Responses to Significant Comments on the 2015 Proposed Rule Revisions to the Treatment of Data Influenced by Exceptional Events

(November 20, 2015; 80 FR 72840)

Docket Number EPA-HQ-OAR-2013-0572
U.S. Environmental Protection Agency

September 2016

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List of Acronyms

AQCR	Air Quality Control Region
AQS	Air Quality System
BACM	Best available control measures
BMP	Best management practice(s)
BSMP	Basic smoke management practices
CAA	Clean Air Act
CASTNET	Clean Air Status and Trends Network
CFR	Code of Federal Regulations
CO	Carbon monoxide
DOT	Department of Transportation
EPA	Environmental Protection Agency
FIP	Federal Implementation Plan
FLM	Federal land manager responsible for management of a federally owned area that has been designated a Class I area as codified in 40 CFR part 81, subpart D
FR	Federal Register
mph	Miles per hour
NACAA	National Association of Clean Air Agencies
NAAQS	National ambient air quality standard or standards
NEAP	Natural Events Action Plan
NRCS	Natural Resources Conservation Service
NWS	National Weather Service
OAQPS	Office of Air Quality Planning and Standards, U.S. EPA
OMB	Office of Management and Budget
PM	Particulate matter
PM_{10}	Particulate matter with a nominal mean aerodynamic diameter less than or equal to 10 micrometers
$PM_{2.5}$	Particulate matter with a nominal mean aerodynamic diameter less than or equal to 2.5 micrometers
PSD	Prevention of significant deterioration
RTC	Response to Comment
SIP	State implementation plan
SMP	Smoke management program
TAR	Tribal Authority Rule
TIP	Tribal implementation plan

USB	U.S. background (ozone)
USDA	U.S. Department of Agriculture
VOC	Volatile organic compound or compounds
WESTAR	Western States Air Resources Council
WUI	Wildland urban interface

1.0 Introduction

This Response to Comments (RTC) document, together with the preamble to the final rule on the revisions to the Treatment of Data Influenced by Exceptional Events (Exceptional Events Rule), presents the Environmental Protection Agency's (EPA) responses to public comments received on the proposal notice to revise the Exceptional Events Rule (80 *Federal Register* (FR) 72840; November 20, 2015). The EPA has addressed all significant issues raised in timely public comments.

The EPA received more than 90 written comments from various commenters during the public comment period on the proposed rule revisions. Among the unique submissions, the EPA received comments from 20 national and regional organizations, including the National Association of Clean Air Agencies (NACAA), Association of Air Pollution Control Agencies, and Western States Air Resources Council (WESTAR); approximately 36 state environmental or health agencies; 3 federal, state, and local elected officials; 8 national environmental or public health organizations, including the Environmental Defense Fund, Natural Resources Defense Council, the Nature Conservancy and the Sierra Club; approximately 24 industry organizations, including the American Petroleum Institute, the Utility Air Regulatory Group, and the U.S. Chamber of Commerce; 2 tribes and tribal agencies; and the American Association of State Highway and Transportation Officials.

The responses presented in this document are intended to augment the responses to comments that appear in the preamble to the final rule and to address comments not discussed in the preamble to the final rule. Although portions of the preamble to the final rule are paraphrased in this RTC document, to the extent such paraphrasing introduces any confusion or apparent inconsistency, the preamble to the final rule itself remains the definitive statement of the rationale for the Exceptional Events Rule revisions adopted in the final rule. This document, together with the preamble to the final Exceptional Events Rule revisions and the information contained in the related *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, should be considered collectively as the EPA's response to all of the significant comments submitted on the EPA's proposal to revise the Exceptional Events Rule.

Section 2 of this RTC document responds comments related to the content of the Exceptional Events Rule revisions while Section 3 includes responses to legal, administrative, procedural, or misplaced comments. Within Section 2, Section 2.1 addresses scoping and definitions, Section 2.2 responds to comments related to the technical criteria within the rule, Section 2.3 addresses the treatment of certain event types, Section 2.4 addresses the exceptional events demonstration development and submittal process and demonstration content and Section 2.5 responds to comments on mitigation measures. Section 4 lists cited references.

Table of Commenters

Draft Number	Comment Number (as it appears in the docket)	Commenter
0074	EPA-HQ-OAR-2013-0572-0074	The National Stone, Sand & Gravel Association
0075	EPA-HQ-OAR-2013-0572-0075	Comment submitted by Rob Manes, Director, The Nature Conservancy, Kansas
0076	EPA-HQ-OAR-2013-0572-0076	Comment submitted by Kurt E. Blase, Counsel, Coarse Particulate Matter Coalition
0077	EPA-HQ-OAR-2013-0572-0077	Comment submitted by Jeff Flake, U.S. Senator, Arizona
0078	EPA-HQ-OAR-2013-0572-0078	Comment submitted by George (Tad) S. Aburn, Jr., Maryland Co-Chair, and Lynne A. Liddington, Knoxville, Tennessee Co-Chair, NACAA
0079	EPA-HQ-OAR-2013-0572-0079	Comment submitted by Eddie Terrill, Division Director, Air Quality Division, Oklahoma Department of Environmental Quality
0080	EPA-HQ-OAR-2013-0572-0080	Comment submitted by Craig Thomas, Sierra Forest Legacy
0086	EPA-HQ-OAR-2013-0572-0086	Comment submitted by Kathleen M. Sgamma, Vice President of Government & Public Affairs, Western Energy Alliance
0087	EPA-HQ-OAR-2013-0572-0087	Comment submitted by Catharine Fitzsimmons, Chief Air Quality Bureau, Iowa Department of Natural Resources
0088	EPA-HQ-OAR-2013-0572-0088	Comment submitted by Steve Trussell, Executive Director, Arizona Rock Products Association
0089	EPA-HQ-OAR-2013-0572-0089	Comment submitted by Jeff Flake, U.S. Senator, Arizona
0093	EPA-HQ-OAR-2013-0572-0093	Comment submitted by Brad Poiriez, Air Pollution Control Officer, Imperial County Air Pollution Control District, California
0095	EPA-HQ-OAR-2013-0572-0095	Comment submitted by John W. Mitchell, Director, Division of Environment, Kansas Department of Health and Environment
0096	EPA-HQ-OAR-2013-0572-0096	Comment submitted by Richard L. Goodyear, P.E., Chief Air Quality Bureau, New Mexico Environment Department

Draft Number	Comment Number (as it appears in the docket)	Commenter
0097	EPA-HQ-OAR-2013-0572-0097	Comment submitted by Lynn Fiedler, Chief, Air Quality Division, Michigan Department of Environmental Quality
0098	EPA-HQ-OAR-2013-0572-0098	Comment submitted by Bill Thompson, Chairman, National Tribal Air Association
0099	EPA-HQ-OAR-2013-0572-0099	Comment submitted by Bryce Bird, President, Air Resources Council, Western States Air Resources
D112	EPA-HQ-OAR-2013-0572-0100	Comment submitted by Rich Felts, President, Kansas Farm Bureau
D113	EPA-HQ-OAR-2013-0572-0101	Comment submitted by Marci Henson, Director, Clark County, Department of Air Quality
D109	EPA-HQ-OAR-2013-0572-0102	Comment submitted by Craig S. Volland, Chair, Kansas Chapter Air Quality Committee, Kansas Chapter Sierra Club
D111	EPA-HQ-OAR-2013-0572-0103	Comment submitted by Danilo Dragoni, Nevada Division of Environmental Protection
D114	EPA-HQ-OAR-2013-0572-0104	Comment submitted by Sean Alteri, Director, Energy and Environment Cabinet, Department for Environmental Protection, Kentucky Division for Air Quality
D115	EPA-HQ-OAR-2013-0572-0105	Comment submitted by Emily W. Coyner, Director, Environmental Issues, National Stone, Sand and Gravel Association
D116	EPA-HQ-OAR-2013-0572-0106	Comment submitted by Todd Parfitt, Director, Wyoming Department of Environmental Quality
D117	EPA-HQ-OAR-2013-0572-0107	Comment submitted by Dennis Smith, Executive Director, Maricopa Association of Governments
D118	EPA-HQ-OAR-2013-0572-0108	Comment submitted by Staci Heaton, Regulatory Affairs Advocate, Rural County Representatives of California
D119	EPA-HQ-OAR-2013-0572-0109	Comment submitted by Michael G. Dowd, Director, Air Division, Virginia Department of Environmental Quality
D120	EPA-HQ-OAR-2013-0572-0110	Comment submitted by Stuart A. Clark, Manager, Air Quality Program, Washington State Department of Ecology
D121	EPA-HQ-OAR-2013-0572-0111	Comment submitted by George S. Aburn, Jr. and Lynne A. Liddington, Co-Chair, Criteria Pollutants Committee, NACAA

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D122	EPA-HQ-OAR-2013-0572-0112	Comment submitted by Frank L. Kohlasch, Manager, Air Assessment Section, Environmental Analysis and Outcomes Division, Minnesota Pollution Control Agency
D123	EPA-HQ-OAR-2013-0572-0113	Comment submitted by Paul DeLong, President and Wisconsin State Forester, National Association of State Foresters
D124	EPA-HQ-OAR-2013-0572-0114	Comment submitted by Michael Sundblom, Director, Pinal County Air Quality Control District
D125	EPA-HQ-OAR-2013-0572-0115	Comment submitted by Dennis Smith, Executive Director, Maricopa Association of Governments, et al.
D126	EPA-HQ-OAR-2013-0572-0116	Comment submitted by Larry Greene, Executive Director, Air Pollution Control Officer, Sacramento Metropolitan Air Quality Management District
D128	EPA-HQ-OAR-2013-0572-0119	Comment submitted by Sheila C. Holman, Director, Division of Air Quality, North Carolina Division of Air Quality
D129	EPA-HQ-OAR-2013-0572-0120	Comment submitted by Gail Good, Director, Air Management, Wisconsin Department of Natural Resources
D130	EPA-HQ-OAR-2013-0572-0121	Comment submitted by Jonathan Downing, Executive Director, Wyoming Mining Association
D131	EPA-HQ-OAR-2013-0572-0122	Comment submitted by Carlos Swonke, P.G., Director, Environmental Affairs Division, Texas Department of Transportation
D133	EPA-HQ-OAR-2013-0572-0123	Comment submitted by Kurt E. Blase, Counsel, Coarse Particulate Matter (PM) Coalition
D134	EPA-HQ-OAR-2013-0572-0124	Comment submitted by Steve Schnoor, Manager-Environment, Land and Water, Rio Tinto Kennecott
D136	EPA-HQ-OAR-2013-0572-0125	Comment submitted by Libby Szabo, Chairman, et al. Jefferson County
D137	EPA-HQ-OAR-2013-0572-0126	Comment submitted by Kara Montalvo, Director, Environmental Compliance and Permitting, Salt River Project Agricultural Improvement and Power District
D138	EPA-HQ-OAR-2013-0572-0127	Comment submitted by Richard A. Hyde, P.E., Executive Director, Texas Commission on Environmental Quality

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D139	EPA-HQ-OAR-2013-0572-0128	Comment submitted by Gary M. Broadbent, Assistant General Counsel and Media Director, Murray Energy Corporation
D140	EPA-HQ-OAR-2013-0572-0129	Comment submitted by Tracy Brunner, President, National Cattlemen's Beef Association and Brenda Richards, President, Public Lands Council
D141	EPA-HQ-OAR-2013-0572-0130	Comment submitted by Ken Pimlott, Director, California Department of Forestry and Fire Protection
D143	EPA-HQ-OAR-2013-0572-0131	Comment submitted by Matthew H. Mead, Governor of Wyoming, Chairman, Western Governors' Association and Steve Bullock, Governor of Montana, Vice Chair, Western Governors' Association
D144	EPA-HQ-OAR-2013-0572-0132	Comment submitted by Oklahoma Department of Environmental Quality
D145	EPA-HQ-OAR-2013-0572-0133	Comment submitted by Leslie Sue Ritts, Counsel to the National Environmental Development Association's Clean Air Project
D146	EPA-HQ-OAR-2013-0572-0134	Comment submitted by Stuart Spencer, Associate Director-Office of Air Quality, Arkansas Department of Environmental Quality
D147	EPA-HQ-OAR-2013-0572-0135	Comment submitted by Bud Wright, Executive Director, The American Association of State Highway and Transportation Officials
D148	EPA-HQ-OAR-2013-0572-0136	Comment submitted by Eric C. Massey, Director, Arizona Department of Environmental Quality
D149	EPA-HQ-OAR-2013-0572-0137	Comment submitted by Georgia Forestry Commission
D150	EPA-HQ-OAR-2013-0572-0138	Comment submitted by Sierra Forest Legacy
D151	EPA-HQ-OAR-2013-0572-0139	Comment submitted by Charlene Albee, Director, Washoe County Health District, Air Quality Management Division
D152	EPA-HQ-OAR-2013-0572-0140	Comment submitted by Stephen R. Lewis, Governor, Gila River Indian Community
D153	EPA-HQ-OAR-2013-0572-0141	Comment submitted by Mary Lou Leonard, Director, Environmental Health Department, City of Albuquerque

