

concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 256-66 (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, USEPA must undertake various actions in association with 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 the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

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

Under 5 U.S.C. 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 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. 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 June 16, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: March 28, 1997.

**Valdas V. Adamkus,**  
*Regional Administrator.*

For the reasons stated in the preamble, 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 P—Indiana**

2. Section 52.770 is amended by adding paragraph (c)(119) to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(119) Approval—On October 2, 1996, the State of Indiana submitted a State Implementation Plan revision request to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. The SIP revision became effective July 19, 1996. The SIP revision request satisfies all applicable requirements of the Clean Air Act.

(i) Incorporation by reference. 326 Indiana Administrative Code 5-1: Opacity Limitations, Section 1: Applicability of Rule, Section 2: Visible emission limitations. Adopted by the Indiana Air Pollution Control Board April 3, 1996. Filed with the Secretary of State June 19, 1996. Published at the Indiana Register, Volume 19, Number 11, August 1, 1996 (19 IR 3049). Effective July 19, 1996.

**PART 81—[AMENDED]**

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

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

**Subpart C—[Amended]**

2. Section 81.315 is amended by removing the table entitled "Indiana-TSP".

[FR Doc. 97-9794 Filed 4-15-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 58**

[001-7201a; A-1-FRL-5808-7]

**Ambient Air Quality Surveillance; Connecticut/Maine/Massachusetts/New Hampshire/Rhode Island/Vermont; Modification of the Ozone Monitoring Season**

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

**ACTION:** Direct final rule.

**SUMMARY:** This final rule contains revisions to 40 CFR part 58, Appendix D, the Ozone Monitoring Season By State Table in Section 2.5. EPA's approval of these revisions will change the ozone monitoring season for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to April 1-September 30.

**DATES:** This action will become effective June 16, 1997, unless EPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Don Porteous, Acting Director, Office of Environmental Measurement & Evaluation, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA 02173. Copies of the documents and data relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Environmental Measurement & Evaluation Division, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Cuzzupe, U.S. Environmental Protection Agency, Region I, Office of Environmental Measurement & Evaluation, Ecosystem Assessment, 60 Westview Street, Lexington, MA 02173. Telephone (617) 860-4383.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

During 1993 and 1994, three New England states submitted proposals to EPA Region 1 to shorten their ozone seasons. In order to maintain a consistent ozone season throughout the Region, EPA Region 1 made the decision to process all of the requests together as one package. All of the states were notified of this decision. On February 7, 1995 (after numerous discussions with the states, and not wanting to delay processing these requests), EPA Region 1 sent formal requests to NH, VT and RI asking them if they were interested in submitting proposals to shorten their ozone seasons. As a result, the states submitted their proposals to the Region.

All six New England States have now submitted proposals to EPA Region 1 to shorten their ozone seasons. The current ozone season for EPA Region 1 is April 1-October 31. The dates of the state's request and their proposals are summarized below:

State	Date of letter	Proposal
CT .....	9/1/93	Apr.–Sept.
ME .....	11/10/93	May–Sept.
MA .....	6/28/94	May–Sept.
VT .....	2/15/95	May–Sept.
RI .....	2/28/95	Apr.–Sept.
NH .....	6/14/95	May–Sept.

## II. Review

The current ozone monitoring season for all of the New England states is April 1–October 31, and is specified in 40 CFR Part 58, appendix D. In order to determine whether or not the ozone seasons could be modified for the New England states, the ozone monitoring data for all six states was reviewed in accordance with the *Guideline on Modification to Monitoring Seasons for Ozone*, Technical Support Division, Office of Air Quality Planning and Standards, March 1990. The guidance document states that “the potential for ozone exceedances can be determined using a variety of procedures. The first and most reliable is the use of historical ozone monitoring data. A review of historical ozone data for this purpose must be based on 5 years of most recent data, in order to ensure that both favorable and unfavorable meteorological conditions are represented.”

The most recent six years of ambient ozone monitoring data (1990–1995) for all of the New England states were reviewed (AIRS AMP350 Raw Data Listing and AIRS AMP355 Standards Reports). The review of the data demonstrates:

(a) That there were no exceedances of the ozone National Ambient Air Quality Standard (NAAQS) in October; and

(b) That no concentrations above 0.100 ppm were recorded in October.

Therefore the test of five years of data without any concentrations above the recommended value of 0.100 ppm has been satisfied. The primary data is available for public review as part of the administrative record at the Office of Environmental Measurement and Evaluation, U.S. EPA—Region I (See the **ADDRESSES** section above for the exact location).

Unfortunately this is not the case for the month of April. There were two exceedances of the NAAQS, as well as several values reported above the recommended 0.100 ppm value for each of the Region I states except for Vermont. The only two years in which no values greater than 0.100 ppm were reported in any of the Region I states were 1992 and 1993.

Although the data for Vermont does satisfy the criteria for April, the

guidance states that the “ozone season designations should not result in a patchwork quilt on either a State or national basis.” As a result, EPA Region 1 decided to maintain one common ozone season for all six New England states and modify the season consistently. The modification will change the ozone season from April 1–October 31 to April 1–September 30. This action will be beneficial for the states as they will be able to save monitoring resources by not being required to measure ozone in the month of October.

It is important to note that shortening the ozone season will affect the calculation of expected exceedances (40 CFR part 50, appendix H) for all of New England. If there are any missing days of data within the new ozone season, a higher calculated number of expected exceedances will be produced in future retrievals of the ambient air quality monitoring data as compared to the number of expected exceedances that would have been calculated within the old ozone season. The following example serves to clarify this point. There are 183 days in the new ozone season and 214 days in the old ozone season. If there were 10 missing days of data, the multiplication factor for determining the number of expected exceedances would be calculated as follows:  $10/183 = 0.054$  in the new ozone season or  $10/214 = 0.046$  in the old ozone season. Although unlikely, the small increase in the number of expected exceedances in the new ozone season could have a significant impact on when marginal non-attainment areas can be designated as attainment areas.

## III. Final Action

After reviewing the most recent six years of ozone monitoring data for CT, ME, MA, VT, RI and NH, EPA Region 1 concluded that the ozone data meets the guidelines recommended for shortening the ozone season from April 1–September 30. Based on the above conclusion, EPA is revising CT, ME, MA, VT, RI and NH’s ozone monitoring season in 40 CFR part 58, appendix D, Section 2.5 to April 1–September 30 of each year for all monitor types in AIRS.

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 the changes to the ozone monitoring seasons for the six New England states should adverse or critical comments be filed. This action will be effective June 16, 1997 unless adverse or

critical comments are received by May 16, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then 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 on June 16, 1997.

## IV. Administrative Requirements

### A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is “significant” and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a “significant regulatory action” under the terms of E.O. 12866 and is therefore not subject to OMB 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. 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.

This action does not create any new requirements. Therefore, I certify that it does not have a significant impact on small entities.

### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203

requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approved 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Under 5 U.S.C. 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. 804(2).

*E. Petitions for Judicial Review*

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 16, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

**List of Subjects in 40 CFR Part 58**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone,

Reporting and recordkeeping requirements.

Dated: March 24, 1997.

**John P. DeVillars,**  
*Regional Administrator, Region I.*

Part 58 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 58—[AMENDED]**

1. The authority citation for part 58 continues to read as follows:

**Authority:** 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Part 58, Appendix D, section 2.5, the table is amended by revising the entries for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to read as follows:

**Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) and Photochemical Assessment Monitoring Station (PAMS)**

\* \* \* \* \*  
2.5 Ozone (O<sub>3</sub>) Design Criteria for SLAMS  
\* \* \* \* \*

**OZONE MONITORING SEASON BY STATE**

State	Begin month	End month
Connecticut .....	April .....	September.
Maine .....	April .....	September.
Massachusetts .....	April .....	September.
New Hampshire .....	April .....	September.
Rhode Island .....	April .....	September.
Vermont .....	April .....	September.

\* \* \* \* \*

[FR Doc. 97-9864 Filed 4-15-97; 8:45 am]

BILLING CODE 6560-50-P