evidence sufficient to permit future DNA testing.''

(a) Evidence not retained beyond the investigative stage. Section 3600A(c)(4) has no application if items of the sort it describes—*e.g.*, items that must be returned to the rightful owner, or items that are so large that their retention is impracticable—are not kept until the time when a defendant is convicted and sentenced to imprisonment. Investigative agents may take samples from such items during the investigative stage of the case, in accordance with their judgment about what is needed for purposes of DNA testing or other evidentiary use, or may conclude that the nature of the items does not warrant taking such samples, and the items themselves may then be returned to the owners or otherwise disposed of prior to the trial, conviction, or sentencing of any defendant. In such cases, section 3600A is inapplicable, because its evidence preservation requirement does not apply at all until a defendant is sentenced to imprisonment, as noted in § 28.22(b)(1).

(b) Evidence not constituting biological material. It is rarely the case that a bulky item of the sort described in section 3600A(c)(4), or a large part of such an item, constitutes biological evidence as defined in section 3600A(b). If such an item is not biological evidence in the relevant sense, it is outside the scope of section 3600A. For example, the evidence secured in the investigation of a bank robbery may include a stolen car that was used in the getaway, and there may be some item in the car containing biological material that derives from a perpetrator of the crime, such as saliva on a discarded cigarette butt. Even if the vehicle is kept until a defendant is sentenced to imprisonment, section 3600A's preservation requirement would not apply to the vehicle as such, because the vehicle is not biological material. It would be sufficient for compliance with section 3600A to preserve the particular items in the vehicle that contain identified biological material or portions of them that contain the biological material.

(c) Preservation of portions sufficient for DNA testing. If evidence described in section 3600A(c)(4) is not otherwise exempt from the preservation requirement of section 3600A, and section 3600A(c)(4) is relied on in disposing of such evidence, reasonable measures must be taken to preserve portions of the evidence sufficient to permit future DNA testing. For example, considering a stolen car used in a bank robbery, it may be the case that one of the robbers was shot during the getaway and bled all over the interior of the car. In such a case, if the car is kept until a defendant is sentenced to imprisonment for the crime, there would be extensive biological material in the car that would potentially be subject to section 3600A's requirement to preserve biological evidence. Moreover, the biological material in question could not be fully preserved without retaining the whole car or removing and retaining large amounts of matter from the interior of the car. Section 3600A(c)(4) would be relevant in such a case, given that fully retaining the biological evidence is likely to be impracticable or inconsistent with the rightful owner's entitlement to the return of the vehicle. In such a case, section 3600A(c)(4) could be relied on, and its requirements would be satisfied if samples of the blood were preserved sufficient to permit future DNA testing. Preserving such samples would dispense with any need under section 3600A to retain the vehicle itself or larger portions thereof.

§ 28.27 Non-preemption of other requirements.

Section 3600A's requirement to preserve biological evidence applies cumulatively with other evidence retention requirements. It does not preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

§ 28.28 Sanctions for violations.

(a) Disciplinary sanctions. Violations of section 3600A or of this subpart by Government employees shall be subject to the disciplinary sanctions authorized by the rules or policies of their employing agencies for violations of statutory or regulatory requirements.

(b) Criminal sanctions. Violations of section 3600A may also be subject to criminal sanctions as prescribed in subsection (f) of that section. Section 3600A(f) makes it a felony offense, punishable by up to five years of imprisonment, for anyone to knowingly and intentionally destroy, alter, or tamper with biological evidence that is required to be preserved under section 3600A with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding.

(c) No effect on validity of convictions. Section 3600A's requirements are enforceable through the disciplinary sanctions and criminal sanctions described in paragraphs (a) and (b) of this section. A failure to preserve biological evidence as required by section 3600A does not provide a basis for relief in any postconviction proceeding.

