

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).

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/promulgated 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.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the NO_x RACT approval for International Paper Company—Hammermill Division—Lockhaven (Clinton County) must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 1997. 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 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 7, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(115) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(115) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_x RACT, submitted on January 6, 1995 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) One letter dated January 6, 1995 from the Pennsylvania Department of Environmental Protection transmitting source specific VOC and/or NO_x RACT determinations in the form of plan approvals or operating permits for International Paper Company—Hammermill Papers Division—Lockhaven.

(B) Operating permit (OP):

(I) International Paper Company—Hammermill Papers Division—Lockhaven—OP 18-0005, effective December 27, 1994, except the expiration date of the operating permit.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 22

[DA 96-459]

Elimination of the Review Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In light of the many demands currently imposed on the Commission concerning nonhearing matters, the Commission has concluded that the proper dispatch of its business and the public interest will be best served by expanding the authority delegated to the General Counsel regarding hearing matters. These amendments change the Commission's Rules to reflect the elimination of the Review Board. These amendments also incorporate nonsubstantive, editorial changes in the Rules to reflect current circumstances.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, (202) 418-0500.

SUPPLEMENTARY INFORMATION:

[Adopted: April 29, 1996; Released: April 30, 1996]

1. By its Order, FCC 96-4, released January 23, 1996, the Commission eliminated the Review Board, effective April 24, 1996, and delegated authority to the Managing Director to make conforming rule modifications. In accordance with the Commission's action, this Order makes necessary changes, together with other nonsubstantive, editorial revisions, in Parts 0, 1, 19 and 22 of the Commission's Rules.

2. Authority for the adoption of the amendments adopted herein is contained in Sections 4(i), 4(j), 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 154(j), 155(b), 155(c) and 303(r). Because these amendments pertain to agency organization, practice and procedure, the notice and comment and effective date provisions of the Administrative Procedure Act, 5 U.S.C. §§ 553(b)(A) and 553(d), are inapplicable.

3. Accordingly, it is ordered, That, pursuant to the authority delegated by the Commission's Order, FCC 96-4, released January 23, 1996, and 47 CFR § 0.231(b), and effective upon publication in the Federal Register, Parts 0, 1, and 22 of the Rules and Regulations ARE AMENDED as set forth below.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 22

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0, 1, and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.5 [Amended]

2. Section 0.5 is amended by removing paragraph (a)(8) and redesignating paragraphs (a)(9) through (a)(15) as paragraphs (a)(8) through (a)(14) respectively, removing the words "Sections 0.11 through 0.161." in paragraph (b) and adding in their place "Sections 0.11 through 0.151.", removing the words "section 5(d)" in the first sentence of paragraph (c) and adding in their place "section 5(c)" and by removing the last sentence of paragraph (c) to read as follows:

§§ 0.31, 0.41 and 0.91 [Amended]

3. Sections 0.31(m), 0.41(h) and 0.91(d) are amended by removing the words "section 5(d)" and adding in their place "section 5(c)."

§§ 0.61 and 0.101 [Amended]

4. Sections 0.61(c) and 0.101(g) are amended by removing the phrase ", the Review Board".

§ 0.161 [Removed]

5. Section 0.161 is removed.
6. Section 0.201 is amended by removing the words "section 5(d)" and adding in their place "section 5(c)" in paragraph (a) introductory text, by revising paragraph (a)(2) and the accompanying Note and by removing the phrase "or to the Review Board" in paragraph (a)(3) to read as follows:

§ 0.201 General provisions.

(a) * * *

(2) *Delegations to rule on interlocutory matters in hearing*

proceedings. Delegations in this category are made to the Chief Administrative Law Judge.

NOTE to paragraph (a)(2): Interlocutory matters which are not delegated to the Chief Administrative Law Judge are ruled on by the presiding officer by virtue of the authority vested in him to control the course and conduct of the hearing. This authority stems from section 7 of the Administrative Procedure Act and section 409 of the Communications Act rather than from delegations of authority made pursuant to section 5(c) of the Communications Act. (See §§ 0.218 and 0.341.)

