

Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

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

#### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—[AMENDED]

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(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–004 to read as follows:

#### § 165.T01–004 Safety Zone: Scharfman Batmitzvah Fireworks, East River, Newtown Creek, New York

(a) *Location.* The following area is a safety zone: those waters of the East River within a 250-yard radius of the fireworks barge in approximate position 40°44'24"N 073°57'57"W (NAD 1983), approximately 300 yards from shore near Newtown Creek, New York.

(b) *Effective period.* This section is effective from 10:15 p.m. until 11:45 p.m. on Saturday, April 10, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. (2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 8, 1999.

#### R.E. Bennis,

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 99–4433 Filed 2–22–99; 8:45 am]

BILLING CODE 4910–15–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE036–1018a; FRL–6303–4]

### Approval and Promulgation of Air Quality Implementation Plans; State of Delaware—Transportation Conformity Regulation

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP). The revision consists of the addition of Delaware's transportation conformity regulation, for the purpose of assuring conformity of Delaware transportation plans, programs and projects to related requirements in the SIP. EPA is approving the transportation conformity regulation as a SIP revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 26, 1999 without further notice, unless EPA receives adverse written comment by March 25, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Robert Kramer, Chief, Energy Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Larry Budney, (215) 814–2184, or by e-mail at budney.larry@epamail.epa.gov. While clarifying questions and requests for additional information may be transmitted via e-mail, comments on this rulemaking must be submitted in writing in accordance with the procedures provided earlier in this document.

## SUPPLEMENTARY INFORMATION:

### I. Background

On April 23, 1998, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Delaware's transportation conformity regulation, Regulation No. 32—Transportation Conformity, to meet the requirements of 40 CFR Part 51, Subpart T, "Conformity to State or Federal Implementation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws". Part 51, subpart T requires states to submit to EPA a SIP revision that contains criteria and procedures for state Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs) and related state and local agencies to assess the conformity of transportation plans, programs and projects, consistent with part 51, subpart T and part 93, subpart A. This action to approve the Delaware's transportation conformity regulation as a SIP revision is being taken under Section 110 of the Clean Air Act (CAA).

### II. Summary of SIP Revision

Delaware Regulation 32—Transportation Conformity establishes policy, criteria and procedures to follow when evaluating the conformity of transportation plans, programs and projects to all applicable SIPs developed pursuant to section 110 and part D of the CAA. The regulation includes the provisions of 40 CFR 93.100–128 and meets the requirements of 40 CFR 51.390. Regulation 32 was developed through consultation between Delaware's DNREC, DOT, MPOs, the Federal Highway Administration and the U.S. Environmental Protection Agency.

The geographic coverage of Regulation 32 includes Delaware's nonattainment and maintenance areas. Under the regulation, Delaware's transportation plans, programs and projects must conform to the purpose of the SIP, and must not:

- cause or contribute to any new violation of a National Ambient Air Quality Standard (NAAQS) in any area;
- interfere with SIP provisions for maintenance of any such standard;
- increase the frequency or severity of any existing violation of such a standard in any area; or
- delay timely attainment of any such standard in any area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed.

This rule will be effective on April 26, 1999 without further notice unless EPA receives adverse comment by March 25, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect, and will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### III. Final Action

EPA is approving Delaware Regulation 32—Transportation Conformity as a SIP revision as requested by DNREC on April 23, 1998.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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 action.

#### F. Submission to Congress and the Comptroller General

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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**G. Petitions for Judicial Review**

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 April 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to approve the Delaware Regulation 32—Transportation Conformity 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, Hydrocarbons, Nitrogen oxides, Ozone.

Dated: February 5, 1999.  
**W. Michael McCabe,**  
*Regional Administrator, EPA Region III.*  
 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart I—Delaware**

2. In Section 52.420, an entry for the Delaware Transportation Conformity Regulation (Regulation No. 32) in the "EPA-Approved Regulations in the Delaware SIP" table in paragraph (c) is added to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*

(c) EPA approved regulations.

**EPA—APPROVED REGULATIONS IN THE DELAWARE SIP**

State citation	Title/subject	State effective date	EPA approval date	Comments
* Regulation No. 32	* Transportation Conformity	* April 11, 1998	* Type: February 23, 1999.	* 
* 	* 	* 	* 	* 

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MM Docket No. 98-134; RM-9271]

**Radio Broadcasting Services; Sheridan, WY and Colstrip, MT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Community Media, Inc., substitutes Channel 229C for Channel 243C3 at Sheridan, Wyoming, and modifies Station KYTI(FM)'s authorization accordingly. To accommodate the upgrade, we will also allow Brian M. Encke ("Encke") to amend his construction permit (File No. 970731MK) to specify operation on Channel 258A in lieu of Channel 229A at Colstrip, Montana. See 63 FR 40873, July 31, 1998. Channel 229C can be allotted to Sheridan in compliance with

the Commission's minimum distance separation requirements at Station WYTI(FM)'s authorized construction permit site. The coordinates for Channel 229C at Sheridan are 44-37-20 North Latitude and 107-06-57 West Longitude. Additionally, Channel 258A can be allotted at Colstrip, Montana, at Encke's authorized construction permit site. The coordinates for Channel 258A at Colstrip are 45-53-42 North Latitude and 106-36-38 West Longitude With this action, this proceeding is terminated.

**EFFECTIVE DATE:** March 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 98-134, adopted February 3, 1999, and released February 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription

Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 229C and removing Channel 243C3 at Sheridan.

3. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Channel 258A and removing Channel 229A at Colstrip.

Federal Communications Commission.

**John A. Karousos,**  
*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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