List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Teva Pharmaceuticals USA'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''000093'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Teva Pharmaceuticals USA, 650 Cathill Rd., Sellersville, PA 18960	000093
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
000093	Teva Pharmaceuticals USA, 650 Cathill Rd., Sellersville, PA 18960
* * *	* * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1010a [Amended]

4. Section 520.1010a *Furosemide tablets or boluses* is amended in paragraph (b) by removing the number ''000332'' and adding in its place ''000093''.

Dated: February 4, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–3662 Filed 2–12–97; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–155–1–7178; TN–MEM–149–3–9701; FRL–5669–3]

Approval and Promulgation of Implementation Plans; State of Tennessee and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) to allow the State to issue Federally enforceable state operating permits (FESOP). EPA is also approving revisions to the Memphis-Shelby County portion of the Tennessee SIP to allow the County to issue Federally enforceable local operating permits (FELOP). EPA is also approving the State's FESOP program and the County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA or ''the Act'') so that both permitting agencies may issue Federally enforceable state operating permits containing limits for hazardous air pollutants (HAP).

DATES: This final rule is effective April 14, 1997 unless adverse or critical comments are received by March 17, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Gracy R. Danois at the EPA Regional Office listed below. Copies of the documents used in developing this action are available for public inspection during normal business hours at the locations listed below. Interested persons wanting to examine these documents, contained in files TN155 and TN149–3, should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal

Center, 100 Alabama Street, SW, Atlanta, Georgia 30303.

Tennessee Department of Environment and Conservation, L & C Annex, 401 Church Street, Nashville, Tennessee, 37243–1531.

Memphis-Shelby County Health Department, 814 Jefferson Avenue, Room 437–E, Memphis, Tennessee, 38105.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air and Radiation Technology Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, SW, Atlanta, Georgia 30303, 404/562–9119. Reference files TN155 and TN149–3.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On January 10, 1995, and May 3, 1995, Memphis-Shelby County and the State of Tennessee, respectively, through the Tennessee Department of Environment and Conservation (TDEC), submitted SIP revisions to make certain permits issued under the County's and the State's existing minor source operating permit program Federally enforceable pursuant to the EPA requirements specified in the Federal Register notice entitled ''Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans'' (see 54 FR 27274, June 28, 1989). Additional materials concerning HAPs and the implementation of the FESOP and FELOP programs were provided by the State and the County to EPA on March 8, 1996, and June 12, 1996, and March 13, 1996, and September 4, 1996, respectively.

EPA has always had and continues to have the authority to enforce state permits which are issued under permit programs approved into the SIP. However, EPA has not always recognized, as valid, certain state permits which purport to limit a source's potential to emit. The principle purpose for adopting the regulations that are the subject of this notice is to give the State of Tennessee and Memphis-Shelby County a Federally recognized means of expeditiously restricting potential emissions such that sources can avoid major source permitting requirements. A key mechanism for such limitations is the use of Federally enforceable state or local operating permits. The term ''Federally enforceable,'' when used in the context of permits which limit potential to emit, means ''Federally recognized.''

The voluntary revision that is the subject of this action approves Division Rule 1200–3–9–.02(11)(a) into both the State and the County portions of the Tennessee SIP. This rule and the additional materials provided by the State and the County satisfy the five criteria outlined in the June 28, 1989, Federal Register notice. Please refer to section II of this notice for the analysis of each of the criteria.

II. Analysis of State and County Submittals

Memphis-Shelby County has adopted the majority of the State of Tennessee's Division Rules in the Memphis City Code. The County maintains the numbering system used by the State of Tennessee within its regulations. Therefore, all references to the State of Tennessee's Division Rules are also applicable to Memphis-Shelby County, unless otherwise noted.

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision. On January 10, 1995, and May 3, 1995, respectively, Tennessee and Memphis-Shelby County submitted SIP revision requests to EPA consisting of Division Rule 1200–3–9–.02(11)(a), amending the stationary source general requirements. Additional materials concerning hazardous air pollutants and the operating permit program were submitted to EPA by Memphis-Shelby County and Tennessee on March 8, 1996, and June 12, 1996, and on March 13, 1996, and September 4, 1996, respectively. These submittals are the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''Federally enforceable'' by EPA. Division Rule 1200–3–9–.02(6) requires each air contaminant source to obtain a permit to operate and to operate in accordance with ''the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.'' In addition, Tennessee has committed to include the following statement in all operating permits issued pursuant to Division Rule 1200–3–9–.02(11): ''The permittee is placed on notice that Condition(s) _____ of this operating permit contain(s) limitations that allow the permittee to opt-out of the major source operating permit program requirements specified in Division Rule 1200–3–9–.02(11). Failure to abide by these limits will not only subject the permittee to enforcement action by the State of Tennessee, but it may also result in the imposition of Federal enforcement action by the United States Environmental Protection Agency and the loss of being Federally recognized as a conditional major source.'' Memphis-Shelby County has committed to incorporate similar language in the operating permits it issues pursuant to the same Division Rule.