* * * * *

§ 0.204 [Amended]

7. Section 0.204 is amended by removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (c)(6) as paragraphs (c)(1) through (c)(5).

8.-9. Section 0.341(c) is revised to read as follows:

§ 0.341 Authority of administrative law judge.

* * * * *

(c) Any question which would be acted upon by the Chief Administrative Law Judge or the Commission, if it were raised by the parties, may be certified by the administrative law judge, on his own motion, to the Chief Administrative Law Judge, or the Commission, as the case may be.

* * * * *

§§ 0.361, 0.362, 0.363, 0.365 and 0.367 [Removed]

10. Sections 0.361, 0.362, 0.363, 0.365, and 0.367 are removed.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

§ 1.4 [Amended]

2. Section 1.4(b) introductory text is amended by removing the phrase "Review Board,".

§ 1.28 [Amended]

3. Section 1.28(c)(3)(ii) is amended by removing the phrase "a member of the Review Board,".

§ 1.51 [Amended]

4. Section 1.51 is amended by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3).

§ 1.101 [Amended]

5. Section 1.101 is amended by removing the words "section 5(d)" and

adding in their place the words "section 5(c)" wherever they occur.

§ 1.102 [Amended]

6. Section 1.102(a)(1) is amended by removing the phrase "the Review Board,".

7. Section 1.104(a) is amended by revising the first sentence to read as follows:

§ 1.104 Preserving the right of review; deferred consideration of application for review.

* * * * *

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final actions taken by members of the Commission's staff on nonhearing matters. * * *

* * * * *

§ 1.106 [Amended]

8. Section 1.106(a)(1) is amended by removing the second sentence.

9. Section 1.115 is amended by removing paragraph (b)(5), and the last sentence of paragraph (e)(1) and revising paragraphs (d), (e)(3) and (f) to read as follows:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in section 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(3) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.
(e) * * *

(3) Applications for review of a hearing designation order issued under delegated authority shall be deferred until exceptions to the initial decision in the case are filed, unless the presiding Administrative Law Judge certifies such an application for review to the Commission. A matter shall be certified to the Commission only if the presiding Administrative Law Judge determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation. A ruling refusing to certify a matter to the Commission is not appealable. In addition, the Commission may dismiss,

without stating reasons, an application for review that has been certified, and direct that the objections to the hearing designation order be deferred and raised when exceptions in the initial decision in the case are filed. A request to certify a matter to the Commission shall be filed with the presiding Administrative Law Judge within 5 days after the designation order is released. Any application for review authorized by the Administrative Law Judge shall be filed within 5 days after the order certifying the matter to the Commission is released or such a ruling is made. Oppositions shall be filed within 5 days after the application for review is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested.

(f) Applications for review, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-space typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see paragraph (e)(3) of this section), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see paragraph (e)(3) of this section), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

* * * * *

§ 1.209 [Amended]

10. Section 1.209 is amended by removing the phrase "the Review Board,".

§ 1.229 [Amended]

11. Section 1.229(f) is amended by removing the phrase ", the Review Board".

12. Section 1.244 is amended by removing the phrase "the Review Board or" in paragraph (c)(4) and revising paragraph (d) to read as follows:

§ 1.244 Designation of a settlement judge.

* * * * *

(d) The settlement judge shall have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

§ 1.245 [Amended]

13. Section 1.245 is amended by removing the phrase "Review Board" and "Board" and adding in their place the word "Commission" in paragraph (b)(4), removing the word "Board" and adding in its place the word "Commission" in paragraph (b)(5), and removing the word "Board" and adding in its place the word "Commission" in paragraph (b)(6).

14. Section 1.271 is revised to read as follows:

§ 1.271 Delegation of review function.

The Commission may direct, by order or rule, that its review function in a case or category of cases be performed by a commissioner, or a panel of commissioners, in which event the commissioner or panel shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§ 1.273 through 1.282.