Dated: April 25, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–8556 Filed 4–26–05; 11:30 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–ME–0004; A–1–FRL–7900–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on February 25, 2004 and December 9, 2004 which includes the Maine Low Emission Vehicle (LEV) Program. It was proposed for approval on January 24, 2005 (70 FR 3335). EPA received an adverse comment on the proposal, which is addressed in this action. The regulations adopted by Maine include the California LEV I light-duty motor vehicle emission standards beginning with model year 2001, the California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. The Maine LEV regulation submitted does not include any zero emission vehicle (ZEV) requirements. Maine has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in accordance with the requirements of the Clean Air Act (CAA). In addition, they have worked to ensure that their program is identical to California's, as required by section 177 of the CAA. The intended effect of this action is to approve the Maine LEV program. This action is being taken under section 110 of the Clean Air Act.

DATES: Effective Date: This rule will become effective on May 31, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID Number R01-OAR–2004-ME–0004. 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 electronic docket, 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 Regional Material in EDocket or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, NW., Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1045, *judge.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on February 25, 2004 and December 9, 2004 which includes the Maine Low Emission Vehicle (LEV) Program. It was proposed for approval on January 24, 2005 (70 FR 3335). EPA received an adverse comment on the proposal from PretiFlaherty, a law firm representing the Maine Automobile Dealers Association (MADA) by letter dated February 22, 2005. MADA had two comments.

First, MADA argued that ''Maine's LEV program is not consistent with the requirement of the Clean Air Act because Maine's program does not contain a denial of registration provision.'' And as a result, this effects the level of emission reductions from the program and as such is not identical to California's program as required by section 177 of the Clean Air Act. Second, MADA takes exception to our reference to Executive Order 13132, where we assert that this will not affect the distribution of power between Maine and EPA under the Clean Air Act, because, in MADA's opinion, the fact that it is approved into the SIP ''gives EPA veto power/approval control over any subsequent amendments * * *'' to Maine's regulations.

On the first point, MADA contends that Maine's enforcement scheme is less effective than one which denies registration to new vehicles which are not LEV certified. EPA and Maine agree, which is why Maine suggested and EPA proposed that Maine should achieve 90 percent of the benefit that a program which does deny registration to a vehicle which is not certified as LEV. However, the Clean Air Act does not require that these LEV programs include registration denial for new vehicles in a given State which are not LEV certified. In order to achieve the full environmental benefits of the LEV program, California did not and does not allow new vehicles which are not LEV certified to be registered in their State. When Massachusetts and New York adopted their versions of the California LEV program, they enforced it the same way. EPA approved those programs into the SIP, and provided those States with emission reduction credit assuming all newer vehicles in those States would be California certified. Since Maine is not assured of that same fact, it was not proposed to be awarded the same amount of credit. (As stated in the NPR , EPA currently estimates that a registration-based California LEV program will provide about 1 percent additional reductions in mobile source VOC and 2 percent in air toxics over the Federal Tier 2 program in 2020 with the program beginning in 2004. We expect no discernible NO_X benefit. As such, Maine would achieve about a 0.9% VOC and 1.8% air toxic by its implementation of the LEV program.)

Section 177 of the Clean Air Act requires any State which is adopting a new motor vehicle emissions program, to adopt standards which are identical to those in California. This section does not require the adopting State to incorporate all the provisions contained in California's emissions program. Enforcement provisions, for example, need not be identical. However, section 177 prohibits States from adopting any standards which could have the effect of creating a third vehicle. As Maine's program is enforced, no such ''third vehicle'' would be created by the fact that new Federal tier 2 vehicles might be registered in Maine based on their enforcement scheme. It does not establish a new standard for vehicle manufacturers to meet. It is also instructive to note that, in the cases of California, Massachusetts and New York, used vehicles which have more than 7,500 miles on the odometer, may be registered in these States, regardless of whether or not they are LEV certified. Because of the fact that used vehicles may be sold into these States at different rates could effect each programs' actual benefits. Further, even minor differences in each State's ability to ensure that only California-certified new vehicles are registered could also effect each programs' benefits. However, we do not believe that this in any way creates a third car or violates the intent of section 177 of the CAA regarding identicality.

It is instructive to note that no automobile manufacturer or association supported MADA's contention regarding this issue of creating a ''third car.'' EPA does believe that the Federal tier 2 program is an effective pollution control strategy, achieving most of the reductions that the California program achieves. We agree with MADA that the Maine LEV program would be more effective in Maine at achieving pollution reductions if such a registration-based program were implemented. However, EPA does not believe that Maine's lack of such an enforcement scheme in any way violates section 177 of the CAA.

On the second point, we do not agree. EPA is approving an existing state rule, and EPA's approval of that rule does not in any way effect the rule that has been promulgated by the State. Chapter 127 is presently in effect in Maine, and EPA's approval does not impact the distribution of power between EPA and Maine, as discussed in Executive Order 13132. It is true that if, in the future, Maine utilizes the emission reductions from this program as part of its strategy to ensure clean air for its citizens as part of its State Implementation Plan (SIP), EPA may object to subsequent State-initiated changes to this rule which relax the level of pollution reductions from the strategy. But EPA would only do so if the State were not replacing the emission reductions which were incorporated into the SIP. In all cases, except when the Clean Air Act prescribes a specific control measure, States are free to modify their air quality strategies in the SIP as long as they maintain the level of reductions necessary to achieve its clean air

objectives for its citizens, as provided by section 110(l) of the CAA. This is true of the Low Emission Vehicle Program. If the State so chose in the future, it may modify this program, subject to the limitation described above. But it does not give EPA veto power or approval control over subsequent changes to the program, including the entire program's repeal.

Other specific requirements of Maine's program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action: EPA is approving a SIP revision at the request of the Maine DEP. This version of the rule entitled ''Chapter 127: New motor Vehicle Emission Standards'' was adopted by Maine with an effective date of December 31, 2000. It was submitted to EPA for approval on February 25, 2004. That submittal was later clarified on December 9, 2004 to justify the level of emission reductions expected from this program. This approves the State achieving 90 percent of the credit achieved by States that implement the California LEV program through a registration-based enforcement system. The regulation adopted by Maine includes the LEV I light-duty program beginning with model year 2001 in Maine, the California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. EPA is approving the Maine low emission vehicle program requirements into the SIP because EPA has found that the requirements are consistent with the CAA.

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, 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), because it merely approves a state rule implementing a Federal standard, and 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, 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. 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. 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 27, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 7, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of 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 *et seq.*

Subpart U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on February 25, 2004 and December 9, 2004 submitting Maine's Low Emission Vehicle Program.

(i) Incorporation by reference.

(A) Chapter 127 of the Maine Department of Environmental Protection rules entitled ''New Motor Vehicle Emission Standards'' with an effective

date of December 31, 2000, including the Basis Statements and Appendix A.

■ 3. In § 52.1031 Table 52.1031 is amended by adding a new state citation for Maine Chapter 127; ''New Motor Vehicle Emission Standards'' to read as follows:

§ 52.1031—EPA—approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
127	New Motor Vehicle Emission Standards.	December 31, 2000.	April 28, 2005	[Insert FR citiation published date.	(c)(58)	Low emission vehicle program, with no ZEV requirements. Program achieves 90% of full LEV benefits.
*	*	*	*	*	*	*

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–8528 Filed 4–27–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0083; FRL–7706–7]

Bacillus thuringiensis VIP3A Protein and the Genetic Material Necessary for its Production; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an extension of the temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production on cotton when applied/used as a plant-incorporated protectant. Syngenta Seeds 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 this extension. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production on cotton. The temporary tolerance exemption will expire on May 1, 2006.

DATES: This regulation is effective April 28, 2005. Objections and requests for hearings must be received on or before June 27, 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–2005–0083. 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 S. 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: Sharlene Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

On July 26, 2004, Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257 submitted a petition (PP 3G6547) to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting that the temporary tolerance exemption for *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its