



# Exceptional Events Rule Revisions Notice of Proposed Rulemaking and Draft Wildfire/Ozone Guidance Notice of Availability

*US EPA*

*Office of Air Quality Planning and Standards*

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Disclaimer: Positions and views expressed here represent proposed rule content and draft EPA guidance

# Overview



- Key Points
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# Key Points

- EPA initiated the Exceptional Events Rule revisions and guidance development process to address certain substantive issues raised by state, local and tribal co-regulators and other stakeholders since promulgation of the rule and to increase the administrative efficiency of the Exceptional Events Rule criteria and process.
- The rule revisions and guidance are intended to make the demonstrations more manageable for the air agency seeking to exclude data and for the EPA office reviewing and acting on these demonstrations.
- EPA initiated the rulemaking effort to address concerns and requests for additional flexibility raised by stakeholders that could not be achieved through the Interim Exceptional Events Implementation Guidance issued in 2013.
- The exceptional events improvements efforts over the past several years have been collaborative involving multiple public webinars, listening sessions, meeting presentations and best practices discussions.
- The Exceptional Events Rule revisions and related guidance are key mechanisms in implementing the 2015 revised Ozone NAAQS.



# Background

- Origin of the Exceptional Events Rule
  - Promulgated on March 22, 2007 (72 FR 13560)
  - Required by statute (Section 319 of the Clean Air Act)
  - Replaced previous EPA policies/procedures
  - Applies to all criteria pollutants and NAAQS and includes general schedule for identifying data and submitting demonstrations
- Elements of the Exceptional Events Rule
  - Establishes procedures and criteria for identifying, evaluating, interpreting, and using air quality monitoring data affected by exceptional events
  - Provides a mechanism by which air quality data can be excluded from regulatory decisions and actions
  - Affects design value calculations, NAAQS designation decisions, attainment determinations, and State / Tribal Implementation Plan development



# Background

- Criteria To Be an Exceptional Event (2007 Rule)
  - The event affects air quality
  - The event is not reasonably controllable or preventable
  - The event is caused by human activity that is unlikely to recur at that location or is a natural event
  - There is a clear causal relationship between the event and the monitored concentration
  - The event is associated with a measured concentration in excess of normal historical fluctuations
  - There would have been no exceedance or violation but for the event
- Examples of Exceptional Events
  - High Wind Dust Events
  - Wildfire Events
  - Volcanic and Seismic Activities



# Background

- Exceptional Events Rule Current Process
  - Air agency identifies potential event-related exceedance
  - Air agency flags data in Air Quality System (AQS) and provides EPA with initial event description
  - Air agency prepares demonstration package and provides public notice and opportunity to comment
  - Air agency submits demonstration package to support data exclusion
  - EPA reviews submittal and either approves or disapproves the exceptional event claim
    - If EPA agrees that event is “exceptional,” then data are excluded
    - If EPA does not agree with air agency claim, then data remain and are used in regulatory determinations
- Implementation has been Challenging
  - Exceptional events are unique and varied
  - Difficult to provide guidance that is both concrete and generally applicable
  - Difficult to pre-determine how much evidence / technical analysis for demonstrations is enough
  - Final rule text and preamble left room for interpretation



# Background

- March 2007 – Exceptional Events Rule promulgated
- May 2013 - EPA finalized interim exceptional events implementation guidance
  - Memorandum to Regional Air Division Directors with 2 attachments
  - Attachment 1 - Frequently Asked Questions document
  - Attachment 2 - High Winds Guidance document
- May 2013 – EPA announced intent to revise the Exceptional Events Rule and develop wildfire/ozone implementation guidance
- August thru November 2013 – Stakeholder outreach and listening sessions related to rule revisions
- November 2014 – Ozone NAAQS proposal containing flagging and demonstration submission schedule for data influenced by exceptional events
- October 2015 – Final Ozone NAAQS containing exceptional events submission schedule (promulgated as proposed)

# Exceptional Events Schedule in 2015 Ozone NAAQS



- Developed to ensure that EPA has adequate time to assess any exceptional events demonstrations that would substantively affect designations under the 2015 revised Ozone NAAQS (*e.g.*, nonattainment vs. attainment, Marginal vs. Moderate). Relevant monitoring data years:
  - 2014-2016 for ozone designations promulgated in October 2017 under the CAA’s 2-year designation schedule
  - 2017 data - only if designations are completed under a 3-year schedule
- Schedule follows past practice and splits the available time during the designations process between the states and EPA.
- Schedule establishes demonstration submission deadlines as follows:
  - October 1, 2016 (for 2013 - 2015 data)
  - May 31, 2017 (for 2016 data)
- Demonstration submission rule language in the 2015 Ozone NAAQS specifies a generic “delta schedule” that could be applied to any future NAAQS revision.
- The proposed Exceptional Events Rule revisions retain the same “delta schedule” that we promulgated in the 2015 Ozone NAAQS.



# Anticipated Schedule for Rule and Guidance



- Exceptional Events Rule revisions and guidance development
  - November 10, 2015 – sign Notice of Proposed Rulemaking for rule revisions and Notice of Availability for draft guidance
  - November 2015 – publication in Federal Register
  - December 8, 2015 – public hearing in Phoenix, Arizona (10am – 6pm, Arizona Department of Environmental Quality office)
  - January 19, 2016 – close of comment period
  - August 2016 – sign final rule and issue final guidance documents
- Relationship to other actions
  - Schedule allows air agencies approximately 2 months to consider the final rule revisions and final guidance prior to submitting their ozone designation recommendations for the 2015 Ozone NAAQS (by 10/1/2016, using 2013-2015 data).

