section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 1998.

**Ronald C. Recker,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 98–25673 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–05–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA172–0103; FRL–6169–1]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the California State Implementation Plan (SIP) that concerns the control of criteria pollutants.

The intended effect of proposing approval of this rule is to regulate emissions of criteria pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** Comments must be received on or before October 26, 1998.

**ADDRESSES:** Comments may be mailed to: Erica Ruhl, Permits Office,(AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Erica Ruhl, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1171.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (''SCAQMD'' or ''the District''), Rule 518.2, Federal Alternative Operating Conditions. This rule was adopted on January 12, 1996 and was submitted by the California Air Resources Board to EPA on May 10, 1996. This rule was found to be complete on July 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being proposed for approval into the SIP.

### II. Background

California state law includes provisions for the granting of variances from air pollution control requirements. When granted, a variance protects a source from enforcement under California law. Historically, EPA has not recognized variances issued pursuant to state law and has taken the position that such variances do not shield sources from enforcement under federal law. If, however, a variance is submitted to EPA and is found to meet the substantive requirements of the Clean Air Act (CAA) governing SIP revisions, it can be approved as a revision to the SIP, thereby receiving federal recognition. State and federal law have coexisted in this manner for many years.

The Clean Air Act allows EPA 18 months to act on submitted SIP revisions [2] and often, because of a large backlog, the Agency takes that long to process them. Members of the regulated community have complained that this method for recognizing variances federally is too time consuming and complex. With this rule, The South Coast Air Quality Management District (''South Coast'' or ''the District'') is proposing to make federal recognition of variances more expeditious by using the title V permitting process.

South Coast Rule 518.2 is designed to allow federal recognition of variances through a process that meets the procedural requirements pertaining to SIP revisions as well as the substantive requirements of the Clean Air Act. In a

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] 42 U.S.C. 7410(k), CAA section 110(k).

nutshell, the rule temporarily modifies the applicable requirement through the title V permit revision process rather than through the source-specific SIP revision process. The rule accomplishes this by establishing a mechanism for the creation of alternative operating conditions (AOCs), a means by which to offset any emissions in excess of the otherwise applicable requirements that would result, and provisions for EPA and public review and EPA veto of proposed AOCs.

The rule restricts the issuance of AOCs to circumstances where the following conditions exist/have been met:

- due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business;
- the closing or taking would be without a corresponding benefit in reducing air contaminants;
- the petitioner for the Alternative Operating Condition has given consideration to curtailing operations of the source in lieu of obtaining an Alternative Operating Condition;
- during the period the Alternative Operating Condition is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
- during the period the Alternative Operating Condition is in effect, the petitioner will monitor or otherwise quantify emission levels from the source and report these emission levels to the District pursuant to a schedule established by the District;
- the Alternative Operating Condition will not result in noncompliance with the requirements of any NSPS, NESHAP or other standard promulgated by the U.S. EPA under Sections 111 or 112 of the Clean Air Act, or any standard or requirement promulgated by the U.S. EPA under Titles IV or VI of the Clean Air Act, or any requirement contained in a permit issued by the U.S. EPA; and
- any emissions resulting from the Alternative Operating Condition will not, in conjunction with emissions resulting from all other Alternative Operating Conditions established by the Hearing Board and in effect at the time, cause an exceedance of the monthly or annual SIP allowance established in the rule.

In addition, the rule requires that the Alternative Operating Condition include enforceable alternative emission limits, operational requirements that result in the source being operated in a manner that reduces emissions to the maximum extent feasible, and/or monitoring, record keeping, and reporting provisions that, to the extent feasible, meet or are as stringent as the otherwise applicable requirement.

If EPA believes that the proposed AOC does not meet applicable requirements, including the requirements of Rule 518.2, it may object. Any AOC will be ineffective if it is not revised to meet EPA's objection unless EPA issues a written rescission of its objection. If EPA does not object, or if EPA's objections are resolved, the AOC constitutes a revision to the source's title V permit and a temporary modification to the applicable requirement.