Draft Number	Comment Number (as it appears in the docket)	Commenter
D154	EPA-HQ-OAR-2013-0572-0142	Comment submitted by John Kinsman, Senior Director, Environment, Edison Electric Institute
D155	EPA-HQ-OAR-2013-0572-0143	Comment submitted by William R. Murray, Vice President for Policy & General Counsel, National Alliance of Forest Owners
D156	EPA-HQ-OAR-2013-0572-0144	Comment submitted by Richard W. Corey, Executive Director, California Air Resources Board
D157	EPA-HQ-OAR-2013-0572-0145	Comment submitted by Rhonda Thompson, P.E., Bureau of Air Quality, South Carolina Department of Health and Environmental Control
D158	EPA-HQ-OAR-2013-0572-0146	Comment submitted by Kevin Rogers, President, Arizona Farm Bureau Federation
D159	EPA-HQ-OAR-2013-0572-0147	Comment submitted by Joseph C. Stanko, Jr., Counsel, Hunton & Williams on behalf of the National Ambient Air Quality Standards
D160	EPA-HQ-OAR-2013-0572-0148	Comment submitted by Clinton J. Woods, Executive Director, Association of Air Pollution Control Agencies
D161	EPA-HQ-OAR-2013-0572-0149	Comment submitted by Kyra L. Moore, Director, State of Missouri Department of Natural Resources
D162	EPA-HQ-OAR-2013-0572-0150	Comment submitted by Tokesha M. Collins-Wright, Partner, Kean and Miller Attorneys at Law on behalf of the Louisiana Chemical Association
D163	EPA-HQ-OAR-2013-0572-0151	Comment submitted by Paul G. Billings, Senior Vice President, Advocacy, American Lung Association
D164	EPA-HQ-OAR-2013-0572-0152	Comment submitted by Ted Steichen, Senior Policy Advisor, American Petroleum Institute
D166	EPA-HQ-OAR-2013-0572-0153	Comment submitted by Aaron M. Popelka, Vice President of Legal and Governmental Affairs, Kansas Livestock Association
D167	EPA-HQ-OAR-2013-0572-0154	Comment submitted by Richard A. Stedman, President, California Air Pollution Control Officers Association
D168	EPA-HQ-OAR-2013-0572-0155	Comment submitted by Michael Villegas, Air Pollution Control Officer, Ventura County Air Pollution Control District

Draft Number	Comment Number (as it appears in the docket)	Commenter
D169	EPA-HQ-OAR-2013-0572-0156	Comment submitted by Bryce West, Vice President Environmental Services-Americas, Peabody Energy
D170	EPA-HQ-OAR-2013-0572-0157	Comment submitted by Denise Koch, Director, Division of Air Quality, State of Alaska Department of Environmental Conservation
D171	EPA-HQ-OAR-2013-0572-0158	Comment submitted by Sandra L. Bahr, David Matusow and Joy E. Herr-Cardillo, Arizona Center for Law in the Public Interest
D172	EPA-HQ-OAR-2013-0572-0159	Comment submitted by William Allison, Director, Air Pollution Control Division, Colorado Department of Public Health & Environment
D173	EPA-HQ-OAR-2013-0572-0160	Comment submitted by John Walke and Emily Dave, Natural Resources Defense Council, Sanjay Narayan, Sierra Club Environmental Law Program and Luis Olmedo, Executive Director, Comite Civico Del Valle, Inc.
D174	EPA-HQ-OAR-2013-0572-0161	Comment submitted by Lucinda Minton Langworthy, Counsel, Hunton & Williams on behalf of the Utility Air Regulatory Group
D175	EPA-HQ-OAR-2013-0572-0162	Comment submitted by Barbara A. Walz, Senior Vice President, Policy and Compliance, Chief Compliance Officer, Tri-State Generation and Transmission Association, Inc.
D177	EPA-HQ-OAR-2013-0572-0163	Comment submitted by Mark Rapp, USFS (retired), Chair, Oregon Prescribed Fire Council
D178	EPA-HQ-OAR-2013-0572-0164	Comment submitted by Bill Snyder, RPF, Chair, Nor. California Society of American Foresters
D179	EPA-HQ-OAR-2013-0572-0165	Comment submitted by Elizabeth Hendler, Project Coordinator, 8-Hour Ozone SIP Coalition
D180	EPA-HQ-OAR-2013-0572-0166	Comment submitted by Kansas Prescribed Fire Council
D181	EPA-HQ-OAR-2013-0572-0167	Comment submitted by Judson H. Turner, Director, Georgia Environmental Protection Division, Georgia Department of Natural Resources
D182	EPA-HQ-OAR-2013-0572-0168	Comment submitted by Northern California Prescribed Fire Council

Draft Number	Comment Number (as it appears in the docket)	Commenter
D183	EPA-HQ-OAR-2013-0572-0169	Comment submitted by Robert L. Stout, Jr., Vice President and Head of Regulatory Affairs, BP America Communications and External Affairs, BP America Inc.
D184	EPA-HQ-OAR-2013-0572-0170	Comment submitted by T. Peter Ruane, President and CEO, American Road and Transportation Builders Association
D185	EPA-HQ-OAR-2013-0572-0171	Comment Denny Barney, Maricopa County Supervisor, District 1, Maricopa County, Arizona
D186	EPA-HQ-OAR-2013-0572-0172	Comment submitted by Glenn Hamer, President and CEO, Arizona Chamber of Commerce and Industry; and Jim Norton, Arizona Manufacturers Council
D187	EPA-HQ-OAR-2013-0572-0173	Comment submitted by Richard B. Standiford, Ph.D., RPF# 2015, District 3, Northern and Southern California Board of Directors, Northern and Southern California Society of American Foresters
D188	EPA-HQ-OAR-2013-0572-0174	Comment submitted by Kelly Shaw Norton, President, Arizona Mining Association
D189	EPA-HQ-OAR-2013-0572-0175	Comment submitted by Joseph Giudice, Office of Environmental Programs Administrator, City of Phoenix
D192	EPA-HQ-OAR-2013-0572-0180	Comment submitted by Scott Stephens, Professor, Wildland Fire Science Co-Director, Center for Fire Research and Outreach University of California, Berkeley et al.
D190	EPA-HQ-OAR-2013-0572-0182	Comment submitted by Bill Kleiman, President, and Charles Ruffner, President-Elect, Illinois Prescribed Fire Council

2.0 Responses to Comments on the Proposed Revisions to the Treatment of Data Influenced by Exceptional Events Rule

The following sections address the comments received by the EPA on the proposed revisions to the Exceptional Events Rule (80 FR 72840; November 20, 2015). We present comment summaries and responses below.

2.1 Comments on Proposed Revisions to the Exceptional Events Rule - General

Comment: Two commenters (D181, D113) expressed appreciation for the EPA's proposal to revise and clarify the rule rather than to rely solely on updated guidance.

EPA Response: The EPA acknowledges the supportive comment, and is finalizing revisions that will clarify the Exceptional Events Rule and improve the efficiency of the demonstration submittal and approval process.

2.1.1 Comments on Applicability of the Exceptional Events Rule and Who May Submit a Demonstration and Request for Data Exclusion

Comment: Some commenters supported the EPA's proposal to authorize Federal Land Managers (FLMs) to request exclusion of air quality data under the revised rule. One commenter suggested that 40 Code of Federal Regulations (CFR) 50.14(a)(l)(ii)(A)(2) of the proposed rule should be modified to read: "Initiate such a request only after discussion with and concurrence by the State in which the affected monitor is located." Commenter stated that, as the responsible agency, every exceptional event demonstration should be approved by and submitted through the state; though the demonstration itself may be prepared in part or in whole by the federal agency that runs the monitor in question in order to better utilize available resources.

EPA Response: This comment is addressed in Section IV.A of the preamble to the final rule.

Comment: Many commenters (0090-8, 0093, 0095, 0096, 0099, D089, D113, D114, D120, D121, D122, D126, D140, D143, D144, D146, D148, D151, D156, D167, D172, D181, 0090-8) disagreed with the EPA's proposal to authorize FLMs to request exclusion of air quality data under the revised rule. Some commenters stated that fire managers might not have the requisite expertise in air quality issues and might not know the status of the area, the possible impact on design value, or other issues regarding the affected area(s), and could conflict with the state's positions. Commenters stated that allowing FLMs to submit demonstrations directly to the EPA does not ensure the protection of air quality nor provide incentive for the fire manager to minimize air impacts. One commenter suggested that, when a potential exceptional event occurs on a federally-managed land-parcel that crosses jurisdictional boundaries, cooperation between all involved agencies would be needed regardless of the agency actually submitting the demonstration; as such, delegating the responsibility of submitting

demonstrations to FLMs is not necessary. One commenter (D138) expressed concern that FLMs do not have the legal authority to submit an exceptional event demonstration, and that the EPA cannot give authority to just FLMs without extending it further to other parties.

EPA Response: After considering the issues raised by commenters, as well as the information provided in the proposed rulemaking, the EPA is finalizing rule language under which FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA, provided the affected state/tribal air agency(ies) concurs. In accordance with 40 CFR 50.14(a)(1)(ii)(A)(2), a demonstration-specific concurrence from the air agency must accompany each submittal. Regardless of who submits a demonstration, the public health is best served when all affected air agencies, FLMs and other federal agencies communicate regularly and work collaboratively. This approach ensures that opportunities for such collaboration are available while at the same time providing the affected state/tribal air agency with the submittal authority. Regarding concerns about the FLMs' legal authority to submit demonstrations, the commenter does not provide any support for the proposition that the EPA would have to extend submittal authority to 'other parties.' Nor does the commenter specify what 'other parties' means. The EPA actions in the final rulemaking ensure that state and tribal air agencies can appropriately collaborate with FLMs in demonstration submittal and preparation. The EPA's decisions are consistent with Section 319 of the Clean Air Act (CAA). The EPA supports and encourages these collaborative efforts. See Section IV.A of the preamble to the final rule for additional detail.

Comment: Two commenters (D183, D145) noted that the EPA must provide assurances in the final rule that the state agency with responsibility for ensuring air quality may submit an exceptional events notification and demonstration even if another entity (*e.g.*, a local or federal agency or a private entity) operates and collects the monitoring data that indicates that an exceptional event has occurred. Specifically, one commenter (D183) noted that many Clean Air Status and Trends Network (CASTNET) monitors are under the jurisdiction of FLMs, and states should be able to use these monitors in their demonstrations.

EPA Response: As explained in Section IV.A of the preamble to the final rule, the EPA finalized rule language under which FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA with the concurrence of the affected state/tribal air agency(ies). With regard to the first and other comments summarized above, nothing in the CAA language at 319(b) explicitly restricts federal and local government agencies from submitting demonstrations if the state agrees. Section 319(b)(3)(B)(iv) of the CAA directs the EPA to develop criteria and procedures for the "Governor of a State to petition the Administrator to exclude air quality monitoring data…," while section 319(b)(3)(B)(i) directs the EPA to promulgate regulations, which provide that "the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies," indicating that Congress anticipated Federal agency involvement in demonstrating exceptional events. The EPA's

implementing regulatory language at 40 CFR 50.14(b)(1) says that the EPA "shall exclude data from use in determinations of exceedances and [NAAQS] violations… where a state demonstrates to the [EPA's] satisfaction that an exceptional event caused a specific air pollution concentration…." The language "where a State demonstrates" has historically been interpreted to mean that only states can initiate the exceptional events process and submit demonstrations. A state may delegate the authority for preparing and submitting demonstrations to local government agencies that are authorized by the CAA to produce and provide data. In this action, the EPA is promulgating regulatory language that authorizes federal agencies to prepare and submit demonstrations if the affected state concurs, on a case-by-case basis, on the preparation and submission of demonstrations by those federal or local government agencies. Submissions by delegated local agencies and/or state-concurred demonstrations by federal agencies have the effect of a state "demonstration." Because the state must take an affirmative action to allow federal or local government agencies to prepare and submit demonstrations under the new regulatory text, the state maintains the ultimate responsibility for submitting exceptional events demonstrations for events influencing concentrations at any regulatory monitor within its jurisdictional bounds.

Comment: One commenter (D129) stated the proposed rule text must clarify if tribes with TAS authority under Section 319 of the CAA can submit exceptional events demonstrations.

EPA Response: Tribes that operate monitors that produce regulatory data may submit exceptional events demonstrations as sovereign nations, regardless of whether they have TAS for CAA section 319(b). Certainly, tribes with TAS under section 319(b) of the CAA may submit exceptional events demonstrations directly to the EPA. (We note that the EPA typically grants TAS status on a program element-by-program element basis and describes the scope of each TAS determination in the EPA action conveying the TAS status.) As we discuss in Section IV.A of the preamble to the final rule, the Exceptional Events Rule applies to state air agencies, to local air quality agencies to whom a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and to tribal air quality agencies operating ambient air quality monitors that produce regulatory data. To be an affected entity for purposes of this rule, the air agency must first operate one or more ambient air quality monitors that produce regulatory data. The provisions of this rule apply uniformly to state and tribal air agencies.

Throughout the preamble to the final rule and regulatory language associated with the Exceptional Events Rule, we use the terminology "state," "tribe" and "air agency" interchangeably. The preamble to the final rule clarifies that references to "air agencies" are meant to include state, local and tribal air agencies responsible for implementing the Exceptional Events Rule. The requirements and provisions of the Exceptional Events Rule, notably the initial notification process, continues to apply to tribal air quality agencies that intend to submit demonstrations. These agencies should consult with the EPA Regional office prior to addressing the procedures and requirements associated with excluding data that have been influenced by exceptional events. The EPA will continue to work with tribes in implementing the provisions of the Exceptional Events Rule.

Comment: One commenter (D129) stated that the EPA should *only* allow the air agency that is authorized to flag and submit data to submit demonstrations. The commenter argued that this limitation would avoid conflicts of interest where the EPA helps a tribe without Treatment as State (TAS) authority for purposes of air quality monitoring to submit a demonstration. The commenter notes that in that situation, the EPA would, in effect, be submitting a request to itself.

EPA Response: Our response to comments on the general issue of what parties may submit a demonstration is given in the preamble to the final rule, particularly in Section IV.A. As we noted in our response to the previous comment, tribes that operate monitors that produce regulatory data may submit exceptional events demonstrations as sovereign nations, regardless of whether they have TAS for CAA section 319(b). On the subject of the EPA assisting a tribe with preparing a demonstration, there are several scenarios in which a tribe could have an interest in whether certain ambient data is excluded from regulatory determinations.

First, sources or events on tribal lands could cause or contribute to a NAAQS violation at a monitor on state lands and ultimately influence whether a tribal area is designated nonattainment or is found to be attaining or violating a NAAQS. Because the violating monitor is on state lands, the state is responsible for submitting a demonstration. Because the tribe cannot submit the demonstration in this circumstance, there is no issue with the EPA assisting the tribe in preparing a demonstration for ultimate state submittal to the EPA.

Second, a tribe may (or may not) have TAS status for the purposes of air quality monitoring and operate a monitor on tribal land. Under the final rule, the tribe could submit a demonstration in this circumstance. We believe that a tribe that is seeking the exclusion of event-affected ambient data, could request the EPA's assistance in preparing an exceptional events demonstration and, in light of our trust responsibilities, the EPA could provide such assistance. We believe that the requirement for public comment on a demonstration and the fact that any regulatory action affected by the exclusion would also be subject to notice-and-comment rulemaking provides adequate transparency. In the scenario in which the EPA prepares or assists in the preparation of a demonstration on behalf of and at the request of a tribe, the EPA intends to employ an independent peer review (*e.g.*, reviewers from other EPA Regional offices and/or EPA headquarters that were not involved in the preparation of the initial demonstration) of a demonstration to avoid perceived conflicts of interest.

A third scenario could involve a party other than the tribe operating a monitor on tribal land that produces regulatory data. Assuming the monitor is a "tribal monitor," that is the operator of the monitor is performing this task on behalf of the tribe, then the tribe could prepare and submit a demonstration, or, the operator could prepare a demonstration on behalf of and at the request of the tribe.

We would address other scenarios not identified here consistently with our trust responsibility and the provisions of the Tribal Authority Rule and the Exceptional Events Rule.

Comment: One commenter (0098) stated that the EPA is the "air agency" for all of the Indian Reservations and trust lands where the Tribe has not assumed that responsibility. The commenter requested that the EPA describe how designation decisions will be handled for Tribes that request assistance from the EPA to help manage air quality on their Reservation. Commenter urged the EPA to provide its plan for how it will work with Tribes to address air quality effects from events that are not reasonably controllable or preventable, whether from on-Reservation sources or up-wind off-Reservation events.

EPA Response: As we discuss in Section IV.A.3 of the preamble to the final rule and as we have done in the past, the EPA will continue to work with tribes in implementing the provisions of the Exceptional Events Rule. Tribes should contact their reviewing EPA Regional office with specific questions. Approaches on individual exceptional events demonstrations are likely to vary based on a number of factors including, but not limited to, the case-by-case nature of the event, the number of and ownership of potentially-influenced monitors, the affected regulatory determinations and the resources and interests of the affected Tribe.

Comment: One commenter (D138) stated the rule should explicitly declare that a state can submit an exceptional event demonstration for any monitored exceedance or NAAQS violation that is caused by an exceptional or natural event within that state's borders (regardless of what entity operates the affected monitor). Another commenter (D116) suggested that language be added to this section clarifying that state agencies may still prepare and submit demonstrations for federally-run monitors if they wish, and furthermore, that this proposed section simply provides additional options for submittal.

EPA Response: As recommended by this comment, the EPA is promulgating regulatory language at 50.14(a)(1)(ii), that is somewhat different than proposed and that clarifies that the state, exclusive of tribal lands, is ultimately responsible for submitting exceptional events demonstrations for exceedances that occur at all regulatory monitoring sites within the boundary of the state. While FLMs or other federal agencies or local agencies to which a state has authorized relevant responsibilities can develop exceptional events demonstrations for events that influence concentrations at regulatory monitors, the state can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within its jurisdictional bounds, including those operated by FLMs, other federal agencies and delegated local agencies. If an FLM or other federal agency prepares a demonstration, the state must concur with the demonstration before it can be submitted to EPA. The state retains the authority to decide whether to concur with and forward an exceptional events submittal generated by another agency. Where questions arise, the reviewing EPA Regional office can provide assistance and direction as part of the Initial Notification of Potential Exceptional Event process. In addition to requesting that FLMs, other federal agencies or delegated local agencies prepare or assist in the preparation of demonstration analyses, a state can also request the same of industrial facilities operating regulatory monitors experiencing event-influenced

exceedances. The EPA cannot act on demonstrations submitted directly by industrial facilities. The authorizing state is responsible, at its discretion, for submitting demonstrations prepared by industrial entities.

Comment: One commenter (D138) stated that the EPA should codify in the rule language a process for handling overlapping/competing authorities of state and federal agencies and conflicts of interest that the EPA might face in evaluating exceptional event demonstrations. Specifically, commenter would like to know if it would it be possible for a state and federal agency to submit independent demonstrations, if the EPA could submit or collaborate with a state exceptional event demonstration, and if the EPA could evaluate an exceptional event demonstration for an affected CASTNET monitor?

EPA Response: As previously discussed in this document and in the preamble to the final Exceptional Events Rule, the EPA is finalizing language that ensures an oversight role for state air agencies. The Exceptional Events Rule applies to all state air agencies and to local air quality agencies to which a state has delegated relevant responsibilities for air quality management, including air quality monitoring and data analysis. Federal agencies will be able to submit demonstrations only with concurrence from the state air agency. If a state does not concur with the local agency's, FLM's, other federal agency's or other entity's exceptional events claim, the state can decide not to forward the submittal to the EPA even if the state has authorized the Federal or local government agencies (who are also authorized by the CAA to produce and provide data) to prepare and submit demonstrations directly to the EPA. This policy will allow federal agencies to develop the demonstrations while maintaining state authority and control over whether the demonstration is acceptable for submittal to the EPA. As the air agency responsible for air quality management in the jurisdiction has a concurrence role, there would be no instance in which a federal and state agency would need to submit independent demonstrations. As part of the initial notification process and the increased communications presented in this rule revision, the EPA will work with the air agencies to develop effective demonstrations. Regarding CASTNET monitors, these are multi-monitor stations operated by various parties under agreements with the EPA. For monitors on state lands, the state air agency may submit or authorize a federal agency or a local district to submit a demonstration that the EPA would then review.

Comment: One commenter (D143) recommended that western states with existing, comprehensive state air quality regulatory programs should have the option of being the lead entity, instead of the EPA, for the receipt of exceptional event submissions from FLMs or from state land or fire managers.

EPA Response: As previously discussed, the EPA is promulgating regulatory language at 50.14(a)(1)(ii), somewhat different than we proposed, that provides that the state, exclusive of tribal lands, is ultimately responsible for submitting exceptional events demonstrations for exceedances that occur at all regulatory monitoring sites within the boundary of the state. While the state is responsible for submitting demonstrations for events that occur within its jurisdiction, the state cannot itself give the final concurrence that causes the data to be excluded from regulatory determinations. The CAA at section 319(b)(1)(A)(iv) clearly states that the "Administrator" must act on demonstration

submittals; only the EPA can determine whether a demonstration meets the exceptional events criteria.

Comment: Two commenters (D111, D153) objected to the requirement that a local air agency submit an exceptional events demonstration through the state, rather than directly to the EPA. These commenters argued that local air agencies should be able to defend their own exceptional event submission, and state agencies should not have the undue burden of submitting these demonstrations.

EPA Response: Under the CAA, states, exclusive of tribal lands, are primarily responsible for the administration of air quality management programs within their borders. As discussed in Section IV.A of the preamble to the final rule, local agencies to which a state has authorized relevant responsibilities can develop and submit exceptional events demonstrations for events that influence concentrations at regulatory monitors they operate. However, we are promulgating regulatory language at 50.14(a)(1)(ii) to clarify that the state, exclusive of tribal lands, can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within its jurisdictional bounds, including those operated by FLMs, other federal agencies, delegated local agencies, and industrial facilities.

Comment: One commenter (D161) recommended that the final rule change should clarify that industrial facilities may not independently submit exceptional events demonstrations to the EPA.

EPA Response: The final rule is clear that industrial facilities may not independently submit exceptional events demonstrations to the EPA. As discussed in Section VI.A.3 of the preamble to the final rule, industrial facilities may operate regulatory monitors that experience event-influenced exceedances and, at the request of the state, such facilities may prepare demonstrations for these exceedances. However, the EPA cannot act on demonstrations submitted directly by industrial facilities. The CAA language at section 319(b)(3)(B)(i) reads, “the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies.” Additionally, the CAA language at 319(b)(3)(B)(iv) requires that the EPA’s implementing regulations provide that “there are criteria and procedures for the Governor of a State to petition the Administration to exclude air quality monitoring data….” Under the CAA, states, exclusive of tribal lands, are primarily responsible for the administration of air quality management programs within their borders. States can delegate relevant responsibilities for air quality management to local agencies, but the CAA does not provide for delegation of these responsibilities to industrial facilities. Where industrial facilities operate regulatory monitors, the state is ultimately responsible for ensuring that collected data are uploaded into the EPA’s Air Quality System (AQS) and for verifying the accuracy of these data. Thus, the authorizing state, at its discretion, is responsible for submitting any demonstrations prepared by industrial entities. The EPA is also clarifying in the preamble to the final rule and in the regulatory text at 50.14(a)(1)(ii) that a state (or tribe) can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within

its jurisdictional bounds, including those operated by FLMs, other federal agencies, delegated local agencies, and industrial facilities.

Comment: One commenter (D129) expressed concern that the revisions do not decrease burden and can, in some circumstances, increase administrative burden through new requirements, such as the initial notification process. Two commenters (D188a, D148) requested that the EPA further clarify all positions, prepare templates with examples of minimum level data or analyses that will support demonstrations, and—in some obvious cases—allow for automatic approvals. These commenters expressed concern that any additional measures will increase burden, and the EPA should reconsider any proposed level of detail for requirements.

