

of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(h) Commencing January 1, 2009, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

Dated: March 25, 2005

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0020; FRL-7895-9]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Low-Emission Diesel Fuel Compliance Date

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

**ACTION:** Final approval.

**SUMMARY:** The EPA is granting final approval to a revision to the Texas Low Emission Diesel (TXLED) fuel program State Implementation Plan (SIP) that applies in 110 counties in the eastern and central parts of Texas. Under section 553(d)(1) of the Administrative Procedure Act, EPA is making this action effective upon publication because it relieves a restriction.

**DATES:** This rule is effective April 6, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06-OAR-2005-TX-0020. All documents in the docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>, once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367; fax number 214-665-7263; e-mail address [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

#### Outline

- I. What Action Is EPA Taking?
- II. What Is the Background for This Action?
- III. What Comments Were Received During the Public Comment Period, February 24, 2005, to March 28, 2005?
- IV. Final Action
- V. Statutory and Executive Order Reviews

## I. What Action Is EPA Taking?

Today we are approving the compliance date changes found in the March 9, 2005, TXLED SIP revision submitted by the State of Texas. We are approving the phased schedule for compliance which extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

## II. What Is the Background for This Action?

We approved the original TXLED rule on November 14, 2001, (66 FR 57196) as part of the Texas SIP and also found that it was relied upon for demonstrating attainment in the Houston-Galveston Attainment Demonstration SIP. On December 15, 2004, the Texas Commission on Environmental Quality (TCEQ) Commissioners proposed to revise the TXLED rule. Among other revisions, the commission proposed to extend the compliance date from April 1, 2005 to October 1, 2005. The commission proposed this extension because of concern about product availability by the current compliance date. On February 16, 2005 the Executive Director of the TCEQ submitted a letter to EPA requesting parallel processing of the compliance date portion of the SIP revision for TXLED.

On February 24, 2005, we proposed approval, through parallel processing, of a revision to the SIP that would change the compliance date for TXLED fuel from April 1, 2005, to October 1, 2005, consistent with a proposed revision to the state rule that the state had noticed for public hearing. In addition, we proposed approval and requested comments on a refinement to the State's proposed revision that the state had subsequently indicated that it was considering. The refinement would extend the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

The commission adopted revisions to the TXLED SIP on March 9, 2005. The revision was submitted to EPA on March 23, 2005. The submitted revision is consistent with our proposal. It

extends the compliance date from April 1, 2005 to October 1, 2005 for producers and importers, from April 1, 2005 to November 15, 2005 for bulk plant distribution facilities, and from April 1, 2005 to January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

### III. What Comments Were Received During the Public Comment Period, February 24, 2005, to March 28, 2005?

We received comments in support of this rulemaking from ExxonMobil Refining and Supply, and Shell Oil Products, US. No adverse comments were received.

### IV. Final Action

We are granting final approval to the compliance date change in the TXLED SIP revision. The compliance dates approved are October 1, 2005 for producers and importers, November 15, 2005 for bulk plant distribution facilities, and January 1, 2006 for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(1) allows a rule to take effect earlier if it relieves a restriction. We are making this action effective upon publication because it relieves a restriction.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2005. 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, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2005.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7402 *et seq.*

### Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under chapter 114, subchapter H, Division 2—Low Emission Diesel, section 114.319 to read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

## EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles</b>				
*	*	*	*	*
<b>Subchapter H—Low Emission Fuels</b>				
*	*	*	*	*
<b>Division 2—Low Emission Diesel</b>				
*	*	*	*	*
Section 114.319 .....	Affected Counties and Compliance Dates ...	03/09/05 ....	04/06/05 and <b>Federal Register</b> page number].	
*	*	*	*	*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 174

[OPP–2005–0073; FRL–7704–4]

#### **Bacillus thuringiensis Modified Cry3A Protein (mCry3A) and the Genetic Material Necessary for its Production in Corn; Temporary Exemption From the Requirement of a Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary/tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn. The temporary tolerance

exemption will expire on October 15, 2006.

**DATES:** This regulation is effective April 6, 2005. Objections and requests for hearings must be received on or before June 6, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0073. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (703) 308–8715; e-mail address: [mendelsohn.mike@epa.gov](mailto:mendelsohn.mike@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**