

## DEPARTMENT OF JUSTICE

## 28 CFR Part 16

[AGA/A Order No. 142-97]

## Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** The Department of Justice is exempting a Privacy Act system of records from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), (8) and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled "Law Enforcement Support Center (LESC) Database, JUSTICE/INS-023." Information in this system relates to inquiries via criminal justice agencies of immigrants who have the status of legal permanent resident and/or United States citizen and who are either the subject of an investigation, or have been arrested, charged and/or convicted for criminal or civil offenses which could render them deportable or excludable under the provisions of immigration and nationality laws. The exemptions are necessary to avoid interference with law enforcement operations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory or other law enforcement process such as, deportation/expulsion proceedings.

EFFECTIVE DATE: August 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Patricia E. Neely—202-616-0178.

**SUPPLEMENTARY INFORMATION:** On May 14, 1997 (62 FR 26458) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "significant economic impact on a substantial number of small entities."

## List of Subjects in Part 15

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: July 31, 1997.

Michael J. Roper,

Acting Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General

Order No. 793-78, 28 CFR part 16 is amended as follows.

1. The authority for Part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. 28 CFR 16.99 is amended by adding paragraphs (i) and (j) to read as follows:<sup>1</sup>

**§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.**

\* \* \* \* \*

(i) The Law Enforcement Support Center Database (LESC) (Justice/INS-023) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), (8) and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(j) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation or other law enforcement operation such as deportation or exclusion. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring

investigations to be continuously reinvestigated.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 97-21856 Filed 8-18-97; 8:45 am]

BILLING CODE 4410-10-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

[TX60-1-7269; FRL-5870-1]

**Clean Air Act (Act) Approval and Promulgation of State Implementation Plans (SIP); Texas; Prevention of Significant Deterioration (PSD) Increments for Particulate Matter Less Than 10 Microns in Diameter (PM-10); Designation of Areas for Air Quality Planning Purposes**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** This action approves changes to the PSD permitting regulations which were submitted as a revision to the SIP for Texas and approves the State's recodification of its PSD provisions. This SIP revision replaces the PSD increments for total suspended particulate (TSP) matter with increments for PM-10. In conjunction with this approval, EPA is also removing the TSP area designation tables in 40 CFR part 81 for Texas. With the PM-10 increments becoming effective in Texas, the TSP area designations no longer serve any useful purpose relative to PSD.

**DATES:** This action is effective on October 20, 1997 unless notice is postmarked by September 18, 1997 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

<sup>1</sup> Paragraphs (g) and (h) were published in the **Federal Register** on June 25, 1997 (62 FR 34169).

**ADDRESSES:** Written comments on this action should be addressed to Mrs. Jole C. Luehrs, Chief, Air Permits Section (6PD-R), at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, First Interstate Bank Building, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Reverdie Daron Page, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7222.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The EPA replaced the TSP increments with increments for PM-10 on June 3, 1993 (58 FR 31622). The EPA promulgated this revision to the Federal PSD permitting regulations in 40 CFR 52.21, as well as to the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. The EPA or its delegated State programs were required to begin implementation of the PM-10 increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (including Texas) will be the date on which EPA approves each revised State PSD program containing the PM-10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with a SIP-approved PSD program was required to adopt the PM-10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM-10 increments, see the June 3, 1993, **Federal Register** document.

In order to address the PM-10 increments, the State of Texas revised 30 Texas Administrative Code (TAC) Chapter 116, Section 116.160(a). The EPA has reviewed this revision and has

found that the revision addresses all of the required regulatory revisions for PM-10 increments.

The EPA originally approved the Texas PSD SIP in the **Federal Register** on June 24, 1992 (57 FR 28093). This approval gave the Texas Natural Resource Conservation Commission (TNRCC) (formerly the Texas Air Control Board (TACB)) direct authority, as of July 24, 1992, to issue and enforce PSD permits in most areas of Texas, with the limitations described in the notice. The State incorporated by reference, with certain exceptions, the regulations in 40 CFR 52.21, as they existed on August 1, 1987, into Section 116.3(a)(13) of TACB Regulation VI, "Control of Air Pollution by Permits for New Construction or Modification." At the time the revisions were adopted by TACB and approved by EPA, Regulation VI was codified in Chapter 116 of Title 31 of the TAC.