EPA Response: The comments do not warrant a change to the final rule. As a whole, the final revisions to the Exceptional Events Rule should improve the efficiency of the demonstration process and not materially increase the administrative burden. The final revisions to the Exceptional Events Rule contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA's approval of the exclusion of event-influenced air quality data, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. The revisions reflect the experiences of the EPA, state, local and tribal air agencies, FLM and other stakeholders in implementing the exceptional events program over the past 10 years. The EPA's intent with these regulatory revisions, our commitment to improved communications, our focus on decisions with regulatory significance, and the expressed non-binding guidance in the preamble to the final rule regarding recommendations for demonstration narrative and analyses to include in demonstration packages, protect human health and the environment while providing needed clarity, increasing the administrative efficiency of demonstration submittal process, and removing some of the challenges associated with implementing the Exceptional Events Rule. Although the rule revisions do contain some new requirements, such as the Initial Notification of Potential Exceptional Event (Initial Notification) process, these changes are intended to focus efforts on the protection of public health and clarify and increase efficiency rather than increase burden. For example, the Initial Notification process facilitates communication between the air agencies and the EPA Regional offices regarding whether a given event is likely to meet the Exceptional Events Rule criteria, whether the event has regulatory significance, and the types of evidence that would best support the rule criteria. This process is intended to reduce unnecessary or redundant technical analyses and ensure that air agencies do not unknowingly expend valuable resources preparing demonstrations that are either unlikely to meet the rule criteria or are for data that do not have regulatory significance.

Regarding the suggestion to prepare templates with examples, although the CAA does not require that EPA develop or provide any templates, examples or guidance, the EPA notes that with these rule revisions we are also announcing the availability of the final version of the non-binding guidance document titled *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations,* which applies the rule revisions to wildfire events that could influence monitored ozone concentrations. This guidance provides air agencies with information on

how to prepare and submit evidence to meet the Exceptional Events Rule requirements for monitored ozone exceedances caused by wildfires. The document includes example analyses, conclusion statements, and technical tools that air agencies can use to provide evidence to satisfy the Exceptional Events Rule criteria. Additionally, the EPA has indicated its intent to update the 2013 Interim Exceptional Events Implementation Guidance documents to reflect the final rule revisions and to develop additional guidance for prescribed fire events that may influence ozone concentrations and stratospheric ozone intrusion events.

Comment: Three commenters (D138, D129, D144) stated that the EPA should define and provide criteria for terms such as "compelling evidence," "administrator's satisfaction," and "public health is being protected," to ensure transparency and fairness. Commenters state that if determining the meaning and components of these terms are left to the Administrator's discretion, then inconsistencies could result in applying these terms.

EPA Response: The EPA is declining to define the phrases "compelling evidence" and "administrator's satisfaction." The EPA will review each exceptional events demonstration on a case-by-case basis using a weight of evidence approach. What is "compelling" or what "satisfies" the Administrator will depend on the facts of a particular exceptional event. CAA section 319(b)(1)(A)(iv) contemplates that the EPA will review exceptional events demonstrations on a case-by-case basis by providing that the Administrator will determine, through the process established in the promulgated regulations, whether the event is an "exceptional event." The EPA may explain its determinations, as appropriate to provide transparency and fairness.

With respect to clarifying the meaning of ensuring that "public health is being protected," the CAA as a whole, and section 319(b) in particular, is premised on the idea that states should undertake reasonable actions to control emissions and protect public health. Although the EPA relies, in large part, on individual states to determine the specific and appropriate actions, the Exceptional Events Rule includes several provisions to ensure the protection of public health. Specifically, the Exceptional Events Rule at 40 CFR 50.14(c)(3)(v) requires that for each demonstration, a state follow the public comment process and allow for a public comment period of at least 30 days. The public comment process ensures transparency and allows the public to raise any health concerns associated with the event as explained in the exceptional events demonstration. A state must also submit the public comments it receives along with its demonstration to the Administrator and address in the submission to the Administrator those comments disputing or contradicting factual evidence provided in the demonstration. Further, in keeping with the EPA's mission to protect public health and consistent with the principles included at CAA section 319(b)(3)(A), and after consideration of the public comments, we are promulgating new mitigation-related regulatory language at 40 CFR 51.930 requiring the development of mitigation plans in areas with "historically documented" or "known seasonal" exceptional events.

Comment: Two industry commenters (D130, D169) stated that the EPA's current guidance is insufficient to address the complex provisions within the Exceptional Events Rule. These commenters encouraged the EPA to promptly provide additional guidance

that helps states prepare demonstrations that satisfy the rule criteria. Commenters also stated that delays in issuing meaningful guidance harms states.

EPA Response: The EPA acknowledges the commenters' concerns. The preamble to the final rule provides guidance in the form of example language and analyses that air agencies can use in their exceptional events demonstrations. As noted previously, concurrent with these rule revisions, we are also announcing the availability of the final version of the non-binding guidance document titled *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, which applies the rule revisions to wildfire events that could influence monitored ozone concentrations. We have also indicated our intent to update the 2013 Interim Exceptional Events Implementation Guidance documents to reflect the final rule revisions and to develop additional guidance for prescribed fire events that may influence ozone concentrations and stratospheric ozone intrusion events.

2.1.2 Comments on the Definition and Scope of an Exceptional Event

Comment: Six commenters (D117, D115, D140, D113, D134, D183) expressed support for the EPA's proposed revisions removing the rule requirement that that an exceptional events demonstration must show that the concentration in question was "in excess of normal historical fluctuations, including background."

EPA Response: The EPA acknowledges commenters' support to revise the regulatory language from the "event is associated with a measured concentration in excess of normal historical fluctuations, including background" to "a comparison to historical concentrations."

Comment: Two commenters (D163, D173) did not support the proposed revisions regarding historical fluctuations because they believe that removing this language effectively weakens clean air protections. One commenter (D163) states that removing the language that the "event is associated with a measured concentration in excess of normal historical fluctuations including background," and changing it to a comparison to historical concentrations would "take another step back" from the specific individual event comparisons required by the Act to allow comparisons to a broader base of days, increasing the likelihood that they will be considered "exceptional." Another commenter (D173) argued that just because a regulatory requirement may require a state to do a more nuanced or case-by-case analysis does not render a phrase unclear. The commenter posited that parsing exceptional events data is a fact-specific and individualized inquiry which may be complex in certain situations. Nonetheless, the commenter stated, the challenging nature of a demonstration is not an excuse to weaken clean air protections through weakened regulatory language. The commenter further maintained that the EPA should retain the historical fluctuations language to avoid over-inclusive rule language due to percentile thresholds based on historical levels. Two additional commenters (D113, D134) stated that the EPA should clarify that eliminating "historical fluctuations" does not limit consideration of background concentrations in exceptional events analyses.

EPA Response: The EPA disagrees with the comment's claim that removing the "in excess of normal historical fluctuations, including background" language effectively weakens clean air protections. As we explain in Section IV.E.3 of the preamble to the final rule, the EPA does not see this change to the rule text as weakening the CAA protections. Contrary to the commenter's statement, a comparison to "historical fluctuations" is not a statutory requirement. The EPA added this requirement in the regulatory text when we promulgated the 2007 Exceptional Events Rule. These rule revisions do not provide a new way of interpreting or evaluating demonstrations. Rather, the revisions describe our consistent interpretation with language that more clearly represents the EPA's intent when analyzing historical concentrations and that more clearly conveys the analytical approach to those preparing demonstration packages. We have not previously required, nor do we require in this final action, that an event-influenced concentration be higher than all previous concentrations to be considered for exclusion under the provisions of the Exceptional Events Rule. Thus, the "comparison to historical concentrations" showing is not less stringent than the "in excess of normal historical fluctuations, including background" showing. The technical analysis remains robust. Also, the EPA has not articulated an approach for comparisons to historical fluctuations that explicitly considers "background" concentrations using any of the common definitions of that term.

Comment: Three commenters (D113, D134, D159) urged the EPA to recognize the important impact of background ozone on NAAQS exceedances, and that background ozone comprises a "considerable portion" of daily 8-hr. ozone air quality across the country. One commenter (D183) recommended that the EPA allow states to exclude data from one or multiple sources of background when background is the principal contributor to a NAAQS exceedance, as unusually high total pollutant background concentration itself may qualify as an exceptional event. Two commenters (D183, D145) said that the EPA should apply a "total background" approach, which includes biogenic emissions, international transport, lightning, wildfires and stratospheric ozone, regardless of duration. One commenter (D145) stated that the discussion of background in the *Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion* is insufficient, as these issues must be addressed by rulemaking. According to the commenter, because the EPA discussed stratospheric ozone intrusion but omitted international transport, there could be a presumption that the EPA does not agree that these events can cause or may contribute to monitored exceedances that should receive exceptional events treatment.

Several commenters (0090-9, D164, D159, D145, D164) stated that the EPA should recognize that lightning and every day biological processes can cause exceptional events. One commenter (D164) opined that nothing in the limited legislative history for Section 319(b) suggests that natural sources of air pollutants, like biological processes or lightning, are barred from consideration as exceptional events. Commenter (D145) urged the agency to address these issues more directly and explicitly recognize in the final rule that they may cause or contribute to NAAQS exceedances that are eligible for exclusion from NAAQS-related and other CAA decision-making.

EPA Response: The EPA acknowledges commenters' concerns regarding background ozone and recognizes that certain sources can contribute to background ozone concentrations. As we discuss in Section IV.B.3 of the preamble to the final rule, when addressing "background" ozone, we refer to the recent *Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion.*[1] As defined in this white paper, U.S. background (USB) ozone is any ozone formed from sources or processes *other than* U.S. manmade emissions of nitrogen oxides, volatile organic compounds (VOC), methane, and carbon monoxide (CO).[2] USB ozone does not include intrastate or interstate transport of manmade ozone or ozone precursors. While some sources that contribute to USB (*e.g.*, wildfires, stratospheric intrusions) may be eligible for treatment as exceptional events, other sources of USB would not meet the Exceptional Events Rule criteria. For example, routine or long-term international manmade emissions are not exceptional events because they are caused by human activity that is *likely to recur* at a given location; likewise, routine biogenic VOC emissions are not exceptional events because they are likely to recur and are not deviations from normal or expected conditions. Thus despite being natural, they are not "events."

The EPA disagrees with the comment that noted that an unusually high background concentration itself may qualify as an exceptional event. An exceptional event must be defined by the source of its emissions. If the underlying source is a natural event (*e.g.*, wildfire) and the emissions influence a regulatory monitor, then it can be considered for exclusion under the Exceptional Events Rule. If the underlying source is anthropogenic then the explicit text of CAA section 319 requires that it can only be considered under the Exceptional Events Rule if the activity causing emissions is unlikely to recur at a particular location. The meteorological processes that result in pollutant transport and the formation of USB ozone are ongoing and thus not an event, even though their influence on ambient concentrations at a particular time and location may be observed only occasionally and thus seem "event-like." Regardless of where the activity or event that caused emissions occurred, and regardless of whether the emissions travel internationally or interstate, all exceptional event criteria applicable to that activity or event must be met in order for the emissions to be excluded.

Comment: Three commenters (D112, D140, D166) asked the EPA to ensure the definition of "event" within the regulatory text includes both a time and geographic component or, at a minimum, multi-day periods when environmental conditions are similar and relevant to ecosystem-level management. Another commenter (D138) specifically asked that the definition of exceptional event in the definitions at 40 CFR 50.1 include situations where multiple events (spread over a large geographic area) may become aggregated in such a way that causes a monitored exceedance or NAAQS violation downwind. One commenter (D112) expanded on the concept of aggregation by

[1] *Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone White Paper for Discussion*, U.S. EPA, December 2015. Available at *https://www.epa.gov/sites/production/files/2016-03/documents/whitepaper-bgo3-final.pdf.*

[2] 80 FR 65292 (October 26, 2015).

noting that the conditions in Kansas require the definition of "event" to include separate prescribed fires conducted at or near the same time by different land managers as one event. Two commenters (D140, D116) argued that a definition of "event" that is restricted to a single land manager or single-day exceedances should be rejected as irrelevant to the scale of ecosystem management being considered when employing prescribed fire.

EPA Response: Section IV.G.1 of the preamble to the final rule and the associated regulatory text at 40 CFR 50.14(b)(7) indicate that an aggregation of events (*e.g.*, multi-day wildfires or several wildfires that contribute to a single exceedance) and their resulting emissions could be eligible for consideration under the provisions of the Exceptional Events Rule. Additionally, we have extended the use of plural terminology to the regulatory definition of exceptional event at 40 CFR 50.1(j) to more clearly acknowledge that an event or events may cause multiple exceedances (*e.g.*, exceedances at multiple monitors or multiple exceedances at a single monitor) or violations. We note, however, that the approach to aggregation may be difficult to implement if the effects of the individual events on their individual days are not fully quantified.