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Clean Air Act). Division Rule 1200–3–9–.02(6) contains regulatory provisions which state that operating permits issued by Tennessee and Memphis-Shelby County will be at least as stringent as any applicable requirement. Applicable requirement is defined in Division Rule 1200–3–9–.02(11)(b)(5) to include all SIP requirements.

Criterion 4. The limitations, controls and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. Division Rules 1200–3–9–.02(6) and 1200–3–9–.02(11)(a) contain regulatory provisions which satisfy this criterion. Permits must contain a statement of basis comparing the source's potential to emit with the more restrictive limit and the procedures to be followed that will insure that the more restrictive limit is not exceeded. Concerning permanence, Division Rule 1200–3–9–.02(11)(a), establishes that in order to obtain a synthetic non-title V permit, the facility must agree to be bound by a permit that establishes more restrictive limitations. Also, the State relies on the requirements of Division Rule 1200–3–13–.01 as their authority to seek enforcement action against a source that violates the conditions of an operating permit. Memphis-Shelby County relies

on the requirements of sections 16–56, 16–59, and 16–77 of the Memphis City Code to meet this criterion. Section 16–56, gives the County the authority to seek enforcement action against sources that violate any of the requirements of the local air pollution code, which includes a failure to meet all permit conditions as required by Section 16–77.

Criterion 5. The state operating permits must be issued subject to public participation. This means that the State and the County agree, as part of their programs, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''Federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits. Division Rules 1200–3–9–.02(11)(a), 1200–3–9–.02(11)(f)8. and 1200–3–9–.02(11)(g) contain provisions establishing that the State and the County will either deny the request for a permit or give EPA and the public notice of an intention to issue the permit and provide for a 30 day public comment period.

A. Applicability to Hazardous Air Pollutants

Tennessee and Memphis-Shelby County have also requested approval of their FESOP and FELOP programs under section 112(l) of the Clean Air Act for the purpose of creating Federally recognized limitations on the potential to emit for HAPs. Approval under section 112(l) is necessary because the SIP revisions discussed above only extend to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e. VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as Federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions, regardless of their relationship to criteria pollutant controls.

[1] 1 EPA issued guidance on January 25, 1995, addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source thresholds.

EPA has determined that the five criteria, published in the June 28, 1989, Federal Register notice, used to determine the validity of a permit which limits potential to emit for criteria pollutants pursuant to section 110 are also appropriate for evaluating the validity of permits which limit the potential to emit for HAPs pursuant to section 112(l). The June 28, 1989, Federal Register notice does not address HAPs because it was written prior to the 1990 amendments to the Clean Air Act; however, the basic principles established in the June 28, 1989, Federal Register notice are not unique to criteria pollutants. Therefore, these criteria have been extended to evaluations of permits limiting the potential to emit of HAPs.

To be recognized by EPA as a valid permit which limits potential to emit, the permit must not only meet the criteria in the June 28, 1989, Federal Register notice, but it must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) provides that EPA will recognize a permit limiting the potential to emit for HAPs only if the state program: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify in Subpart E of Part 63 the approval criteria for programs limiting potential to emit HAPs. EPA anticipates that these criteria will mirror those set forth in the June 28, 1989, Federal Register notice. Permit programs which limit potential to emit for HAPs and are approved pursuant to section 112(l) of the Act prior to the planned regulatory revisions under 40 CFR part 63, subpart E, will be recognized by EPA as meeting the criteria in the June 28, 1989, Federal Register notice. Therefore, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to recognize FESOP and FELOP programs that limit a source's potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore approving the Tennessee and Memphis-Shelby County FESOP and FELOP programs so that Tennessee and Memphis-Shelby County may issue permits that EPA will recognize as validly limiting potential to emit for HAPs.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes the FESOP and FELOP programs submitted by Tennessee and Memphis-Shelby County contain adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989, notice is met; that is, Division Rule 1200–3–9–.02(11)(b)(5) states that all requirements in the permits issued under the authority of the operating permit programs must be at least as stringent as all other applicable Federally enforceable requirements. In connection with EPA's review of the Tennessee and Memphis-Shelby County title V operating permit programs, EPA has also conducted an extensive analysis of Tennessee and Memphis-Shelby County's underlying authority to enforce HAP limits. It should be noted that a source that receives a Federally recognized operating permit may still need a Title V operating permit under Division Rule 1200–3–9–.02 if EPA promulgates a MACT standard which requires non-major sources to obtain Title V permits.

Regarding the requirement for adequate resources, Tennessee and Memphis-Shelby County have committed to provide for adequate resources to support their respective FESOP and FELOP programs. EPA expects that resources will continue to be sufficient to administer those portions of the minor source operating permit programs under which the subject permits will be issued, because both the State of Tennessee and Memphis-Shelby County have administered minor source operating permit programs for a number of years. However, EPA will monitor the implementation of the FESOP and FELOP programs to ensure that adequate resources are in fact available.