Note: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

§ 1.273 [Amended]

15. Section 1.273 is amended by removing the phrase "or by the Review Board,".

§ 1.277 [Amended]

16. Section 1.277 is amended by removing the phrase "or member of the Review Board" in paragraph (f).

17. Section 1.291 is amended by removing paragraph (a)(2) and redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(2) through (a)(4) and revising new redesignated

paragraph (a)(4), by removing the phrase "the Review Board," in paragraph (c)(3), and revising paragraph (d) and the authority to read as follows:

§ 1.291 General provisions.

(a) * * *

(4) Each interlocutory pleading shall indicate in its caption whether the pleading is to be acted upon by the Commission, the Chief Administrative Law Judge, or the presiding officer. If the pleading is to be acted upon by the presiding officer, he shall be identified by name.

* * * * *

(d) No initial decision shall become effective under § 1.276(e) until all interlocutory matters pending before the Commission in the proceeding at the time the initial decision is issued have been disposed of and the time allowed for appeal from interlocutory rulings of the presiding officer has expired.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

18. The authority following § 1.296 is revised to read as follows:

§ 1.296 Service.

* * * * *

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

§ 1.301 [Amended]

19. Section 1.301(c)(6) is amended by removing the words "Review Board" and adding in their place the word "Commission".

20. Section 1.302 is amended by removing the phrase "or the Review Board" in paragraph (b) wherever it occurs and revising paragraph (f) to read as follows:

§ 1.302 Appeal from presiding officer's final ruling; effective date of ruling.

* * * * *

(f) The Commission will act on the appeal.

* * * * *

§ 1.311 [Amended]

21. Section 1.311(d) is amended by removing the phrase "the Review Board,".

§ 1.1319 [Amended]

22. Section 1.1319(a)(2) is amended by removing the phrase "the Review Board and/or".

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.935(f)(5) is revised to read as follows:

§ 22.935 Procedures for comparative renewal proceedings.

* * * * *

(f) * * *

(5) Parties will have 30 days in which to file exceptions to the Initial Decision.

[FR Doc. 97-1699 Filed 1-28-97; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB88

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Plants and Threatened Status for Four Plants From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for *Astragalus brauntonii* (Braunton's milk-vetch) and *Pentachaeta lyonii* (Lyon's pentachaeta) and threatened status for *Dudleya abramsii* ssp. *parva* (Conejo dudleya), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), and *Dudleya verityi* (Verity's dudleya). These taxa occur in grassland, chaparral, or coastal sage scrub habitats in the mountains surrounding the Los Angeles basin, California. The six plants are threatened by one or more of the following—urban development, recreational activities, alteration of fire cycles and fire suppression activities, overcollecting, habitat fragmentation and degradation, and competition from invasive weeds. Several of the plants are also threatened by naturally occurring events by virtue of their small numbers and population sizes. This rule implements the protection and recovery provisions provided by the Endangered Species Act (Act) for these plants.

EFFECTIVE DATE: February 28, 1997.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor,

Ventura Field Office (see ADDRESSES section) (telephone: 805/644-1766; facsimile: 805/644-3458).

SUPPLEMENTARY INFORMATION:

Background

Astragalus brauntonii (Braunton's milk-vetch), *Pentachaeta lyonii* (Lyon's pentachaeta), *Dudleya abramsii* ssp. *parva* (Conejo dudleya), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), and *Dudleya verityi* (Verity's dudleya) are located around the Los Angeles basin, California. The lowland plains are bounded by mountains and hills that expose Mesozoic or older basement rocks and sedimentary and igneous rocks of late Cretaceous to late Pleistocene age. The southern portion of the Transverse Ranges forms the northern and western boundary of the basin and includes the San Gabriel Mountains, the Santa Monica Mountains, and the Simi Hills. The Santa Ana Mountains at the northern end of the Peninsular Ranges border the southern region of the basin.