Comment: Commenter (D145) asks the EPA to clarify that a combination of event-related or continuous uncontrollable/unpreventable pollution can meet the definition of an exceptional event provided the elements of the rule are met (*i.e.*, the event(s) caused the exceedance and could not be reasonably prevented or controlled by the State).

EPA Response: As we note in our response to the previous comment, the rule revisions allow for event aggregation under certain circumstances. We explain in more detail in Section IV.G.1 if the preamble to the final rule that as part of the aggregation approach, the air agency must show that each identified event separately satisfies each of the three technical rule criteria (*i.e.*, human activity/natural event, not reasonably controllable or preventable, and clear causal relationship). For the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of a NAAQS. We do not intend our approach for event aggregation to allow for the aggregation of unnamed events or events that occur over the course of an extended timeframe. Also, as explained in a response to a previous comment, if the underlying source is a natural event (*e.g.*, wildfire) and the emissions influence a regulatory monitor, then it can be considered for exclusion under the Exceptional Events Rule. If the underlying source is anthropogenic then the explicit text of CAA section 319 requires that it can only be considered under the Exceptional Events Rule if the emissions from the original source is unlikely to recur at a particular location.

Comment: Three commenters (D125, D148, D152) agree with the EPA's proposed revision to simplify and combine some of the core Exceptional Events Rule elements that must be met for approval of exceptional event demonstrations.

EPA Response: The EPA acknowledges the commenters' support.

Comment: Two commenters (D120, D137) eagerly await the "Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS." Two commenters (D131, D147) stated that they hope it will alleviate their concerns with state Departments of Transportation (DOTs) potentially being required to mitigate for uncontrollable events as well as the potential for project delays while awaiting decisions on exceptional events. These commenters recommended that any guidance be developed consistent with the Office of Management and Budget's (OMB) final Bulletin entitled, "Agency Good Guidance Practices," which establishes policies and procedures for the development, issuance, and use of significant guidance documents by Executive Branch departments and agencies.

EPA Response: The EPA acknowledges the commenters' feedback and interest in the upcoming draft guidance. Whether the forthcoming guidance will alleviate specific concerns is likely to be determined on a case-by-case basis. We cannot say, at this point, whether mitigation will or will not be required for individual transportation-related projects. We intend to draft future guidance according to current applicable policies and practices, which includes "appropriate review and public participation, accessible and transparent to the public, of high quality, and not improperly treated as legally binding requirements."[3]

Comment: One commenter (D145) stated that the EPA provided useful information by discussing how a State could demonstrate that air quality monitored exceedances resulting from transported pollution, wildland fires including wildfires and prescribed fires, stratospheric ozone intrusions and high wind dust events could be eligible for treatment as exceptional events. The commenter stated that, while this discussion of specific events is useful, the commenter is not clear how the weight of evidence approach necessarily affects each type of event.

EPA Response: Section IV.C.3 of the preamble to the final rule indicates that in applying a "weight of evidence" approach to reviewing individual exceptional events demonstrations, the EPA believes it is appropriate to consider all relevant evidence and qualitatively "weigh" this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, its persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event. Because of the case-by-case nature of exceptional events, the EPA does not believe it is appropriate to provide specific instructions on how to "weigh" all relevant evidence for every potential event. Rather, we provide examples within the preamble to the final rule and exceptional events implementation guidance for certain event and pollutant combinations. In addition, the air agencies and the reviewing EPA Regional office should discuss the most appropriate approach to implementing the provisions of the Exceptional

[3] OMB's "Final Bulletin for Agency Good Guidance Practices," January 18, 2007. Available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf.*

Events Rule during the Initial Notification of Potential Exceptional Event process (*see* Section IV.G.5 of the preamble to the final rule for additional information).

Comment: One commenter (0090-3) noted that while the EPA has made efforts within the proposed rule revisions to streamline the process for identifying exceptional events and developing, submitting and reviewing associated exceptional events demonstrations, more deference needs to be given to states throughout the process. The commenter submits that the EPA should rely on the expertise of state and local agencies when determining whether exceptional events have occurred.

EPA Response: When determining whether event-influenced monitoring data can be excluded under the Exceptional Events Rule, section 319(b) of the CAA requires a system of checks and balances. State and local air agencies are uniquely positioned to evaluate whether an event occurred by nature of the fact that they operate ambient air quality monitoring networks that collect monitoring data, which could be influenced by exceptional events. Air agencies (*i.e.*, "states") can then use the Exceptional Events Rule and the guidance in the rule preamble, as well as other implementation guidance, to prepare an exceptional events demonstration. The EPA (*i.e.*, the "Administrator") must then determine that the air agency has satisfied the statutory requirements (*see* CAA 319(b)(1)(A)(iv), CAA 319(b)(3)(B)(i) and CAA 319(b)(3)(B)(iv)). The CAA criteria cannot be presumed to be satisfied unless the EPA concurs with an air agency's request to exclude data.

Comment: One commenter (D113) supported the definition of "exceptional event" in the proposed rule, and described the EPA's definition as meaning that a physical event should not be considered an exceptional event unless the resulting emissions reach and impact a monitoring site.

EPA Response: It is unclear what the commenter means by "physical" event, as the regulatory definition of "exceptional event" does not include reference to a "physical event." The EPA does, however, agree with the comment that an event would not be considered "exceptional" unless the event-influenced emissions cause an exceedance or violation of a NAAQS at a monitoring site. This concept is explicit in the definition at 40 CFR 50.14(j), which states, "*Exceptional event* means an event(s) and its resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event(s) and the monitored exceedance(s) or violation(s)…." The event must also meet the other criteria and procedures within the Exceptional Events Rule.

Comment: One commenter (D122) requests that the EPA consider allowing the state agency responsible for designations to initiate an exceptional events request for any data collected in the state, regardless of whether the state agency is the owner of the monitor.

EPA Response: The EPA agrees with the comment that as the agency primarily responsible for administering air quality management programs with their borders, a state (or local air agency or tribe) can always submit demonstrations for events that meet the requirements of the Exceptional Events Rule for any regulatory monitor within its jurisdictional bounds, including those operated by FLMs, other federal agencies,

delegated local agencies, and industrial facilities. We clarify this point in Section IV.A.3 of the preamble to the final rule and within the associated regulatory text at 40 CFR 50.14(a)(1)(ii).

Comment: One commenter (D145) suggests that after the last sentence in the current definition that states "[an exceptional event] does not include stagnation * * * or meteorological events involving high temperatures or lack of precipitation, or air pollution relation [*sic*] to source noncompliance," the EPA could add "*However, it (i.e., an exceptional event) may cause conditions that affect air quality yet result from such ineligible events."*

EPA Response: The EPA agrees with the concept expressed by the commenter and has clarified, through the regulatory definition of an exceptional event, that drought alone does not create emissions and therefore does not meet the definition of an exceptional event. Rather, drought can result in arid conditions that can combine with or exacerbate the effects of events that meet the requirements, provisions and criteria of the Exceptional Events Rule.[4] Because there are many definitions of drought, we also clarify that we are referring to "severe, extreme or exceptional drought" as defined by the U.S. Drought Monitor.

Comment: Two commenters (D188, D113) agreed that a natural event includes its resulting emissions.

EPA Response: The EPA acknowledges the commenters' support and has codified this concept, as proposed, within the definition of a natural event at 40 CFR 50.1(k). Our rationale for including this language in the regulatory text is included in Section IV.B of the preamble to the final rule

Comment: One commenter (D145) stated that the agency should not include lists like the one at 80 FR 72864, which identifies several event types that could be considered among those that could meet the definition of an exceptional event and qualify for data exclusion unless they are consistent with the EPA's other discussions in the preamble and are caveated by a phrase such as "including, but not limited to…."

EPA Response: The EPA clarifies in the introduction to Section IV.F of the preamble to the final rule that we listed those event types that appeared in the preamble to the 2007 Exceptional Events Rule simply to clarify that we did not propose any changes in our November 2015 proposed rule revisions that would change our previous characterization of the listed events. We also clarify in the preamble to the final rule revisions that we did not intend to imply that these are the only event types that could be considered for data exclusion under the Exceptional Events Rule.

[4] Drought can also exacerbate the air quality impact of activities that do not meet the criteria of the Exceptional Events Rule, such as dust from vehicular travel on unpaved roads.

Comment: Commenter (D145) noted that while it may make sense to include a comparison of historical concentrations in even the simplest exceptional events demonstration, the table of required evidence and the provision itself continue to appear "overly-prescriptive" and "unnecessarily burdensome." Other comments made this same point and suggested retaining the analyses in a Table as guidance.

EPA Response: The EPA acknowledges the commenter's feedback. The table identifying example evidence and analyses to support the comparison to historical concentrations was intended to provide information rather than identify required action on the part of the air agency. We have determined that the table does not belong in regulatory text and have included a modified version of this table, which appears as Table 2, in the preamble to the final rule where it will serve as guidance.

Comment: One commenter (D150) noted that the EPA's discussion of the comparison to historical concentrations and requiring only 5 years of data for the analysis does not address the complexities and challenges of implementing a program of prescribed fire necessary to establish/restore a sustainable ecosystem. Rather than looking at only 5 years of data, which represent periods of limited prescribed fire use and extensive fire suppression, the commenter suggested developing and using an emissions trade-off matrix to support data submittals and data exclusion requests. Commenter suggested that the matrix could contain modeled emissions scenarios built from current existing fuel conditions, past emissions and fuel records from local fire events and future fire and emissions projections with consideration of a no fire scenario, limited fire use (the current scenario), increased fire use based on reasonable percentages (25%-50%-75%) of accomplishment of full fire regime consistency, and account for climate warming and drought scenarios. If prepared collaboratively by air agencies, FLMs, scientists and other interested parties, such a matrix would allow agencies and other stakeholders to fully understand the emissions trade-offs and health impacts associated with prescribed fire use.

EPA Response: Although the EPA has not developed or included such a matrix for these rule revisions, we acknowledge that a product or matrix, such as that described by the commenter, could support both the human activity unlikely to recur at a particular location criterion and the not reasonably controllable or preventable criterion. We also note that this type of information could be included in a multi-year land or resource management plan with a stated objective to establish, restore and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species that also identifies the subject area as a candidate for prescribed fire.

Comment: One commenter (D161) requested that the EPA provide additional clarity regarding why footnote 57[5]—regarding whether malfunctions at industrial facilities can be considered exceptional events if the malfunction does not result in source noncompliance—was added or remove the footnote entirely, as it could promote exceptional events requests for power plant failures.

[5] 80 FR 72864 (November 20, 2015).

EPA Response: Section IV.F of the preamble to the final rule explains that we added the commenter-identified footnote to the November 2015 proposal to clarify the EPA's previously stated guidance position[6] that limited noncompliance of local sources can be expected from time to time as a result of process upsets or malfunctioning control equipment. These events may be classified as "upsets" or "malfunctions" as defined by the applicable State or local agency regulations, and they may be considered a violation of applicable emission or opacity limits. If these events are caused by upsets or malfunctions, they should be so noted and reported to the appropriate control agency. If they constitute a violation, legal remedies may be available to relevant parties. In summary, if a malfunction is caused by or results in source noncompliance, then the resulting emissions *cannot* be considered for exclusion under the Exceptional Events Rule in light of the plain language of CAA section 319(b)(1)(B)(iii). However, if the malfunction was *not* caused by nor did it result from source noncompliance (*e.g.*, it resulted from an act of nature, such as a lightning strike) AND if the resulting emissions caused a NAAQS exceedance or violation AND if it otherwise meets the requirements of the Exceptional Events Rule, then the emissions from the malfunction could be considered for exclusion under the provisions of 40 CFR 50.14. Although the final Exceptional Events Rule includes an explanation of why we included this footnote in the proposal, we removed this footnote from the final Exceptional Events Rule.

Comment: One commenter (D168) stated that the EPA must clarify whether the definition of an exceptional event includes an event that does not cause air pollutant concentrations to exceed the NAAQS standard concentration but forces the design value above the limit, causing a violation of the NAAQS.

EPA Response: The EPA addresses this issue, in part, in Sections IV.G.1 and IV.G.2 of the preamble to the final rule and maintains the position previously stated in Questions 30 and 31 of the *Interim Exceptional Events Rule Frequently Asked Questions guidance document* (US EPA, May 2013), that under certain circumstances concentration values that are not themselves exceedances of a relevant NAAQS could contribute to a violation of the NAAQS and thus could be considered eligible for exclusion under the Exceptional Events Rule.