EPA also believes that the Tennessee and Memphis-Shelby County programs provide for an expeditious schedule which assures compliance with section 112 requirements. These programs will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the Tennessee or Memphis-Shelby County programs would allow a source to avoid or delay compliance with a CAA requirement applicable on a particular date. In addition, nothing in the Tennessee or Memphis-Shelby County program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally recognized limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which a source may

avoid classification as a major source by obtaining a Federally recognized limit on its potential to emit HAPs. EPA has long recognized as valid, permit programs which limit potential to emit for criteria pollutants as a means for avoiding major source requirements under the Act. The portion of this approval which extends Federal recognition to permits containing limits on potential to emit for HAPs merely applies the same principles to another set of pollutants and regulatory requirements under the Act.

EPA has reviewed this SIP revision and determined that the criteria for approval as provided in the June 28, 1989, Federal Register notice (54 FR 27282) and in section 112(l)(5) of the Act have been satisfied.

B. Eligibility for Previously Issued Permits

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's and the County's existing rules prior to the effective date of today's rulemaking. If the State and County followed their own regulations, then each agency issued a permit that established a Federally recognized permit condition that was subject to public and EPA review. Therefore, EPA will consider all such operating permits Federally enforceable upon the effective date of this action provided that any permits that the State wishes to make Federally enforceable are made available to EPA and are supported by documentation that the procedures approved today have been followed. EPA may review any such permits to ensure their conformity with the program requirements.

III. Final Action

In this action, EPA is approving Tennessee's FESOP program and Memphis-Shelby County's FELOP program. 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 SIP revisions should adverse or critical comments be filed. This action will be effective April 14, 1997 unless, by March 17, 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 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.

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 April 14, 1997.

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 the July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision of any SIP. Each request for revision of the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Clean Air Act as Amended in 1990

EPA has reviewed the requests for revision of the Federally-approved Tennessee SIP described in this notice to ensure conformance with the provisions of the Clean Air Act as amended in 1990. EPA has determined that this action conforms with those requirements.

B. Petition for Review

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2).)

C. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

D. 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.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because approval of Federal SIP does not 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(R).

E. Unfunded Mandates Reform Act of 1995

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under section 112(l) of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to the State government in the aggregate or to the private sector.

F. Small Business Regulatory Enforcement Fairness Act of 1996

Under 5 U.S.C. 801(a)(1)(A) 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: December 16, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(145) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(145) Revisions to Division Rule 1200—Stationary Sources—General Requirements, submitted by the Tennessee Department of Environmental Protection on May 3, 1995.

(i) Incorporation by reference.

(A) Division of Air Pollution Control Rule 1200–3–9–.02(11)(a), effective September 21, 1994.

(B) Memphis City Code Section 16–77, reference 1200–3–9–.02(11)(a), effective October 28, 1994.

(ii) Other materials. None.

[FR Doc. 97–3577 Filed 2–12–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 58

[FRL–5683–4]

Modification of the Ozone Monitoring Season; Alabama, Georgia, and Mississippi

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Previously, the ozone monitoring season in Region 4 was twelve months in Florida; March—November in Georgia, Alabama, and Mississippi; and April—October in North Carolina, South Carolina, Tennessee, and Kentucky. Based on review of ozone monitoring data, Region 4 has determined that the appropriate ozone monitoring ozone season should be April 1–October 31 for all Region 4 states except Florida. Florida will continue to have a twelve month monitoring season.

EFFECTIVE DATE: March 17, 1997.

ADDRESSES: Copies of documents concerning 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 24 hours before the visiting day.

The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4, Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Dick Schutt, (404) 562–9033.

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109. (334) 271–7861.

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. (404) 363–7000.

Air Division, Office of Pollution Control, Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi, 39289–0385. (601) 961–5171.

Bureau of Environmental Health, Jefferson County Department of Health, P.O. Box 2648, Birmingham, Alabama 35202. (205) 930–1225.

The City of Huntsville, Department of Natural Resources & Environmental Management, 305 Church Street, Huntsville, Alabama 35801. (205) 535–4206.

FOR FURTHER INFORMATION CONTACT: Dick Schutt at 404/562–9033.

SUPPLEMENTARY INFORMATION: 40 CFR 58.13(a)(3) provides that ambient air quality data must be collected except periods or seasons exempted by the Regional Administrator. EPA Region 4 has analyzed ozone monitoring data for all of the Region 4 states except Florida during the years 1991–1995. Air monitoring stations in the seven states recorded ozone values at or above .100 ppm on only three days between November 1–April 14. Based on this data, the EPA has determined that the appropriate ozone monitoring season should be April 1–October 31 for all Region 4 states except Florida. Florida will continue to have a twelve month monitoring season.

Therefore, pursuant to 40 CFR 58.13(a)(3), by letter dated September 5, 1996, from John H. Hankinson, EPA Region 4 Administrator, the EPA changed the Alabama, Georgia, and Mississippi ozone monitoring season to be April 1–October 31.

The ozone monitoring season for Region 4 states will be re-evaluated when the national ambient air quality standard for ozone is revised. The ozone monitoring season will be revised, if necessary at that time.

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

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. EPA certifies that this rule will not have an impact on any number of small entities.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition