

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 258

[Docket No. 2004–9 CARP SRA]

## Rate Adjustment for the Satellite Carrier Compulsory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is publishing the royalty rates for analog television broadcast stations retransmitted by satellite carriers under the section 119 statutory license.

**DATES:** January 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:** On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”), a part of the Consolidated Appropriations Act of 2005. Pub.L. 108–447, 118 Stat. 3394. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over-the-air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as making a number of amendments to the license. One of the amendments to section 119 sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network and superstations. 17 U.S.C. 119(c)(1). The law directs the Librarian of Congress to publish notice in the **Federal Register** requesting satellite carriers, distributors and copyright owners to submit to the Copyright Office any voluntary agreements they have negotiated as to the adjustment of the rates for analog stations. The Library published such a notice on December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004).

The Office has received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of

sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to “provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.” 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on January 26, 2005, to fulfill this requirement. 70 FR 3656 (January 26, 2005). No objections were received. Consequently, the Library is adopting the voluntary agreement as final.

## List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

## Final Regulation

■ For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

**PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS**

■ 1. The authority citation for part 258 is amended to read as follows:

**Authority:** 17 U.S.C. 119, 702, 802.

■ 2. Section 258.2 is revised to read as follows:

**§ 258.2 Definitions.**

(a) *Commercial establishment.* The term “commercial establishment” means an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; *provided* that the term “commercial establishment” shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

(b) *Syndex-proof signal.* A satellite retransmission of a broadcast signal shall be deemed “syndex proof” for purposes of § 258.3(b) if, during any semi-annual reporting period, the retransmission does not include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission.

(c) *Per subscriber per month.* The term “per subscriber per month” means each subscriber subscribing to the station in question, or to a package

including such station, on the last day of a given month.

■ 3. Section 258.3 is amended by adding new paragraphs (d) through (h) to read as follows:

**§ 258.3 Royalty fee for secondary transmission of broadcast stations by satellite carriers.**

\* \* \* \* \*

(d) Commencing January 1, 2005, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—  
(i) 20 cents per subscriber per month for distant superstations.  
(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(e) Commencing January 1, 2006, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—  
(i) 21.5 cents per subscriber per month for distant superstations.  
(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(f) Commencing January 1, 2007, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—  
(i) 23 cents per subscriber per month for distant superstations.  
(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(g) Commencing January 1, 2008, the royalty rate for secondary transmission of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing—  
(i) The 2007 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 2007 to January 2008.

(ii) The 2007 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 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 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 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