2.1.3 Comments on the Types of Ambient Concentration Data and Data Uses Addressed by the Exceptional Events Rule

Comment: Many commenters disagreed with the EPA's proposal to limit exceptional event requests to a specific set of regulatory actions. These commenters supported allowing a case-by-case inclusion of other actions arguing that the EPA should acknowledge that exceptional events regulation could affect other, not specifically-identified, CAA issues such as design value estimates, prevention of significant deterioration (PSD) background determinations, transportation hot spot analysis, future

[6] *Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events* (the Exceptional Events Policy), U.S. EPA, OAQPS, EPA-450/4-86-007, July 1986.

year projections for modeled attainment demonstrations, and other purposes. Five commenters (D117, D119, D111, D110, D113) specifically stated that the EPA cannot constrain the application of exceptional events determinations to only certain determinations, and the EPA must allow for the exclusion of exceedances that qualify as exceptional events where there is any potential impact on determining whether a NAAQS has been exceeded or an area is in violation of the NAAQS.

EPA Response: The EPA has included the following language in the regulatory text at 40 CFR 50.14(a)(1)(i)(F): "Other actions on a case-by-case basis as determined by the Administrator." The EPA added this language to acknowledge that it may be appropriate to use the provisions in the Exceptional Events Rule to exclude data for regulatory determinations not specifically articulated in the in the list of five regulatory determinations. The preamble to the final rule discusses that this case-by-case approach could apply if the event were determined to have regulatory significance based on discussions between the air agency and the EPA Regional office during the Initial Notification of Potential Exceptional Event process.

Comment: Four comments (D181, D116, D119, D138) suggest that the EPA issue the described *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS,* which will apply to exclusion of data outside regulatory decisions, concurrently with the promulgation of the Exceptional Events Rule. Two commenters (D116, D119) request that the EPA release that guidance for public comment, and one commenter (D116) requested that the EPA provide that guidance for public comment prior to finalizing the Exceptional Events Rule.

EPA Response: The EPA acknowledges the commenters' feedback and interest in the upcoming draft guidance. As we discussed in the November 2015 proposal and describe in more detail in Section IV.C of the preamble to the final rule, we intend to develop a supplementary guidance document, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other than Retrospective Determinations of Attainment of the NAAQS,* to describe the appropriate additional pathways for data exclusion for some "predicted future" monitoring data applications. As discussed in the preamble to the final rule, we have delayed the release of this guidance to allow us to incorporate the content of the final Exceptional Events Rule revisions. Once available, the EPA intends to post the draft guidance document on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events*. We expect the Web site announcement to include instructions, as appropriate, for providing public comment.

Comment: One commenter (D114) stated that the EPA should not use the term "initial area designation" to describe one of the applicable actions under the Exceptional Events Rule, as it implies that redesignations are not encompassed by the bulleted list. The commenter suggested that the rule use the term "designations" instead.

EPA Response: CAA section 107(d)(1) directs the EPA to "…promulgate the designations of all areas (or portions thereof) ... as expeditiously as practicable, but in no

case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard….” CAA section 107(d)(3) governs redesignation activities that follow the initial area designations. Both initial area designation decisions and redesignation decisions for a particular NAAQS are listed as regulatory determinations by the Administrator in 40 CFR 50.14(a)(1)(i)(A) that may qualify for use of exceptional events demonstrations. Furthermore, the bulleted list of the applicable regulatory determinations in the preamble to the final rule lists “an action to designate or redesignate an area….” See section IV.C.2 of the preamble to the final rule for more detail.

Comment: Four commenters (D112, D131, D147, D164) requested that the EPA add two actions to the potential regulatory decisions. First, commenters stated that the EPA should explicitly include clean data determinations as potential actions. Second, the previously identified commenters, as well as a fifth commenter (D184), argued that the EPA should include options to remove uncontrollable event emissions from background concentrations for transportation conformity hotspot analyses, and options to streamline transportation conformity hotspot analyses prior to the development and the EPA’s acceptance of exceptional event packages to prevent significant delay in transportation project development.

EPA Response: Clean data determinations are included within the determination regarding whether a nonattainment area has attained a NAAQS by its CAA deadline. This determination is identified in 40 CFR 50.14(a)(1)(i)(C). The EPA is not specifically including transportation conformity hotspot analyses within the identified list of determinations by the Administrator, but acknowledges that these analyses could be included within “other actions on a case-by-case basis as determined by the Administrator” at 40 CFR 50.14(a)(1)(i)(F) if determined to have regulatory significance based on discussions between the air agency and the EPA Regional office during the Initial Notification of Potential Exceptional Event process.

Comment: One commenter (D173) stated that, with respect to the applicable regulatory actions listed in the proposed rule, and potentially with respect to others, the EPA must align its regulations to the statutory requirements of CAA section 319 to ensure that only data contemplated by the statute for exclusion is in fact excluded. Two commenters (D173, D114) further noted that the EPA may not exclude or agree to exclude event-affected data from other types of regulatory determinations without first undertaking notice-and-comment rulemaking to alert the public to what regulatory determinations beyond these five are being considered, and to take comment on the lawfulness and appropriateness of extension beyond these five types.

EPA Response: CAA section 319(b) includes the phrase “determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards,” which implies that demonstrations must follow the provisions in the Exceptional Events Rule for the EPA to concur with excluding data in connection with certain types of regulatory actions. In the final rule, we have added regulatory language to interpret this phrase as including the following types of actions: (1) an action to designate or redesignate an area as attainment, unclassifiable/ attainment, nonattainment or unclassifiable for a particular NAAQS, (2) the assignment or re-assignment of a

classification category (marginal, moderate, serious, etc.) to a nonattainment area to the extent this is based on a comparison of its "design value" to the established framework for such classifications, (3) a determination regarding whether a nonattainment area has attained a NAAQS by its CAA deadline, (4) a determination that an area has data for the specific NAAQS that qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant, (5) a finding of State Implementation Plan (SIP) inadequacy leading to a SIP call to the extent the finding hinges on a determination that the area is violating a NAAQS and (6) Other actions on a case-by-case basis as determined by the Administrator. Any determinations made by the Administrator on a case-by-case basis will conform with the requirements of CAA 319(b). These regulatory revisions align with the statutory text. Further, the public will have the opportunity to provide input on any "case-by-case" determination made in accordance with 50.14(a)(1)(i)(F) because any such determinations will be made in the context of a regulatory determination. Additionally, air agencies must make their demonstrations available for public comment and the submission to the EPA must include the public comments received and the state air agency's responses to the comments. We note that the commenter did not point out any specific ways in which such alignment does not exist, or specific changes that would make it exist.

We have also indicated our intent to develop a supplementary guidance document to describe the appropriate additional pathways for data exclusion for some "predicted future" monitoring data applications. We expect the Web site announcement to include instructions, as appropriate, for providing public comment. Any application of such guidance in a particular case may or may not involve notice-and-comment, depending on the specific situation and the process for the type of action involved.

2.1.4 Comments on the Definition of Natural Events

Comment: Many commenters supported the proposed changes to revise the definition of a natural event to include the concept of an event and its resulting emissions and to acknowledge that natural events can recur. These same commenters also supported the EPA's proposal to include language in the regulatory definition to clarify that anthropogenic emission sources that contribute to the event emissions (and subsequent exceedances or violations) that are reasonably controlled do not play a "direct" role in causing emissions. One commenter (D173) stated that a natural event is one that is not the result of human activity and that the statute clearly and explicitly distinguishes between "natural event[s]" (events that do not have a human origin) and "events caused by human activity." Five commenters (D109, D117, D129, D130, D169) note that the EPA should not expand or condition the definition of "natural events" to include anthropogenic emissions. One commenter (D109) specifically stated that the attempt to amend the definition of *natural* to encompass prescribed fire on wildland is inconsistent with prescribed burns, because prescribed burns are initiated by humans, at the same time each year, over a period of just a few weeks.

EPA Response: The EPA acknowledges the feedback from those commenters who supported the proposed revisions to the definition of a natural event. We have retained in

the regulatory definition the concept that we consider reasonably controlled anthropogenic sources to not play a direct role in causing emissions. As we discuss in the preamble to the final rule, we believe that if reasonable controls were implemented on contributing anthropogenic sources at the time of the event and if, despite these efforts and controls, an exceedance occurred, then we would consider the human activity to have played little or no direct causal role in causing the event-related exceedance. Thus, we would consider the event as a natural event. We also note in the preamble to the final rule that the event would *not* be natural if all of the event-related emissions originated from anthropogenic sources or if anthropogenic emission sources that contributed to the event-related emissions could have been reasonably controllable but reasonable controls were not implemented at the time of the event.

This is a reasonable interpretation of the language in the CAA at 319(b)(1)(A)(iii) that requires that an exceptional event "is an event caused by human activity that is unlikely to recur at a particular location or a natural event." While Congress included both "human activities" and "natural event[s]" as separate activities within an exceptional event, it also required the continued use of previous guidance as an interim provision until the effective date of the 2007 Exceptional Events Rule. One of the guidance documents identified at CAA 319(b)(4)(B) was the May 30, 1996 memorandum titled, "Areas affected by PM-10 natural events" (The PM_{10} Natural Events Policy). This policy document characterized high wind events as one category of natural events and provided that "Ambient PM_{10} concentrations due to dust raised by unusually high winds will be treated as due to uncontrollable natural events under the following conditions: (1) the dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM)." The policy also indicated that there is not always a bright line that excludes all anthropogenic activity from a "natural event." The March 2006 proposed Exceptional Events Rule elaborated on the concept of reasonable controls on anthropogenic sources.[7] After notice and opportunity for comment, the EPA set forth in the preamble to the final 2007 Exceptional Events Rule its interpretation that reasonably controlled anthropogenic sources in combination with emissions from natural sources could be considered to be "natural events."

We could also apply the idea of "little or no direct causal role" in causing the event-related exceedance to other generally accepted natural events such as wildfires. Wildfires could be started by accidental, human caused actions, such as arson or a smoldering campfire (clearly "human activities") and still be considered natural events. Similarly, we are finalizing the definition of wildfire to include escaped prescribed fires. We did not propose and we are not amending the definition of "natural" to encompass prescribed fire on wildland. We clearly state in Section IV.F.2.b of the preamble to the final rule that prescribed fires are events caused by human activity and, therefore, to be considered an exceptional event, every prescribed fire demonstration must address the "human activity unlikely to recur at a particular location" criterion. We note in this same section of the preamble that to meet the unlikely to recur criterion, a prescribed fire on wildland could

[7] 71 FR 12592 (March 10, 2006).

use one of two benchmarks to describe the expected frequency of prescribed fires on wildland: (1) the natural fire return interval as articulated in the 2007 preamble or (2) the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem. We agree with the commenter that prescribed fires on wildland, while they may mimic natural fires, are not by themselves natural events.

Comment: Three commenters (D117, D139, D154) argue that in noting that recurrence does not disqualify a natural event from consideration as an exceptional event, the EPA is seeking to read out the "or" that is contained in CAA section 319(b)(A)(ii), something it lacks authority to do. These commenters further state that no natural source should ever require control. One commenter (D117) argues a natural event is a separate category of exceptional events, and the EPA interjects the concept of recurrence into natural events by stating that "for *all types of events,* we consider reasonableness in light of the technical information available to the air agency at the time the event occurred. An air agency 'caught by surprise' by an event ... should not be expected to have implemented the same controls prior to an event as an air agency that has been aware that events of a certain type occur with regularity and cause NAAQS exceedances or violations." According to the commenter, there are natural events for which no amount of measures can control - much less prevent, and whether or not such events recur is not a permissible consideration for determining whether natural events have occurred. Commenter states that areas that experience repeated natural events cannot be penalized under the CAA for an inability to prevent natural events and the EPA cannot impose an open-ended obligation to increase controls for events that fundamentally cannot be prevented. According to another commenter (D154), the EPA must clarify further its treatment of "natural events" to ensure that the simple recurrence of such events in some areas does not trigger additional requirements.

EPA Response: The EPA disagrees with the comment regarding the recurrence of natural events. As noted in the response to the previous comment, Congress included both "human activities" and "natural event[s]" as separate activities within the exceptional events criteria. The concept of recurrence (*i.e.*, human activity *that is unlikely to recur at a particular location* or a natural event" (emphasis added)) applies specifically to human activities and not to natural events. We acknowledge that natural events can recur. We note, however, that to be considered "exceptional," natural events must satisfy all rule criteria. We further note that CAA section 319(b) does not restrict the applicability of the not reasonably controllable or preventable criterion to certain types of events, thus, the "not reasonably controllable or preventable" criterion, and the implementing Exceptional Events Rule language, applies to both events caused by human activity and to natural events. We discuss this concept in additional detail in Section IV.E.2 of the preamble to the final rule. Additionally, the revised final Exceptional Events Rule includes a mitigation plan requirement for areas with historically documented or known seasonal natural events. *See* 40 CFR 50.14(b)(9) and 51.930 and Section V of the preamble to the final rule. This requirement addresses the potential environmental and public health impacts associated with recurring events, including natural events, in an area.