The Governor of Texas submitted to EPA on February 18, 1991, a revision to Section 116.3(a)(13) of TACB Regulation VI. This revision changed the date in Section 116.3(a)(13) from "August 1, 1987" to "October 17, 1988" to reflect the amendments to 40 CFR 52.21 as promulgated in the **Federal Register** on October 17, 1988 (53 FR 40656) (Nitrogen Oxides PSD increments). The EPA approved this revision to Section 116.3(a)(13) on September 9, 1994 (59 FR 46556).

The Governor of Texas submitted to EPA on May 13, 1992, a revision to redesignate Section 116.3(a)(13) to Section 116.3(a)(11), with minor changes thereto. The EPA approved this revision on September 27, 1995 (60 FR 49788).

On August 16, 1993, the TACB repealed Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification," and adopted a recodified and revised Regulation VI (31 TAC Chapter 116) with the same name. The recodified and revised Regulation VI was submitted to EPA as a revision to the Texas SIP on August 31, 1993.

The TACB merged with the former Texas Water Commission to become the Texas Natural Resource Conservation Commission (TNRCC) on September 1, 1993. The TACB air quality control regulations were transferred from Title 31 of the Texas Administrative Code (31 TAC) to Title 30 of the Texas Administrative Code (30 TAC). The designation for Regulation VI thus changed from 31 TAC Chapter 116 to 30 TAC Chapter 116.

##### **II. State Submittal**

In this action, EPA is approving the recodified and revised Regulation VI only for the PSD portion of the new regulation. The EPA is also approving for the PSD SIP the transfer of Regulation 31 TAC to 30 TAC. The rest of the recodified regulation VI and its transfer to 30 TAC will be acted upon in a separate notice.

The Act as amended in 1990 requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action. See section 110(k)(1) and 57 FR 13565, April 16, 1992. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

Public hearings to entertain public comment for the recodified PSD rules were held by Texas on March 16 and 31, 1993. After the public hearings, the recodification was adopted by the State on August 16, 1993. That recodification was formally submitted to EPA for approval as a SIP revision on August 31, 1993. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter was forwarded to Texas, on January 5, 1994, indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

A public hearing to entertain public comment for the PM-10 increment PSD rule was held by Texas on January 19, 1995. After the public hearing, the rule revision was adopted by the State on March 1, 1995. The revision was formally submitted to EPA for approval on July 12, 1995. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal,

in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter was forwarded to Texas, on October 20, 1995, indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

### III. Analysis of State Submittal

The following table summarizes EPA's evaluation of each section submitted and acted upon in this action. The table cross-references the submitted sections of the recodified rules

pertaining to Prevention of Significant Deterioration to the previous rule.

Summary of Submittals Pertaining to Recodification of Regulation VI and "Prevention of Significant Deterioration"

Recodified rule	Date submitted	Title	Old rule	Comments
116.160(a) .....	August 31, 1993 .....	Prevention of Significant Deterioration Requirements.	116.3(a)(11) .....	(a)
116.160(b) .....				(a)
116.160(c) .....				(a)
116.160(d) .....				(a)
116.160(a) .....	July 12, 1995 .....	PSD Requirements .....	116.3(a)(11) .....	Replaced Effective Date to incorporate PSD PM10 increments.
116.161 .....	August 31, 1993 .....	Source Located in an Attainment Area with a Greater than <i>de minimis</i> impact.	116.3(a)(9) .....	(c)
116.162 .....	August 31, 1993 .....	Evaluation of Air Quality Impacts.	116.3(a)(12) .....	(a)
116.162 (1)–(4) .....				
116.163(a) .....	August 31, 1993 .....	Prevention of Significant Deterioration Permit Fees.	116.11(b)(2)(A) .....	(a)
116.163(b) .....			116.11(b)(2)(B) .....	(a)
116.163(c) .....			New .....	(b, c)
116.163(d) .....			116.11(b)(3) .....	(a)
116.163(e) .....			116.11(b)(4) .....	(a)
116.141(a) .....	August 31, 1993 .....	Determination of Fees .....	116.11(b)(1) .....	(a)
116.141(c) .....			116.11(b)(3) .....	(a)
116.141(d) .....			116.11(b)(4) .....	(a)
116.141(e) .....			New .....	(b, c)
116.010 .....	August 31, 1993 .....	Definition— <i>de minimis</i> impact.	General Rules 101.1 .....	(a)