# Proposed Exceptional Events Rule Revisions



- Clarify the types of determinations and actions to which the authorizing statutory authority in CAA section 319(b) applies
  - Designations
  - Classifications
  - Attainment determinations
  - Attainment date extensions
  - Findings of SIP inadequacy leading to SIP call
- Return to the core statutory elements and implicit concepts of CAA section 319(b)
  - The event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation (as supported by a comparison of the of the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times)
  - The event was not reasonably controllable or preventable
  - The event was a human activity that is unlikely to recur at a particular location or was a natural event

# Proposed Exceptional Events Rule Revisions



- Clarify “not reasonably controllable or preventable” criteria
  - Rely on attainment/maintenance SIPs approved within 5 years of demonstration submittal
  - Indicate that air agencies generally have no obligation to specifically address controls for emissions originating outside their jurisdictional (*i.e.*, state/tribal/international) border(s)
  - “Controllable” and “preventable” are separate tests
- Clarify high wind elements currently addressed in guidance
  - Include provisions for the high wind threshold
  - Include provisions for “extreme” events
- Codify requirements for the content and organization of exceptional events submittals
  - Make initial notification by the state to the EPA of a potential exceptional event a required (but waivable) preliminary step before submitting a demonstration (based on best practices)
  - Include narrative conceptual model
  - Address core statutory elements
  - Include documentation that public comment process was conducted
- Remove “general schedule” deadlines for data flagging and demonstration submittal

# Proposed Exceptional Events Rule Revisions



- New fire-related rule language and preamble text
  - Clarify that all wildfires on wildland are natural events
  - Clarify that prescribed fire is a human-caused event eligible for treatment as an exceptional event and propose a streamlined path to show how air agencies can satisfy rule criteria
    - Rely on land/resource management plans (for frequency of recurrence and for “not reasonably preventable”)
    - Identify recommended components of Smoke Management Programs and Basic Smoke Management Practices
  - Define fire-related terms in regulatory language
- Other provisions
  - Address who may submit a demonstration
  - Event aggregation
  - Mitigation

# Draft Wildfire/Ozone Exceptional Events Implementation Guidance



- Full document name: *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*
- What does the draft guidance do?
  - Incorporates and applies the proposed rule revisions to wildfire/ozone events
  - Provides example analyses, conclusion statements, and technical tools that air agencies can use to provide evidence that the wildfire event influenced the monitored ozone concentration
  - Invites comment on the appropriateness of either expanding the wildfire/ozone guidance, or developing a separate guidance document, to specifically address demonstration components for prescribed fires

# Draft Wildfire/Ozone Exceptional Events Implementation Guidance



- What does the draft guidance do?
  - Identifies fire and monitor-based characteristics that would allow for a streamlined demonstration package using a three-tiered approach
    - Tier 1 demonstrations
      - Simplest and least resource intensive
      - Apply when fire events cause clear O<sub>3</sub> impacts in areas or during times of year that typically experience lower O<sub>3</sub> concentrations
      - Use time series plot and evidence of transport to the monitor
    - Tier 2 demonstrations
      - Apply when the impacts of the fire on O<sub>3</sub> levels are less clear and would require more evidence than Tier 1 demonstrations
      - Use Q/D (emissions/distance) screening criterion, threshold-based monitored concentrations and evidence of transport to and influence at the monitor
    - Tier 3 demonstrations
      - Apply when the relationship between the subject fires and influenced O<sub>3</sub> concentrations is more complicated
      - Build upon tiers 1 and 2
  - Appropriate tier to be determined by affected air agency and reviewing EPA regional office during proposed “Initial Notification” process



# Proposed Exceptional Events Rule Revisions and Draft Guidance – Requests for Comment

- Proposed Exceptional Events Rule Revisions
  - Incorporating elements of guidance in rule revisions
  - Clarifications to the scope of Administrator determinations included within the Exceptional Events Rule
  - Components and approaches associated with “not reasonably controllable” and “not reasonably preventable”
  - Proposed approach to defining recurrence at a particular location
  - Approaches that could effectively communicate expectations regarding reasonable controls
  - Characterizing “extreme” events
  - Incorporating smoke management program elements in rule text versus guidance
  - Appropriateness of Federal Land Managers and other federal agencies submitting demonstrations directly to EPA
  - Proposed changes to the Air Quality System for data flagging
  - Approaches for mitigation, including whether changes are needed, plan components and implementation
- Draft Wildfire/Ozone Guidance
  - Approach for tiering
  - Key factors
  - Appropriateness of either expanding the wildfire/ozone guidance or developing a separate guidance document, to specifically address demonstration components for prescribed fires



# Communication and Outreach

- Public outreach webinar following proposal
  - Content of the proposed rule revisions
  - Content of draft guidance
- Public hearing
  - December 8, 2015 from 10am – 6pm
  - In Phoenix, Arizona at Arizona Department of Environmental Quality offices
  - Details and registration information provided in *Federal Register* and on Exceptional Events website
- Implementation workshop(s) for states, tribes, and other affected stakeholders following rule promulgation and release of final guidance
- Continued development of exceptional events tools (e.g., website, templates)
- Revisions to existing Interim Exceptional Events Implementation Guidance following promulgation





# Available Resources

- Docket for the rule revisions: EPA-HQ-OAR-2013-0576 at <http://www.regulations.gov>
- Docket for the draft wildfire guidance: EPA-HQ-OAR-2015-0229 at <http://www.regulations.gov>
- Exceptional Events Website at <http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>
- EPA Regional Office staff and/or EPA Office of Air Quality Planning and Standards staff



# Clarifying Questions