## III. EPA Evaluation and Proposed Action

In determining the approvability of this rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in sections 110, 182, and 193 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

### *A. CAA Requirements Governing Approval of 518.2*

The Clean Air Act includes several provisions that apply to the approval of rules, such as Rule 518.2, that would revise the SIP by relaxing existing requirements. These provisions are discussed below.

1. States' revisions to SIPs require reasonable notice and public hearing

Congress adopted section 110(l) as part of the 1990 CAA Amendments. Entitled ''Plan Revisions,'' it provides that States may adopt revisions to an implementation plan after reasonable notice and public hearing.

2. Revisions to State Implementation Plans must be submitted to EPA for review

CAA section 110(a)(3)(C) states that when a State or the Administrator grants an exemption under certain limited circumstances,[3] neither the State nor the Administrator need revise a SIP if the plan would have met the requirements of the Act absent such exemptions. This section suggests that when a State or the Administrator grants an exemption that does not fall under one of the specified categories, the applicable implementation plan may require revision. Since a variance would almost never fall under one of the listed categories, the State must submit a plan revision for the Administrator's approval in order for it to be effective as a matter of federal law.

Section 110(i) confirms the above interpretation of section 110(a)(3)(C). It states that with certain exceptions, including a plan revision under subsection (a)(3), neither the State nor the EPA Administrator may take any action, such as an order, suspension, or plan revision, that modifies any requirement of the applicable implementation plan with respect to any stationary source.

A number of courts, including the Supreme Court, have held that both the State and the Agency must approve plan revisions in order for them to be held valid under the Act.[4] The Supreme Court has also said that the Agency needs to review proposed SIP revisions to assure that variances granted are consistent with the Act's requirement that the national standards be attained as expeditiously as practicable and maintained thereafter.[5]

3. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of the NAAQS or any other requirement included in the Act

Under section 110(l), the Administrator is not to approve a revision of a plan ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act].'' Thus this provision serves to assure that the State, in seeking a revision to its SIP, does not impair its compliance with the statutory mandates applicable to the SIP.

*a. Attainment and Maintenance of the NAAQS. In General:* Under section 110(l) EPA must conform with the overarching general requirement that it may not approve a revision to the SIP

[3] These circumstances include:

- 42 U.S.C. 7418: Control of pollution from Federal facilities. This provision permits the President to exempt any emission source of any department, agency, or instrumentality in the executive branch if he determines it to be in the paramount interest of the U.S. to do so.
- 42 U.S.C. 7413(d): Administrative assessment of civil penalties. This exemption provides that when the Administrator has made a finding that a person violated a SIP, EPA need not concurrently insist on a SIP revision.
- 42 U.S.C. 7410(f), (g): National or regional energy emergencies. Both of these subsections create limited authority to exempt sources from compliance with SIPs for limited time-periods, provided they meet specified requirements (e.g. severe national or regional energy emergency).
- 42 U.S.C. 7419: Primary nonferrous smelter orders. This section applies only to primary nonferrous smelters in existence on August 7, 1977.

[4] *See, e.g., Train* v. *NRDC*, 421 U.S. 60 (1975); *Illinois* v. *Commonwealth Edison Co.*, 490 F. Supp. 1145 (1980); *California Tahoe Regional Planning Agency* v. *Sahara Tahoe Corp.*, 504 F. Supp. 753, 768 (1980).

[5] *Train* at 91.

that would cause the SIP to fail to ensure attainment or maintenance of the NAAQS.

*Post 1990 Non-RACT Rules:* For non-RACT, post-1990 rules, section 110(l), in conjunction with section 110(a)(3)(C), requires EPA to assure that the emissions resulting from the relaxation of rule requirements will not interfere with attainment or reasonable further progress before it can approve this type of revision.

*b. Other Requirements Included in the Act—Post 1990 RACT Rules.* Section 172, which provides general rules for all nonattainment areas, requires nonattainment areas to adopt a number of measures, including rules requiring sources to apply reasonably available control technology (RACT).[6] Sections 182(a)(2)(A) and (b)(2) amplify this requirement for ozone nonattainment areas. The former section requires areas designated as nonattainment just prior to the 1990 Amendments to submit rules imposing RACT on certain existing sources of volatile organic compounds (VOC). The latter section requires all moderate and above nonattainment areas to impose similar control measures. The purpose of these requirements was essentially to insure that major sources of VOC and $NO_x$ use control measures that amount to RACT.

RACT requirements are especially relevant because they represent a significant class of requirements that nonattainment areas must adopt regardless of the other measures they have enacted as part of their plans to achieve attainment. Accordingly, section 110(l) appears to limit a State's ability to adopt revisions that would ''interfere'' with the mandate created by these provisions.

For a variance to a RACT rule put into effect after November 15, 1990, section 110(l) dictates that in the aggregate, the overall level of reductions that were to be achieved through the imposition of RACT may not be diminished.

[6]Congress has not defined RACT in the CAA, but has apparently adopted EPA's definition of RACT as articulated in a memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, Regions I–X, on ''Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas,'' section 1.a (December 9, 1976). EPA defined RACT as: ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' RACT for a particular source is to be determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.'' 44 FR 53762 (1979).

4. The modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant is prohibited, unless the modification insures equivalent or greater emission reductions of such air pollutants

CAA section 193, also known as the General Savings Clause, preserves the validity of regulations, standards, rules, notices, orders, and guidance in effect before November 15, 1990. Moreover, it prohibits the modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant, unless the modification insures equivalent or greater emission reductions of such air pollutants. In nonattainment areas, section 193 provides that EPA may not approve a variance submitted as a revision to a control requirement in effect prior to November 1990 unless the submitted revision ensures equivalent or greater emission reductions.

5. EPA may permit a relaxation of standards or a limited exemption from compliance with regulations where the effects of the relaxation or exemption are insignificant and may be deemed *de minimis*

The D.C. Circuit held that the granting of certain exemptions may be a permissible exercise of agency power to overlook circumstances that in context may be considered *de minimis.* This ability constitutes not a right to depart from the statute, but rather a tool to be used in implementing the legislative design. *Alabama Power Co.* v. *Costle,* 636 F. 2d 323, 360 (1979). Further, the Court held that:

> Unless Congress has been extraordinarily rigid, there is likely a basis or an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based on a fair reading of the specific statute, its aims and legislative history'' *Alabama Power Co.* v. *Costle,* 636 F. 2d at 360–61 (D.C. Cir 1979).

Thus, according to the *de minimis* rule laid out in *Alabama Power,* the EPA may excuse unavoidable excess emissions where these are insignificant in light of total permissible emissions and where the applicable statutory provisions are not extraordinarily rigid.

*B. EPA Evaluation of Rule 518.2*

Given the CAA provisions described above, federal recognition of state-issued variances can be problematic. First, procedurally, a variance cannot be federally recognized unless it is submitted as a revision. Section 110(a)(3)(C), 110(i), Train, and the other cases discussed above impose this requirement in order to obligate the Agency to enforce its mandate of ensuring that States are attaining or maintaining the NAAQS. Second, the Act's substantive requirements limit EPA's ability to approve variances.

In determining the approvability of this rule, EPA has evaluated the rule for consistency with the requirements of the CAA and EPA regulations, as found in sections 110, 172, 182, and 193 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

1. States' revisions to SIPs require reasonable notice and public hearing.

The District's rule adoption procedures and EPA's process for SIP action on rules provide opportunity for public comment on Rule 518.2, which sets out the process and criteria for establishing AOCs. In addition, Rule 518.2 meets the CAA section 110(l) requirements for reasonable notice and public hearing by subjecting each alternative operating condition to EPA and public review for 45 days.

2. Revisions to State Implementation Plans must be submitted to EPA for review

To meet the requirements of section 110(i), Rule 518.2 substitutes the Title V permit modification process for the source-specific SIP revision process. In effect, Rule 518.2 would be a SIP rule that allows the local district board to set temporary alternative requirements in accordance with the criteria spelled out in the rule. The State then submits the alternative limit to EPA as a proposed Title V permit modification, which by statute EPA has 45 days to review with the option of vetoing it if the modification does not meet applicable requirements. Using this procedural tool, EPA is able to meet the requirements of section 110(i) because all of the changes occur within the context of a rule that has already been approved into the SIP and each alternative operating condition will be submitted to EPA for review.

3. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of the NAAQS

Rule 518.2 was also designed to meet the requirements of sections 110(l) and 110(a)(3)(C) through the development of an emissions bank. South Coast demonstrated to EPA that when it created its base-year inventory, it used actual emission estimates from its sources, some of which were excess. Further, South Coast showed that its plan to achieve attainment, required under sections 110 and 182 of the Act, took these emissions into account. South Coast then argued that as long as the emissions from variances do not exceed the amount of ''excess emissions'' already included in the inventory, the requirements of section 110(l) should be satisfied. Accordingly, South Coast went on to quantify the amount of emissions included in the base-year inventory from excess emissions, and then created annual and monthly caps within Rule 518.2 equivalent to that inventory quantification. This approach satisfies section 110(a)(3)(C) because as long as the cap is not exceeded, no variance (or ''alternative operating condition or AOC,'' as denominated in Rule 518.2) would cause a deviation from South Coast's plan for attainment.

4. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of * * * any other requirement included in the Act

For variances sought from post-1990 RACT standards, EPA must ensure that the AOC meets the non-interference requirement of section 110(l). That is, in the aggregate, the overall level of reductions that were to be achieved through the imposition of RACT may not be diminished. This indicates that in ordinary circumstances, if RACT standards are to be relaxed, the equivalent emissions reductions must be obtained from other sources subject to RACT rules.

As stated above, unless Congress has been extraordinarily rigid, EPA has an implied *de minimis* authority to provide exemption when the burdens of regulation yield but a trivial gain. *Alabama Power,* 636 F. 2d at 360. While Congress intended EPA to ensure that nonattainment plans provide for the implementation of RACT, it left the definition of RACT to EPA's discretion. The legislative history for the 1990 Clean Air Act Amendments associated with section 172 reveals that while Congress discussed adding a stringent definition of RACT to the Act,[7] the version it ultimately adopted did not define RACT. Accordingly, EPA concludes that Congress has given it considerable flexibility in implementing the RACT program. Therefore, as long as Rule 518.2 does not significantly affect the reductions to be obtained from the aggregation of all RACT rules, Rule 518.2 passes, with respect to RACT, the non-interference requirement of Section 110(l). Turning to the rule, for all pollutants under 518.2, both the annual and monthly caps established by 518.2 equal less than one-tenth of one percent of the total stationary source emissions inventory. Since EPA anticipates that excess emissions from RACT rules will be a subset of the total excess emissions covered by the program, EPA believes that ''RACT'' excess emissions are essentially *de minimis* and do not significantly impact the reductions expected from RACT in the aggregate.

5. The modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant is prohibited, unless the modification ensures equivalent or greater emission reductions of such air pollutants

For variances sought from standards adopted prior to 1990, EPA must ensure that the AOC meets the CAA section 193 requirement that the modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant, must ensure equivalent or greater emission reductions of such air pollutants. In other words, in nonattainment areas, section 193 provides that EPA may not approve a variance submitted as a revision to a control requirement in effect prior to November 1990 unless the submitted revision ensures equivalent or greater emission reductions. Offsetting excess emissions from variances with the Rule 518.2 bank does not insure equivalent emission reductions because that bank is ''funded'' with excess emissions included in the inventory rather than from real reductions.

Under the *de minimis* rule that the D.C. Circuit established in Alabama Power, unless Congress has been extraordinarily rigid, EPA may provide an exemption for minimal increases in emissions. Congress adopted rigid language when it enacted section 193. It stated: ''No control requirement in effect * * * before November 15, 1990 in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' 42 U.S.C. 193 (emphasis added). Thus, Congress appears to have left EPA with little or no discretion to permit the modification of any pre-1990 control requirement, unless the modification ensures at least equivalent, if not greater, reductions of such air pollutant.

A review of the legislative history associated with Section 193 supports the interpretation that Congress was being quite rigid when it enacted this provision. In spite of all the other requirements designed to bring the South Coast into attainment, Congress still enacted section 193. The Report on the House Energy and Commerce Committee on the 1990 Amendments noted that the ''anti-backsliding language'' in section 193:

> [P]rohibits the relaxation of control requirements currently in effect, or required to be adopted. * * * Although many nonattainment areas are allotted additional years before they must attain ambient air quality standards under these amendments, all areas must continue to use pollution control measures already in place or scheduled to be put in place, as well as those additional measures required under this Act, in order to assure attainment as expeditiously as practical.