Comment: Two commenters (D163, D173) stated that the EPA should not classify the cleanup after a natural event as "a natural event." Commenter (D173) opined that the

statute clearly and explicitly distinguishes between "natural event[s]" (events that do not have a human origin) and "events caused by human activity."

EPA Response: The preamble to the 2007 Exceptional Events Rule identified certain event types, including "natural disasters and associated cleanup," that may qualify as exceptional events if all rule criteria are met. In the Section IV.F of the preamble to this final rule, we repeat those event types that first appeared in the preamble to the 2007 Rule and note that we did not propose, nor are we finalizing in this action, any changes to the definition of "exceptional event" to address the listed event types. Our intent in identifying the event types was simply to acknowledge our continued belief that the identified event could still be considered "exceptional." The 2007 preamble did not take a position on whether such a cleanup should be treated as a natural event or an anthropogenic event. Because we proposed no changes to address cleanup after a natural event, this comment about the natural/anthropogenic distinction for cleanups after a natural event is beyond the scope of this rulemaking. As with all exceptional events demonstrations, the EPA will review each demonstration on a case-by-case basis using a weight of evidence approach, and applying the appropriate criteria.

Comment: One commenter (D166) stated that the EPA should allow certain prescribed fire events to be considered a natural event if the prescribed fire is consistent with the natural fire return interval and mimics a natural occurrence. Upon submission of a demonstration, the EPA would only need to verify that the prescribed fire exceptional event corresponded with the fire return interval to verify the event as a "natural event."

EPA Response: The EPA disagrees with the comment's contention that prescribed fires should be considered natural events if they are consistent with the natural fire return interval and mimic a natural occurrence, as described in the comment. We clearly state in Section IV.F.2.b of the preamble to the final rule that prescribed fires are events caused by human activity and, therefore, to be considered an exceptional event, every prescribed fire demonstration must address the "human activity unlikely to recur at a particular location" criterion. We note in this same section of the preamble that to meet the unlikely to recur criterion, a prescribed fire on wildland could use one of two benchmarks to describe the expected frequency of prescribed fires on wildland: (1) the natural fire return interval as articulated in the 2007 preamble or (2) the prescribed fire frequency needed to establish, restore and/or maintain a sustainable and resilient wildland ecosystem. We also note that the definition of wildfire includes "a prescribed fire that… because of natural factors such as high winds, developed in an unplanned way such that its management challenges are essentially the same as if it had been initiated by an unplanned ignition." 40 CFR 50.1(n). Thus, while prescribed fires on wildland may mimic natural fires, they are not by themselves natural events. However, we note that as a practical matter, the required content of a demonstration for a prescribed fire under the comment's recommended approach and under the approach in the final rule would be essentially the same. As the EPA understands the comment, the comment proposes that if a prescribed fire is consistent with the natural fire return interval and mimics a natural occurrence, then it should be considered a natural event. Under the final rule, the agency submitting the exceptional events demonstration may choose to explain that if the prescribed fire is consistent with the natural fire return interval and mimics a natural occurrence then the

fire would be considered anthropogenic, and provide information supporting the demonstration by addressing the "not likely to recur" criterion.

2.2 Comments on the Technical Criteria for the Exclusion of Data Affected by Events

Comment: Three commenters (D117, D130, D169) stated that if the EPA changes language to require that a demonstration "must include" criteria, rather than that it "provide evidence" with respect to criteria, the agency should not impose a greater burden on the state. Potentially, the EPA could issue guidance clarifying this point.

EPA Response: The EPA is promulgating regulatory language at 40 CFR 50.14(c)(3)(iv) that "[t]he demonstration to justify data exclusion *must include*:" (emphasis added) the subsequently identified elements. The "must include" language replaces the previous regulatory language to "provide evidence." We revised this language to more clearly identify the required components in an exceptional events demonstration as the references in the 2007 Rule were somewhat circular (*i.e.*, the definition of exceptional event at 40 CFR 50.1(j) referred to the requirements in 40 CFR 50.14 and the demonstration requirements at 40 CFR 50.14(c)(3)(iv) refer back to 40 CFR 50.1(j)). We believe that these cross references created some confusion as to the necessary components in a demonstration. We do not believe either choice of words necessarily conveys a greater burden. As with all exceptional events demonstrations, the EPA will review each demonstration on a case-by-case basis using a weight of evidence approach.

2.2.1 Comments on the Human Activity Unlikely to Recur at a Particular Location or a Natural Event Criterion

Comment: One commenter (D161) supported the EPA's incorporating into rule text the 3-year benchmark under which if there have been two prior events of a similar type within a 3-year period in an Air Quality Control Region (AQCR), then the third event, for which an air agency is preparing (or would prepare) a demonstration, would not satisfy the ''human activity that is unlikely to recur at a particular location'' criterion and, thus, would not qualify as an exceptional event. Three additional commenters (D130, D166, D173) stated the three events in 3 years benchmark for event recurrence should be guidance rather than rule because recurrence is event specific and should be analyzed on a case-by-case basis or, alternatively (D168), the benchmark should remain as general guidance with exceptions granted on a case-by-case basis. Three commenters (D116, D139, D169) noted that the EPA's strict reliance on this 3 year benchmark for event recurrence could unnecessarily exclude the third event in a 3-year from consideration as an exceptional event.

EPA Response: To support the concept of recurrence within the "human activity unlikely to recur at a particular location or a natural event" technical criterion, we have incorporated as guidance in Section IV.E.1 of the preamble to the final rule, the

benchmark that a third event in a 3-year period would constitute recurrence. The EPA can grant exceptions to this benchmark on a case-by-case basis as there could be circumstances where it would be reasonable to not apply this benchmark. As we indicate in our response to the following comment, we did not retain use of an AQCR to define the bounds for an area subject to recurrence.

Comment: Two commenters (0095, D168) supported the use of AQCRs to define the bounds of a "particular location," provided there could be exceptions. On the other hand, seventeen commenters stated that the use of AQCRs is generally inappropriate. Commenters offered several reasons why an AQCR might not be suitable bounds for effective analysis of event recurrence (*e.g.,* AQCRs can be antiquated and inconsistent with current jurisdictional boundaries; AQCRs may be too large (particularly in some areas of the West); AQCRs could be subdivided by terrain).

EPA Response: As we note in Section IV.E.1 of the preamble to the final rule, AQCRs are not the only way to define the bounds of a "particular location" with respect to the "human activity unlikely to recur at a particular location" portion of the "human activity unlikely to recur at a particular location or a natural event" criterion. Rather than prescribe a specific approach, we are relying on the affected air agencies to propose and the EPA Regional offices to determine, the appropriate bounds for "a particular location," under which the EPA will assess the case-by-case nature of the event demonstration.

Comment: Several commenters provided feedback regarding event recurrence specifically as it applies to prescribed fires on wildland. Two commenters (D140, D166) stated that the EPA should rely solely on the ecologically-relevant benchmarks related to natural fire return frequency and ecosystem management rather than relying on an arbitrary benchmark of two exceedances within 3 years in a given AQCR. One commenter (D150) stated that the EPA should increase flexibility by removing the 3-year, three-event criteria from the rule and replacing it with rule language such that as long as a FLM or state land manager has a plan that supports fire use, is acting within the recognized variability of the natural fire regime, has applied adequate smoke management practices, or offers reasonable evidence that supports a public health or public safety concern, including climate adaptation actions, it will be considered an acceptable demonstration of compliance.

EPA Response: As we note in the preamble to the final rule, both in Section IV.E.1 and in Section IV.F.2.b, the general benchmark for recurrence (*i.e.*, three events in 3 years) does not apply to prescribed fires. Rather than using this general benchmark for prescribed fire on wildland, we are promulgating in 40 CFR 50.14(b)(3)(iii), that recurrence for prescribed fires is defined by either the natural fire return interval or the prescribed fire frequency needed to establish, restore, and/or maintain a sustainable and resilient wildland ecosystem contained in a multi-year land or resource management plan with a stated objective to establish, restore, and/or maintain a sustainable and resilient wildland ecosystem and/or to preserve endangered or threatened species through a program of prescribed fire.

Comment: Two commenters (D148, D188a) stated that event recurrence should not be a relevant issue regarding a natural event, and the EPA should have the burden of showing that controls in an area could have reasonably prevented or controlled an exceptional event, and then use that information to promulgate a SIP call for additional planning requirements. One commenter (D125) argued that that recurring, uncontrollable or unpreventable natural events, such as weather driven high wind dust events, should not be cause for requiring states to implement additional controls or additional measures beyond those required by an approved SIP. One commenter (D154) stated that the EPA must clarify further its treatment of "natural events" to ensure that the simple recurrence of such events in some areas does not trigger additional requirements.

EPA Response: The commenters appear to misconstrue the issue of event recurrence. For purposes of exceptional events eligibility, the concept of recurrence only applies to "human activity unlikely to recur at a particular location" and not to natural events. Natural events can recur. The EPA has clarified this issue by defining natural event as "an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role." See Section IV.D of the preamble to the final rule for further discussion of the definition of a natural event. However, recurring natural events may result in mitigation plan requirements. See Section V of the preamble to the final rule for more discussion of mitigation and regulatory text codified at 40 CFR 50.14(b)(9) and 51.930.

Comment: Two commenters (D130, D169) requested guidance regarding whether the 3-year benchmark in which a third event occurring over a 3-year period would not be considered "unlikely to recur" applies when there is a partially natural and partially anthropogenic event. Specifically, the commenters asked that the EPA clarify that the event recurrence benchmark does not apply to events attributed to either fully natural emission sources, or a combination of natural and reasonably-controlled anthropogenic sources.

EPA Response: Depending on the specific circumstances of the event in question, the 3-year benchmark may or may not apply. Event recurrence, as part of the human activity unlikely to recur or a natural event criterion, only applies to human activity. If an event is natural, it is not subject to the 3-year benchmark. As discussed in Section IV.D of the preamble to the final rule, the EPA defines natural event as "an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. Anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions." Thus, determining whether the 3-year benchmark applies depends on whether the partially natural and partially anthropogenic event fits the definition of "natural event."

Comment: Two commenters (D130, D169) state that the recurrence benchmark ignores the weight-of-evidence approach, as it makes recurrence the defining factor for a demonstration.

EPA Response: As explained in Section IV.C of the preamble to the final rule, the EPA is clarifying that in applying a "weight of evidence" approach to reviewing individual

exceptional events demonstrations, it is appropriate to consider all relevant evidence and qualitatively "weigh" this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, its persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event. This approach allows the EPA to properly consider whether an event satisfies the rule criteria. Depending on the event in question, a weight of evidence analysis may show that for an anthropogenic event recurrence is the most important factor in satisfying the human activity unlikely to recur or a natural event criterion. As stated in Section IV.E.1 of the preamble to the final rule, the EPA discusses the benchmark of three events in 3 years to define recurrence as guidance through the preamble to the final rule, not codified as rule language. Thus, the recurrence benchmark may be, but is not necessarily, a compelling factor of satisfying one criterion of the Exceptional Events Rule.

Comment: One commenter (D138) said that the EPA has not adequately defined what constitutes an "event" for purposes of determining the number of events that have occurred within a 3-year period for event recurrence, and recommended that the EPA codify in rule that a single event can encompass multiple days for purposes of determining whether human activity is unlikely to recur at a particular location.

EPA Response: The EPA is clarifying, as guidance in Section IV.E.1 of the preamble to the final rule, that a single event, natural or caused by human activity, can span multiple days and result in an air agency flagging multiple monitor-day values in the AQS (*i.e.*, multiple exceedances of a given NAAQS at a single monitor in a single day or multiple NAAQS exceedances at multiple monitors on multiple days). The EPA considers a single discrete event to be one occurrence even if it extends over more than one day.

Comment: Several commenters maintain that if an event cannot be controlled, then recurrence cannot be relevant.

EPA Response: The definition of exceptional event in CAA Section 319(b)(1)(A) identifies "human activity that is unlikely to recur at a particular location or a natural event" and "not reasonably controllable or preventable" as two distinct requirements. The CAA requires the agency to consider the "not reasonably controllable or preventable" criterion regardless of whether a natural event recurs.