<sup>a</sup>No substantive changes in recodified rule.

<sup>b</sup>New rule.

<sup>c</sup>EPA has determined is consistent with the Act.

#### PSD Program as Submitted August 31, 1993

As part of the recodification SIP submittal, on August 31, 1993, Texas submitted Sections 116.010, 116.160, 116.161, and 116.162, addressing PSD and Sections 116.163 and 116.141 relating to the determination of fees.

Sections 116.160 (a)–(d) replace Section 116.3(a)(11) without substantive changes. Section 116.3(a)(11) is the PSD requirement and was approved June 24, 1992, as 116.3(a)(13) (57 FR 28093), EPA approved revisions to Section 116.3(a)(13) to incorporate the NO<sub>x</sub> increments on September 9, 1994 (59 FR 46556), and EPA approved the redesignation to Section 116.3(a)(11) (60 FR 49788) with minor revisions on September 27, 1995.

Section 116.161 replaces Section 116.3(a)(9) (A)–(C). Section 116.161 provides that if a source is located in an area classified as attainment or unclassifiable for any National Ambient Air Quality Standard (NAAQS), then TNRRCC will not issue a permit to any new major stationary source or major modification to the source if the ambient air impacts would cause or contribute to a violation of any NAAQS. A major source or major modification

will be considered to cause or contribute to a violation of a NAAQS when the emissions from such source or modification would, at a minimum, exceed the *de minimis* impact levels specified in Section 116.010 at any locality that is designated to be nonattainment or is predicted to be nonattainment for the applicable standard. The submitted revision conforms to the requirements of 40 CFR 51.165(b). The EPA approved a similar provision as Section 116.3(a)(14) on July 10, 1981 (46 FR 35643). The EPA subsequently approved the redesignation to Section 116.3(a)(9) and revisions thereto on September 27, 1995 (60 FR 49788). This new language mirrors the Federal rule and therefore meets the requirements of 40 CFR 51.165(b) and the Act.

The definition of *de minimis* impact in Section 116.010 is being included with this recodification because Section 116.161 relies on this definition for applicability thresholds. Section 116.010, definition of *de minimis* impact replaces the same definition in Section 101.1, of the General Rules without substantive changes. The EPA approved the definition of *de minimis*

impact in Section 101.1 on September 10, 1991 (56 FR 46117).

Section 116.162 introductory paragraph and Sections 116.162 (1)–(4) replace Section 116.3(a)(12) without substantive changes. Section 116.3(a)(12) Evaluation of Air Quality Impacts was approved as 116.3(a)(14) on November 22, 1988 (53 FR 47189). The EPA approved the redesignation to Section 116.3(a)(12) with minor revisions on September 27, 1995 (60 FR 49788).

In the recodification of Chapter 116, Texas divided Section 116.11(b) Determination of Fees into two parts. Section 116.163 applies to projects for which PSD does apply and Sections 116.141 applies to projects for which PSD does not apply.

Section 116.163 (a)–(b), and (d)–(e) replaces Section 116.11(b)(2) (A)–(B) and 116.11(b) (3)–(4) without substantive changes except for an increase in permitting fees and a special rate for Federal facilities. Section 116.163(c) merely states that a New Source Review permit fee is not required in addition to the PSD fee.

Sections 116.141 (a), (c), and (d) replace subsections 116.11(b) (1), (3), and (4) without substantive changes

except for an increase in permitting fees and a special rate for Federal facilities. Section 116.141(e) establishes a minimum fee.