Because of Congress's evident intent not to allow relaxation of section 193 rules, it is possible that 518.2 would violate the requirements of section 193. However, EPA believes that the inclusion of pre-1990 rules in Rule 518.2 is justified because the variance bank in the rule is so small that any excused excess emissions would essentially be insignificant such that in effect, no relaxation has occurred. However, given the *de minimis* rule of Alabama Power, and that the language of 193 appears to be ''rigid,'' EPA is soliciting comment on this issue.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, South Coast Rule 518.2, Federal Alternative Operating Conditions is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

[7] See Report No. 100–231, Committee on Environment and Public Works (100th. Cong., 1st. Sess., 1987).

relation to relevant statutory and regulatory requirements.

### IV. Administrative Requirements

*A. Executive Orders 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, 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).

*C. 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 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 proposed 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 17, 1998.

**David P. Howekamp,**

*Regional Administrator, Region 9.*

[FR Doc. 98–25760 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–U

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part l7

**RIN 1018–AC2l**

## Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Plant Puccinellia parishii (Parish's alkali grass) as Endangered

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Fish and Wildlife Service (Service) withdraws a proposal to list the plant *Puccinellia parishii* (Parish's alkali grass) as an endangered species under the Endangered Species Act of 1973, as amended. This small annual grass occurs near desert springs, seeps, and seasonally wet areas in Apache, Coconino, and Yavapai counties, Arizona; San Bernardino County, California; San Miguel County, Colorado, and Catron, Cibola, Grant, Hidalgo, McKinley, Sandoval, and San Juan counties, New Mexico. The sites in Apache and Coconino counties, Arizona, are on the Navajo and Hopi Indian reservations. This determination is based on the recent discovery of additional populations and on new information concerning the species' habitat requirements and apparent tolerance to habitat impacts.

**ADDRESSES:** The complete file for this notice is available for public inspection, by appointment, during normal business hours at the Service's New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113.

**FOR FURTHER INFORMATION CONTACT:** Charlie McDonald at the above address, or telephone 505/346–2525.

**SUPPLEMENTARY INFORMATION:**

### Background

Parish's alkali grass was first collected by Samuel Bonsal Parish at Rabbit Springs in the Mojave Desert of California in 1915. A.S. Hitchcock described it as a new species in 1928. The genus *Puccinellia* contains about 100 species of mostly north-temperate grasses (Willis and Shaw 1973); there are 10 species in the United States (Hitchcock and Chase 1951). Most species of *Puccinellia* have polyploid chromosome numbers with only two diploid species in the United States, *P. parishii* and *P. lemonii* (Church 1949). Studies by Davis and Goldman (1993) indicate that *P. parishii* and *P. lemonii* are each genetically and morphologically distinct.

Parish's alkali grass is a dwarf, ephemeral (winter-to-spring), tufted annual. The leaves are 1–3 centimeters (cm) (0.4–1.2 inches (in)) long, firm, upright, and very narrow. Flowering stems are 2–20 cm (0.8–8.0 in) long, number 1–25 per plant, and appear from April to May. Plants grow from about March through June, but can only be positively identified during the flowering period. Plants die during the typically dry southwestern spring. By mid-July, there is usually no sign of plants at occupied sites.

Parish's alkali grass occupies alkaline springs, seeps, and seasonally wet areas that occur at the heads of drainages or on gentle slopes at elevations of 800–2200 meters (m) (2600–7200 feet (ft)). The amount of available habitat depends on the size of the wet area and can vary from a few square meters to 16 hectares (ha) (40 acres (ac)). The species requires continuously damp soils during its late winter to spring growing period. The number of plants in a population can fluctuate widely from year to year in response to growing conditions. Parish's alkali grass often grows in association with *Distichlis spicata* (salt grass), *Sporobolus airoides* (alkali sacaton), *Carex* spp. (sedge), *Scirpus* spp. (bulrush), *Juncus* spp. (rush),