Strong substrate preferences are exhibited by all of the taxa included in this rule. Populations of *Astragalus brauntonii* are only known to occur on small limestone outcrops. *Pentachaeta lyonii* is found on clay soils in ecotonal areas between grasslands and shrublands. All of the dudleyas occur on volcanic or sandstone rock outcrops with specific microhabitat characteristics. *Dudleya verityi* and *Dudleya abramsii* ssp. *parva* occur exclusively on the outcrops and soils derived from the Miocene Conejo volcanics at the western end of the Simi Hills and the Santa Monica Mountains. *Dudleya cymosa* ssp. *marcescens* occupies the lower slopes of volcanic cliffs in canyons that have perennial moisture. *Dudleya cymosa* ssp. *ovatifolia* is found on rock outcrops with forms specific to sedimentary conglomerate or volcanic breccia (Nakai 1987, Natural Diversity Data Base (NDDB) 1994).

Most of the major habitat types in which these rare plants occur are considered sensitive by the botanical community in California. Large scale loss of habitat, fragmentation, and alteration of natural ecosystem processes have resulted from development, fire suppression activities, cattle grazing, and vegetation type conversion by agricultural practices (Schoenherr 1989). *Astragalus brauntonii* is associated with the fire-dependent chaparral habitat dominated by *Adenostoma fasciculatum* (chamise),

Yucca whipplei (yucca), and the rare *Cupressus forbesii* (Tecate cypress). *Dudleya abramsii* ssp. *parva* commonly occurs in a cactus-dominated coastal sage scrub, which provides nesting habitat for the rare Bell's sage sparrow (*Amphispiza belli belli*) and rufous-crowned sparrow (*Amophila ruficeps*). Most of the coastal sage scrub where *Dudleya verityi* occurs is dominated by *Artemisia californica* (coastal sagebrush), *Eriogonum fasciculatum* (wild buckwheat), *Salvia leucophylla* (purple sage), and occasionally *Coreopsis gigantea* (giant coreopsis). *Dudleya verityi* is associated with the rare *Eriogonum crocatum* (Conejo buckwheat) and *Dudleya blochmaniae* ssp. *blochmaniae* (Blochman's dudleya). A unique lichen flora of over 70 species is associated with *Dudleya verityi* and coastal sage scrub habitat on Conejo Mountain (Riefner 1992). The grassland habitat in which *Pentachaeta lyonii* occurs is largely dominated by introduced old world grass and herb genera such as *Avena*, *Brassica*, *Bromus*, *Centaurea*, and *Erodium*. Several native plant species are present in these grasslands, including the bunch grass *Nassella pulchra*.

Discussion of the Six Plant Taxa

Astragalus brauntonii was first collected in 1901 by Ernest Braunton near Sherman (now called West Hollywood), Los Angeles County. Samuel B. Parish described it two years later as *Astragalus brauntonii*. In 1929, Per Axel Rydberg published the name *Brachyphragma brauntonii* in his revision of the genus; however, this name was not recognized by most botanists. Rupert Barneby recognized the name *Astragalus brauntonii* in his *Atlas of North American Astragalus* (Barneby 1964). *Astragalus brauntonii* is included in the current edition of *The Jepson Manual* (Spellenberg 1993).

Astragalus brauntonii is a robust, short-lived perennial in the pea family (Fabaceae). It is one of the tallest members of the genus, reaching a height of 15 decimeters (dm) (60 inches (in.)) and is covered with woolly hairs. A thick taproot and woody basal stem gives rise to several to many stems. The 4 to 16 centimeter (cm) (1.5 to 6.5 in.) long leaves are pinnately compound with 25 to 33 oblong-ovate, abruptly pointed leaflets. The light purple flowers are clustered in 35- to 60-flowered racemes 4 to 14 cm (1.5 to 5.5 in.) long. The beaked, slightly curved pods are oblong-ovoid and 6.5 to 9 millimeters (mm) (2.5 to 3.5 in.) long. *Astragalus brauntonii* is readily distinguished from the only other perennial species of *Astragalus* in the