The EPA approved Sections 116.11(b)(1)–(4) on November 24, 1986 (51 FR 42223) and revisions thereto on September 27, 1995 (60 FR 49788). The EPA approved Subparagraphs 116.11(b)(3) (A)–(B) on August 15, 1983 (48 FR 36819). The EPA has determined that Sections 116.163(c) and 116.141(e) are consistent with the Act.

It is EPA's position that the recodified PSD rules meet 40 CFR 51.166 and the Act.

#### *PSD Program as Submitted July 12, 1995*

The Governor of Texas submitted a revision to 30 TAC Chapter 116, Section 116.160(a) on July 12, 1995, which incorporates the requirements of 40 CFR 52.21 as revised by EPA on June 3, 1993 (effective June 3, 1994) to reflect the PM-10 increment revision as promulgated in the **Federal Register** on June 3, 1993. This revision enables the State of Texas, with certain exceptions, to implement and enforce the Federal PSD rules, including the PSD PM-10 increments. The exceptions are the same as those discussed in the action published June 24, 1992, approving the Texas PSD SIP. The EPA has determined that the State of Texas has adequately revised its existing PSD SIP to incorporate the provisions of the PM-10 increments promulgated by EPA on June 3, 1993.

#### **IV. TSP Area Deletions**

Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which: (1) Do not meet a NAAQS (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In the original list of all area designations pursuant to section 107(d)(2) (section 107 areas), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

The EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM-10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM-10 promulgated at that time.<sup>1</sup> States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM-10 increments replaced the TSP increments. With the State adoption and implementation of the PM-10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM-10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., "PSD areas," and to provide the geographic link necessary for implementation of the PM-10 increments.<sup>2</sup>

Thus, in the June 3, 1993, **Federal Register** document in which EPA promulgated the PM-10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM-10 increments. For delegated PSD programs or in States where EPA administers the PSD program, the TSP area designations were to be deleted after the PM-10 increments became effective in those States (i.e., June 3, 1994). In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM-10 NAAQS.

As stated above, Texas has adopted and submitted adequate PSD revisions

<sup>1</sup> The EPA did not promulgate new PM-10 increments simultaneously with the promulgation of the PM-10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments "not more than 2 years after the date of promulgation of \* \* \* standards." Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

<sup>2</sup> It should be noted that 40 CFR part 81 does not presently list all section 107 areas for PM-10. Only those areas designated "nonattainment" appear in the State listings. This is because under the listing published by EPA in the **Federal Register** on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM-10 nonattainment areas designated by operation of law, EPA did not include a new PM-10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas not designated nonattainment for PM-10 by operation of law, are designated unclassifiable. The PM-10 increments apply in any area designated unclassifiable for PM-10.

for PM-10 increments. In addition, Texas has no TSP areas designated as nonattainment. All existing PM control measures in the Texas SIP remain in effect to ensure continuing attainment and maintenance of the PM-10 standard throughout the State. Thus, deletion of the TSP area designations will not result in relaxation of any PM controls that would impact the PM-10 NAAQS. Furthermore, Texas has one PM-10 nonattainment area (the City of El Paso) identified in the PM-10 designation table in 40 CFR part 81 for Texas. The EPA approved the PM-10 SIP for El Paso on January 18, 1994 (59 FR 2532). Since the State has adopted, and EPA has approved, the PM-10 SIP for El Paso, EPA believes it is appropriate at this time to delete the State's TSP designation tables in 40 CFR 81.344.

Consistent with the above discussion, EPA is deleting all of the State's existing TSP designation tables in 40 CFR 81.344 and placing these section 107 areas into the PM-10 area designation table in 40 CFR 81.344, consistent with the June 3, 1993 **Federal Register**.

#### **V. Final Action**

The EPA is approving the transfer from 31 TAC to 30 TAC Sections 116.010; 116.160; 116.161; 116.162; 116.163; addressing part C of Title I of the 1990 Clean Air Act which requires each SIP to address the requirements of PSD, and 31 TAC Section 116.141 (a), (c), (d), and (e) relating to the determination of fees, as submitted on August 31, 1993, and revisions to 30 TAC Section 116.160(a) submitted on July 12, 1995. Sections 116.160, 116.161, 116.162, 116.163 (a)–(b), 116.163(d), and 116.163(e), as submitted August 31, 1993, replace, without substantive changes except for an increase in permitting fees and a special rate for Federal facilities, respectively: 116.3(a)(11), 116.3(a)(9), 116.3(a)(12), 116.11(b)(2) (A)–(B), 116.11(b)(3), and 116.11(b)(4). Sections 116.141 (a), (c), and (d) replace without substantive changes except for an increase in permitting fees and a special rate for Federal facilities, respectively subsections 116.11(b) (1), (3), and (4). Sections 116.163(c) and 116.141(e) are new. Consistent with the June 3, 1993, **Federal Register** and for the reasons described above, EPA is deleting the State's existing TSP area designation tables and revising the PM-10 area designation table in 40 CFR 81.344.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register**

publication, EPA is proposing to approve these SIP revisions should adverse or critical comments be filed. This action will be effective October 20, 1997 unless, by September 18, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 20, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## VI. Administrative Requirements

### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

### 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. See 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.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because neither the Federal SIP approval nor the deletion of the TSP

tables impose any new requirements, I certify 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *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, 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.

The EPA has determined that the approval action 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 action approves preexisting 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.

### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

### E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 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

### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 18, 1997.

**Jerry Clifford,**

*Acting Regional Administrator (6RA).*

Part 52, 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 SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(102) to read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(102) The Governor of Texas submitted on August 31, 1993, and July 12, 1995, revisions to the Texas State Implementation Plan for Prevention of Significant Deterioration adopted by TACB on August 16, 1993, and by Texas Natural Resource Conservation Commission (TNRCC) on March 1, 1995. The revisions adopted on August 16, 1993, were a comprehensive recodification of and revisions to the existing requirements. The revision adopted on March 1, 1995, amended the recodified Section 116.160(a) to incorporate the PM-10 PSD increments.

(i) Incorporation by reference.

(A) TACB Board Order Number 93-17, as adopted by TACB on August 16, 1993.

(B) Recodified and revised Regulation VI—Control of Air Pollution by Permits for New Construction or Modification, as adopted by TACB on August 16, 1993, Repeal of 31 TAC Sections 116.3(a)(9), 116.3(a)(11), 116.3(a)(12),

116.3(14), and 116.11(b) (1)–(4); New Sections 116.160 introductory paragraph, 116.160 (a)–(d), 116.161, 116.162 introductory paragraph, 116.162 (1)–(4), 116.163 (a)–(e) and 116.141 (a),(c)–(e).

(C) Revisions to Regulation VI—Control of Air Pollution by Permits for New Construction or Modification: as adopted by Texas Natural Resource Conservation Commission (TNRCC) on August 16, 1993. New Section 116.010, definition of *de minimis* impact.

(D) Revision to General Rules, as adopted by Texas Natural Resource Conservation Commission (TNRCC) on August 16, 1993, Repeal Section 101.1 definition of *de minimis* impact.

(E) Texas Natural Resource Conservation Commission (TNRCC) Commission Order Docket Number 95–0276–RUL, as adopted by Texas Natural Resource Conservation Commission (TNRCC) on March 1, 1995.

(F) Revision to Regulation VI—Control of Air Pollution by Permits for

New Construction or Modification, revised 30 TAC Section 116.160(a), as adopted by Texas Natural Resource Conservation Commission (TNRCC) on March 1, 1995.

\* \* \* \* \*

3. Section 52.2303(a) is revised to read as follows:

**§ 52.2303 Significant deterioration of air quality.**

(a) The plan submitted by the Governor of Texas on December 11, 1985 (as adopted by TACB on July 26, 1985), October 26, 1987 (as revised by TACB on July 17, 1987), September 29, 1988 (as revised by TACB on July 15, 1988), February 18, 1991 (as revised by TACB on December 14, 1990), May 13, 1992 (as revised by TACB on May 8, 1992), August 31, 1993 (as recodified, revised and adopted by TACB on August 16, 1993), July 12, 1995 (as revised on March 1, 1995) containing Regulation VI—Control of Air Pollution for New Construction or Modification,

Sections 116.010, 116.141 and 116.160–116.163; the Prevention of Significant Deterioration (PSD) Supplement document, submitted by the Governor on October 26, 1987 (as adopted by TACB on July 17, 1987); revision to General Rules, Rule 101.20(3), submitted by the Governor on December 11, 1985 (as adopted by TACB on July 26, 1985), is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality.

\* \* \* \* \*

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**§ 81.344 [Amended]**

2. Section 81.344 is amended by removing the table for TSP and revising the PM–10 table to read as follows:

**§ 81.344 Texas.**

\* \* \* \* \*

**TEXAS-PM–10 NONATTAINMENT AREAS**

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
AQCR 022 .....	.....	Unclassifiable .....	.....	Moderate.
AQCR 106 .....	.....	Unclassifiable .....	.....	
AQCR 153:				
El Paso County—city of El Paso .....	11/15/90	Nonattainment .....	11/15/90	
3 limited areas in El Paso County .....	.....	Unclassifiable .....	.....	
(El Paso 1, 2, and 4).				
1 limited area in El Paso County .....	.....	Unclassifiable .....	.....	
(El Paso 3)				
1 limited area in El Paso County .....	.....	Unclassifiable .....	.....	
(El Paso 5).				
Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 210 .....	.....	Unclassifiable .....	.....	
AQCR 211:				
Lubbock County—That portion of the city of Lubbock enclosed by Loop .....	.....	Unclassifiable .....	.....	
289 highway.				
Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 212 .....	.....	Unclassifiable .....	.....	
AQCR 213:				
2 limited areas in Cameron County .....	.....	Unclassifiable .....	.....	
(Cameron 1 and 2) .....	.....	Unclassifiable .....	.....	
Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 214:				
2 limited areas in Nueces County .....	.....	Unclassifiable .....	.....	
(Nueces 1 and 2).				
Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 215:				
3 limited areas in Dallas County .....	.....	Unclassifiable .....	.....	
(Dallas 1, 2, and 3).				
1 limited area in Tarrant County .....	.....	Unclassifiable .....	.....	
(Tarrant 1).				
3 limited areas in Tarrant County .....	.....	Unclassifiable .....	.....	
(Tarrant 2, 3, and 4)				
Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 216:				
1 limited area in Harris County .....	.....	Unclassifiable .....	.....	
(Houston 1).				
1 limited area in Harris County .....	.....	Unclassifiable .....	.....	

## TEXAS-PM-10 NONATTAINMENT AREAS—Continued

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
(Houston 2). 1 limited area in Harris County ..... (Aldine). 1 limited area in Harris County ..... 1 limited area in Galveston County ..... Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 217: 1 limited area in Bexar County ..... Remainder of AQCR .....	.....	Unclassifiable .....	.....	
AQCR 218 .....	.....	Unclassifiable .....	.....	

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 97-21803 Filed 8-18-97; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300528; FRL-5737-1]

RIN 2070-AB78

### Avermectin; Pesticide Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for the combined residues of avermectin B<sub>1</sub> and its delta-8,9-isomer in or on celeriac and spinach. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on celeriac and spinach. This regulation establishes a maximum permissible level for the combined residues of avermectin B<sub>1</sub> and its delta-8,9-isomer in or on these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on July 31, 1998.

**DATES:** This regulation is effective August 19, 1997. Objections and requests for hearings must be received by EPA on or before October 20, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP-300528], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing

requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300528], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300528]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Daniel Rosenblatt, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9375, e-mail: rosenblatt.dan@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the miticide avermectin, in or on celeriac at 0.05 parts per million (ppm) and spinach at 0.05 ppm. These tolerances will expire and are revoked on July 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will