state operated are the result of enforceable emission limits or other mandatory programs such that the emission rates will not increase. Moreover, while the State asserts that it will achieve a 46.6% NO_X reduction, and 20.8% VOC reduction during that time period, New York's modeling used higher levels of assumed reductions, assuming 48% NO_X reductions and 30% VOC reductions without demonstrating how it will achieve those higher levels of emissions reductions. Even assuming these projected emissions reductions were reliable, New York's modeling shows ''predicted'' nonattainment in

[1] 76 FR 48208 (August 8, 2011).

[2] CSAPR was promulgated by EPA to help states reduce air pollution and attain and maintain CAA standards, including the 1997 ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. On August 21, 2012, the D.C. Circuit vacated CASPR. *See EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Circuit 2012). The Court ordered EPA to continue administering CAIR pending the promulgation of a valid replacement for CSAPR. *Id.* at 60.

Connecticut, New Jersey, and Pennsylvania. New York does not adequately explain how it concludes that New York emissions do not significantly contribute to these predicted exceedances. The fact that the State might have certain planning obligations with respect to areas in these states under other statutory provisions does not absolve the State of its obligation to address the planning requirements of section 110(a)(2)(D)(i)(I).

By only evaluating areas with predicted nonattainment in 2020, New York has also failed to address the State's potential interference with maintenance of the 2008 ozone NAAQS in downwind states. In remanding CAIR to the EPA in the *North Carolina* decision, the D.C. Circuit explained that the regulating authority must give the ''interfere with maintenance'' clause of section 110(a)(2)(D)(i)(I) ''independent significance'' by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment, considering historic variability. 531 F.3d at 910–911. New York's analysis does not give the ''interfere with maintenance'' clause of section 110(a)(2)(D)(i)(I) independent significance because its analysis did not attempt to evaluate the potential impact of New York emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality.

Furthermore, the 2020 projection year New York chose for its modeling and by which the State asserts it will achieve substantial NO_X reductions is two years later than the moderate area attainment date for the 2008 ozone NAAQS, which is July 11, 2018. Among other things, the court's decision in *North Carolina,* clarified that, to the extent possible, upwind emissions reductions necessary to address the interstate transport of air pollution should be aligned with the attainment dates for downwind nonattainment areas. 531 F.3d at 912. New York has not demonstrated either that the State's SIP is adequate to address interstate transport by the downwind attainment date for the 2008 ozone NAAQS or that emissions reductions necessary to address interstate transport are not practically feasible until 2020.

Among the emissions reductions cited by New York in its SIP, the State cites its participation in CAIR as a control measure that results in control of NO_X emissions within the State. New York notes that under CAIR, New York EGUs were subject to both the ozone season NO_X emissions trading program and the annual NO_X emissions trading program. The CAIR ozone season NO_X emissions trading program was intended to address interstate transport of air pollution for the 1997 ozone NAAQS. The CAIR annual NO_X emissions trading program, along with the annual sulfur dioxide (SO_2) trading program, was intended to address interstate transport of air pollution for the 1997 fine particulate matter ($PM_{2.5}$) NAAQS.

Although New York correctly notes that the *North Carolina* decision kept CAIR in place temporarily while EPA developed a replacement, and that the D.C. Circuit later issued a decision vacating that replacement, CSAPR, and requiring continued implementation of CAIR, the EPA does not agree that it is appropriate to rely on CAIR for purposes of addressing interstate transport with respect to the 2008 ozone NAAQS. First, EPA designed CAIR to address the 1997 ozone NAAQS, but not the more stringent 2008 ozone standard at issue here. It is not sufficient to merely cite evidence of compliance with older programs such as CAIR or measures implemented for prior ozone NAAQS as a means for satisfying interstate transport obligations for the 2008 ozone NAAQS.

More importantly, in *North Carolina,* the D.C. Circuit held that CAIR was ''fundamentally flawed,'' 531 F.3d at 929, in part because CAIR did not satisfy the statutory requirement to ''achieve something measurable towards the goal of prohibiting sources 'within the State' from contributing to nonattainment or interfering with maintenance in 'any other State.' '' *Id.* at 908. Accordingly, the D.C. Circuit held in *EME Homer City Generation, L.P.* v. *EPA,* ''when our decision in *North Carolina* deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done.'' 795 F.3d 118, 133 (2015). For these reasons, the EPA cannot now approve an interstate transport SIP addressing any NAAQS based on the state's participation in CAIR.

Regardless of CAIR's infirmities, the rule is no longer being implemented. Subsequent to New York's submission of its SIP, on April 29, 2014, the U.S. Supreme Court reversed that D.C. Circuit decision vacating CSAPR and remanded the case to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On October 23, 2014, the D.C. Circuit granted our motion to lift the judicial stay on CSAPR and delay compliance deadlines by three years. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. Consistent with the Court's order we issued an interim final rule amending CSAPR so that compliance could begin in an orderly manner on January 1, 2015 (79 FR 71663, December 3, 2014), replacing CAIR. On July 28, 2015, the D.C. Circuit issued its decision on the issues raised on remand from the Supreme Court. The court denied all of petitioners' facial challenges to CSAPR, but remanded several emissions budgets to the EPA for reconsideration. *EME Homer City Generation, L.P* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). A final rule making the revised CSAPR implementation schedule permanent was issued on March 14, 2016. 81 FR 13275. Accordingly, CAIR implementation ended in 2014 and CSAPR implementation began in 2015. States and the EPA are no longer implementing the CAIR trading programs. Thus, it is no longer appropriate for states to rely on the emissions reductions achieved by compliance with CAIR to satisfy emission reduction obligations.

EPA has recently shared technical information with states to facilitate their efforts to address interstate transport requirements for the 2008 ozone NAAQS. EPA developed this technical information following the same approach used to evaluate interstate contribution in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (Dec. 3, 2015) (''CSAPR Update Rule''). In CSAPR, EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, EPA proposed an air quality screening threshold of one

percent of the applicable NAAQS and requested comment on whether one percent was appropriate. EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, EPA determined that it was important to use a relatively lower one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. EPA determined that a ''0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.''

In the final CSAPR, EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and EPA's previous use of a one-percent threshold in CAIR. EPA used a single ''bright line'' air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm. The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. EPA has subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

On August 4, 2015, EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS.[3] The modeling data released in this NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, EPA proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_X and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical support documents have been included in the docket for this SIP action. The modeling data released in the NODA on August 4, 2015 and the CSAPR Update are the most up-to-date information EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update proposal for the 2008 ozone NAAQS, the air quality modeling (1) identified locations in the U.S. where EPA expects nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (*i.e.,* nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720–30, December 3, 2015). Consistent with CSAPR, EPA proposed to use a threshold of 1 percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind nonattainment or maintenance receptors. EPA proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered ''linked'' to that receptor, and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

The results of EPA's air quality modeling with respect to New York is summarized in Table 1 below.[4] That modeling indicates that emissions from New York are linked to both nonattainment and maintenance receptors in downwind states.

TABLE 1—CSAPR UPDATE PROPOSAL CONTRIBUTIONS TO DOWNWIND NONATTAINMENT AND MAINTENANCE AREAS

State	Largest contribution to nonattainment	Largest contribution to maintenance	Downwind nonattainment receptors located in states	Downwind maintenance receptors located in states
New York	16.96 ppb	17.21 ppb	Connecticut	Connecticut and New Jersey.

[3] Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS), 80 FR 46271 (August 4, 2015).

[4] These data also appear in Table V.D–1 of the CSAPR Update proposal. See 80 FR at 75727.

As noted above, New York provided information documenting significant emission reductions that have been made throughout the state beginning in 1995 and additional emission reductions expected to occur by 2020. These controls have resulted in significant reductions in NO_X emissions in New York and undoubtedly have reduced the amount of transported pollution to other states. However, many of the emission reductions achieved through these measures were accounted for in the EPA's modeling baseline of 2011 used to evaluate interstate transport with respect to the 2008 ozone NAAQS, and further accounted for in EPA's modeling projections to 2017. Accordingly, the most recent technical analysis available to the EPA contradicts New York's conclusion that the state's SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard. Furthermore, New York did not demonstrate how these rules and data developed for different purposes provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS. Despite the substantial emissions reductions achieved by New York, we have subsequently published information and proposed an update to CSAPR that addresses the 2008 ozone NAAQS that demonstrates New York emissions still have an impact on other states.

EPA is proposing to disapprove the 2008 ozone New York Infrastructure SIP submission for both the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I). As explained above, the SIP submission does not provide an adequate technical analysis demonstrating that the state's SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state. Moreover, EPA's most recent modeling indicates that emissions from New York are projected to significantly contribute to downwind nonattainment and maintenance receptors in other states.[5]

Section 110(a)(2)(D)(i)(II)—Prong 4

In this action, EPA is proposing that New York satisfies the 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4). New York addresses visibility protection requirements for the 2008 ozone NAAQS through its Regional Haze SIP. EPA approved New York's Regional Haze SIP submittal (August 28, 2012, 77 FR 51915) as part of New York's SIP. The regional haze rule requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. Thus, New York's approved Regional Haze SIP ensures that emissions from sources within the State are not interfering with measures to protect visibility in other states.

EPA's notes that New York's Regional Haze SIP was supplemented with a FIP by EPA for three units at two sources where EPA disapproved the Best Available Retrofit Technology (BART) determinations for those units. In our August 2012 rulemaking, EPA promulgated a FIP to address our disapproval of BART determinations for Roseton Generating Station Units 1 and 2 and Danskammer Generating Station's Unit 4. 77 FR 51915 (Aug. 28, 2012). The additional emission reductions under the FIP were, however, not necessary to demonstrate that New York met its share of the emissions reductions sufficient to meet reasonable progress goals (found at 40 CFR 51.308 (d)(1)) at Class I areas affected by New York's emissions. EPA fully approved that aspect of New York's Regional Haze SIP. EPA's analysis demonstrating that New York had met its share of its regional emissions reductions can be found in the Regional Haze Technical Support document, which is available in the docket for the rule.

Since EPA's action on New York's Regional Haze Plan, the Title V permits for Danskammer and Roseton have been updated by New York to incorporate the FIP limits established by EPA. The Title V permit for Danskammer was submitted to EPA as a SIP revision on August 20, 2015.

III. What action is EPA taking?

EPA is proposing to disapprove the portion of the April 4, 2013 New York SIP submittal pertaining to the requirements of CAA section 110(a)(2)(D)(i)(I) regarding interstate transport of air pollution that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS (*i.e.,* CAA section 110 (a)(2)(D)(i)(I) (prongs 1 and 2)) in other states. Disapproval will establish a 2-year deadline for EPA to promulgate a FIP to address New York's CAA interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance unless the State submits, and EPA approves a SIP that meets these requirements (per section 110(c)(1) of the CAA). Disapproval does not start a mandatory sanctions clock pursuant to CAA section 179 because this action does not pertain to either a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

EPA is proposing approval of the portion of the April 4, 2013 New York SIP submittal pertaining to the CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4).

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by following the directions in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

a. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

c. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business

[5] New York and others interested parties have provided comments on both the NODA and proposed CSAPR Update Rule. See Docket No. EPA–HQ–OAR–2015–0500 at *http://www.regulations.gov*. We will consider these comments in final rulemaking on the CSAPR Update Rule. Even absent this data, New York's SIP failed to adequately address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule, we certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

d. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. EPA has determined that the proposed partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve certain pre-existing requirements, and to disapprove certain other pre-existing requirements, under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this proposed action.

e. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

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, as specified in Executive Order 13132, because it merely proposes to approve certain state requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

f. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

g. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply proposes to approve certain state requirements, and to disapprove certain other state requirements, for inclusion into the SIP.

h. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule 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.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

j. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to partially approve and partially disapprove certain state requirements for inclusion into the SIP under section 110(a) of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 13, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–14523 Filed 6–20–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 28

[Docket No. USCG–2003–16158]

RIN 1625–AA77

Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Coast Guard announces the withdrawal of this regulatory project, which involved possible amendments to Coast Guard regulations affecting uninspected United States commercial fishing, fish processing, and fish tender vessels. The possible amendments involved vessel stability and watertight integrity, risk awareness and minimization, personnel instruction and drill requirements, safety and survival equipment, and compliance documentation. Withdrawal of this regulatory project will allow the Coast Guard to focus on a new rulemaking project implementing 2010 and 2012 legislation that affects the commercial fishing industry.

DATES: The advance notice of proposed rulemaking on Commercial Fishing Industry Vessels, published on March 31, 2008, at 73 FR 16815, is withdrawn as of June 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. Jack Kemerer, Chief, Fishing Vessel Safety Division (CG–CVC–3), Office of Vessel Activities (CG–CVC); telephone 202–372–1249, email *Jack.A.Kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Discussion

This is one of two Coast Guard publications that appear in today's **Federal Register** and that address uninspected commercial fishing industry vessels (CFVs).

- This document, announcing the withdrawal of an older rulemaking project that we began prior to 2010.
- A notice of proposed rulemaking (NPRM) for a newer rulemaking project, implementing the 2010 and 2012 statutory mandates.

We opened this older project in 2002. Its purpose was to improve safety in the commercial fishing industry, which remains one of the most hazardous occupations in the United States. As we discussed in our March 31, 2008, advance notice of proposed rulemaking (ANPRM; 73 FR 16815),[1] although existing Coast Guard regulations had resulted in improved safety on CFVs, the improvements in safety had leveled off and we concluded that additional regulatory action was needed to achieve further fatality and vessel loss reductions. We further concluded that safety could be improved significantly through new regulations for vessel stability and watertight integrity, risk awareness and minimization, personnel instruction and drill requirements, safety and survival equipment, and compliance documentation.

Public comments on our withdrawal of the older project are welcome, but should be submitted to the docket for the newer project. In particular, we encourage comments on whether any of the regulatory ideas discussed in our March 31, 2008 ANPRM (73 FR 16815) should be the subject of future Coast Guard regulatory action. Please see Part I of the new NPRM's preamble for information on how to submit comments, and see Part VI of that preamble for a discussion of the comments we received on the ANPRM.

Legislation enacted in 2010 and 2012 has provided the Coast Guard with additional regulatory authority over CFVs. The new legislation appears in Title VI of the Coast Guard Authorization Act of 2010, Pubic Law 111–281, 124 Stat. 2959 and in sections 303 and 305 of the Coast Guard and Maritime Transportation Act of 2012, Public Law 112–213, 126 Stat. 1563–1534. The new legislation significantly changes the Coast Guard's regulatory authority over CFVs and mandates some safety provisions that were proposed in this older project. For example, the new legislation—

- Mandates new equipment requirements for many vessels, or extends existing requirements to wider vessel populations;
- Extends Coast Guard authority over Aleutian Trade fish tenders and CFVs that operate more than 3 nautical miles offshore or that carry more than 16 individuals onboard—the vessels regulated under 46 CFR part 28, subpart C;
- Requires the Coast Guard to conduct periodic mandatory dockside examinations of vessels regulated under subpart C;
- Requires new-built, smaller CFVs regulated under subpart C to meet recreational vessel safety standards;
- Requires CFVs regulated under subpart C to document maintenance, instruction, and drills;
- Requires new-built, larger, CFVs to meet loadline and vessel classification requirements, and phases in alternate safety compliance requirements for older, larger CFVs; and
- Expands the Coast Guard's authority to terminate a vessel's operation under unsafe conditions.

These requirements are discussed at greater length in the newer project's NPRM. We have decided to focus our regulatory attention on the effective implementation of the 2010 and 2012 legislation, and we therefore withdraw this older project. This notice is issued under the authority of 5 U.S.C. 552.

Dated: June 10, 2016.

Paul F. Zukunft,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 2016–14400 Filed 6–20–16; 8:45 am]

BILLING CODE 9110–04–P

[1] The ANPRM public comment period originally closed on July 29, 2008, but was reopened until December 15, 2008 (see notice, 73 FR 46912, Aug. 12, 2008). Two public meetings were held in Seattle, WA, Nov. 21 and 22, 2008.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–259; FCC 16–64]

Connect America Fund, ETC Annual Reports and Certification, Rural Broadband Experiments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several specific procedures that will apply in the Phase II auction. Pursuant to the Commission's existing rules for