Comment: Commenter (D117) stated that the Proposed Rule is unclear with respect to its example of a maintenance area that is subject to an approved SIP but where the SIP was approved more than 5 years before the submitted event. The commenter referred to the EPA's example: "In 2014 there is a single high wind dust event with sustained wind speeds above the high wind threshold that results in two exceedance days, sufficient to constitute a 3-year NAAQS violation." The commenter explained that two exceedances, however, do not constitute a PM_{10} NAAQS violation in a 3-year period if an area has continuous PM_{10} monitors; four exceedances are the minimum necessary to constitute a violation at a single monitor. The commenter asserted that the EPA needs to clarify this example to better explain how two exceedances can cause a PM_{10} NAAQS violation in a 3-year period.

EPA Response: The commenter correctly notes a number of considerations (*e.g.*, single monitor versus multiple affected monitors, sampling frequency of the monitor) that must be accounted for in the data handling for a given NAAQS. The example that we provided in the preamble to the proposed Exceptional Events Rule revisions did not specify the monitor type or whether previous exceedances occurred at the monitor in question. Rather, our intent was to indicate that an event occurred that ultimately resulted in an exceedance for which the affected air agency desired to submit a demonstration. Our example was intended to illustrate a scenario for which the affected air agency may be able to rely on the controls in a SIP even though the SIP had been approved by the EPA more than 5 years prior to the demonstration submittal. We note that we have not repeated the examples given in the preamble of the proposed rule in the preamble to the final rule. We note that in our final rule we are promulgating language providing for reliance on a SIP approved 5 years from the date of the event rather than 5 years from the demonstration submittal.

Comment: One commenter (D145) seeks confirmation that the proposed test does not distinguish between whether the recurrence is in a nonattainment or a prevention of significant deterioration area, or an area that is undesignated, since the statute makes no distinction for the purposes of exceptional events regarding the NAAQS classification of the location where an exceptional event occurs.

EPA Response: As we clarify in Section IV.E.1, the recurrence benchmark of three events in 3 years generally applies regardless of an area's designation status with respect to the NAAQS that is the focus of the event demonstration.

Comment: Commenter (D150) supported what it characterized as the EPA's science-based definition of "not likely to recur" that employs the natural fire return interval, maintenance burns that maintain ecological benefits and resilience established in previous treatments, and protection of public safety as appropriate indicators of recurrence frequency for prescribed fire on wildland. The commenter stated that, when addressing prescribed fires, the EPA's "not preventable" language should address the emissions trade-offs and resultant impacts to public health from not burning according to the appropriate fire return interval. The commenter stated that the EPA should also clarify that additional event-related exceedances (*e.g.*, more than three events in 3 years) are not necessarily evidence of noncompliance if controls are in place, the event-related exceedance was caused by a fire that is within the natural fire regime, or for other defendable justifications offered by federal land managers.

EPA Response: As a general matter, the preamble to the final rule provides non-binding guidance and recommendations for satisfying specific rule criteria. This does not mean that these recommendations are the only way to address a given issue. The preamble guidance only precludes other approaches when the rule language identifies a specific condition as being necessary to satisfy a given requirement. As we discuss in general terms throughout the preamble to the final rule, and specifically in Section IV.F.2.b for prescribed fire on wildland, the EPA will review each demonstration on a case-by-case basis using a weight of evidence approach. For prescribed fire on wildland, we would consider relevant scientific data and information to support both the "human activity

unlikely to recur at a particular location" and the "not reasonably controllable or preventable" criteria.

2.2.2 Comments on the Not Reasonably Controllable or Preventable Criterion

Comment: One commenter (D168) suggested that PM violations associated with earthquakes that cause significant structural damage (and resulting dust generated over large areas) would not be reasonable to prevent or control. This commenter stated that air agencies should apply reasonable controls in the recovery period only after sufficient capacity to do so has been restored (in the event of a large scale disaster that disrupts basic services). Three other commenters (D130, D133, 0088) noted that air agencies should *not* be required to apply controls in the recovery period following a natural event (*e.g.*, dust storms).

EPA Response: While the EPA generally agrees that earthquakes are natural events and would not be reasonable to prevent or control, we also note that the scenario that all of the commenters describe (*i.e.*, dust emissions/PM violations in the recovery period following an event, whether earthquake, dust storm or another event) would likely be considered within the "natural disasters and associated cleanup" category that appeared in the preamble to the 2007 Rule and that may qualify as exceptional events if all rule criteria are met. Because we proposed no changes to address cleanup after a natural event, this comment is beyond the scope of this rulemaking. As with all exceptional events demonstrations, the EPA will review each demonstration on a case-by-case basis using a weight of evidence approach.

Comment: One commenter (D143) interpreted the "not reasonably controllable or preventable" criterion to mean that if a set of measures to reduce the magnitude and impact of event-related emissions should reasonably have been in place for emission sources that contribute to event-related emissions AND if a set of measures to stop or avert the event should reasonably have been in place, then those controls and measures must have been in place at the time of the event for the event to qualify for consideration under the Exceptional Events Rule. The commenter explained that this approach will require states to take undefined emission reduction steps to account for future events that are both uncontrollable and unpredictable, and that also may occur under federal managers. The commenter recommends that the states should not be held accountable for determining what would be reasonable controls or prevention measures, and what unforeseen and uncontrollable emissions sources may occur in the future, on a prospective basis.

EPA Response: The EPA disagrees with the comment that "reasonable" controls requires states to "take undefined emission reduction steps to account for future events." As we explained in the proposal and describe in detail in Section IV.E.2 of the preamble to the final rule, what is "reasonable" for purposes of "not reasonably controllable or preventable" should consider the technical knowledge available to the air agency at the time of the event. The proposal also noted that this technical knowledge would consider the attainment status of the affected area, the known frequency and severity of recurring

events (if any), and any communications between the affected air agency and the reviewing EPA Regional office regarding reasonable controls. The preamble to the final rule also repeats the suggestion that appeared in the Interim High Winds Guidance and the proposal that an air agency could prospectively assess and determine that the controls in place for a particular type of event, or a planned enhancement of those controls, are sufficient to meet the not reasonably controllable or preventable criterion, and then obtain the EPA's review and concurrence of this assessment prior to more events of that type occurring. The proposal expressed the EPA's belief that this prospective approach would reduce disagreements that might otherwise occur over later retrospective assessments, and we continue to see value in using these prospective assessments. Further, air agencies continue to have the option of making such a showing even if they do not use the prospective approach.

Regarding the portion of the comment referring to the reasonable control of the air quality impacts of events affecting land under federal management, the final rule gives no special status to such lands.

Comment: One commenter (D133) stated that if a source is subject to and is in compliance with reasonable control measures under other provisions of the CAA, then the EPA should not require additional control measures on the source to satisfy the not reasonably controllable or preventable criterion. The commenter supported the EPA's approach that reasonable controls can be demonstrated if a case specific analysis shows that reasonable measures were applied at the time of the event, provided it is clear that compliance with applicable permit terms, SIP provisions or other requirements is sufficient.

EPA Response: The EPA acknowledges the comment and is promulgating regulatory language that enforceable control measures are "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) implemented in accordance with an attainment or maintenance SIP, a federal implementation plan (FIP) or a tribal implementation plan (TIP); (2) if the EPA approved the plan within 5 years of the date of an event; and (3) if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP.

Comment: One commenter (D171) stated that the EPA is correct in limiting the deference when demonstrating "reasonable controls" to enforceable control measures implemented in accordance with an attainment or maintenance SIP approved within 5 years of the date of demonstration submittal. However, this deference should be treated as a rebuttable presumption, and should be based on attainment or maintenance SIPs approved within 3 years of when the EPA last approved controls.

EPA Response: The EPA acknowledges the comment and is promulgating regulatory language that enforceable control measures are "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) implemented in accordance with an attainment or maintenance SIP, FIP, or a TIP; (2) if the EPA approved the plan within 5 years of the date of an event; and (3)

if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP. With respect to the argument that deference to control measures in a SIP, FIP, or TIP should be a rebuttable presumption, we respond by explaining that if the control measures do not meet the three requirements identified above, then they will not constitute "reasonable controls." We respond to comments suggesting other timeframes for deference in Section IV.E.2 of the preamble to the final rule by explaining that we retain our proposed language that 5 years represents a reasonable timeframe during which (1) the control measures in a current SIP (or FIP or TIP) address all event-relevant sources of current importance, (2) the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP (or FIP or TIP) are the same measures that are known and available at the time of a more recent event, and (3) the conditions in the area have not changed in a way that would affect the approvability of the same SIP (or FIP or TIP) if it newly needed the EPA's approval. Additionally, as discussed in Section IV.E.3 of the preamble to the final rule, we encourage the use of 5 years of data when developing analyses to support the clear causal relationship criterion because we believe that 5 years of ambient air data represent the range of "normal" air quality. Using a 3-year period of deference might mask (or accentuate) the range of "normal" air quality.

Comment: Multiple commenters (D163, 0093, 0096, 0099, D121, D145, D159, D164) stated that the presumption of "reasonable controls" based on an approved attainment or maintenance SIP should apply to any SIP, including areas in attainment or unclassifiable, and should apply until the EPA finds the SIP to be inadequate. Commenters state that the EPA should provide attainment areas and unclassifiable areas that only have an infrastructure SIP with a list of controls that would need to be in place prior to an event to meet the "not reasonably controllable or preventable" criteria. Similarly, commenters stated that the EPA should also allow states to rely on measures in SIPs awaiting the EPA's approval, SIPs approved more than five years prior to the date of the event, or in an EPA-approved infrastructure SIPs as evidence of reasonable controls. Commenters contended that, at a minimum, states should be allowed to compare the measures in such SIPs to those applied to sources in recent nonattainment or maintenance area SIPs (which would be considered evidence that the controls are adequate) to demonstrate that the measures in older or infrastructure SIPs constitute reasonable controls. Furthermore, the commenters stated that SIPs for nonattainment and maintenance areas should indicate that reasonable controls are in place if approved within 5 years of the date of the *event*, not the date of the demonstration submittal. One commenter argued that agencies with a valid, in-place and approved natural event action plan (NEAP) or mitigation plan should be exempt from the 5-year requirement.

EPA Response: The EPA is promulgating regulatory language that enforceable control measures are "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) implemented in accordance with an attainment or maintenance SIP, a FIP, or a TIP; (2) if the EPA approved the plan within 5 years of the date of an event; and (3) if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP. Whether demonstrations can rely on infrastructure SIPs, NEAPs and mitigation plans and SIPs approved by the EPA more than 5 years prior to the date of

the event is explained fully in Section IV.E.2 of the preamble to the final rule. In the situations described by the commenters that will not be covered by the final rule language, it may still be possible to reach the outcome preferred by the commenters on a case-by-case basis if the weight of evidence referred to by the commenters indicates that such outcome is appropriate.

Comment: Several commenters (D164, 0090-8, 0096, 0099, D121, D145, D154, D159) stated that in certain cases, some states' infrastructure SIPs or other state-level regulations may provide a reasonable level of control in attainment areas that could support exceptional events demonstrations. Thus, commenters recommended that the EPA allow states to rely on measures in EPA-approved infrastructure SIPs as evidence of reasonable controls.

EPA Response: CAA sections 110(a)(1) and 110(a)(2) require every state to develop and submit to the EPA an "infrastructure SIP" for each NAAQS within 3 years of the promulgation of a new or revised NAAQS. While infrastructure SIPs address a number of CAA requirements, including the requirement to identify emission limits for specific pollutants, infrastructure SIPs are not required to include attainment or maintenance demonstrations and are not required to demonstrate that the controls on particular sources are "reasonable." While the measures identified in *some* EPA-approved infrastructure SIPs may satisfy the not reasonably controllable or preventable criterion, we are not relying on the measures in *all* infrastructure SIPs as the content of infrastructure SIPs does not necessarily include an assessment of those controls that are reasonable to have in place to address air quality impacts from particular types of events that may become the focus of exceptional events demonstrations. We discuss this concept in more detail in Section IV.E.2 of the preamble to the final rule. We will assess the appropriateness of relying on measures in an infrastructure SIPs to satisfy the not reasonably controllable or preventable criterion on a case-by-case basis.

***Comment*:** One commenter (D133) stated it is not reasonable to expect restoration of all or part of natural surface water flows because these water diversions first occurred many years ago as part of the settlement of the West and are not likely to be changed at this point. Commenter noted that the proposed revisions to the Exceptional Events Rule significantly expand the scope of a demonstration package and are inherently unreasonable in that it is difficult to conceive of any situation where it would be reasonable to control natural sources of wind-blown dust. The commenter further stated that the mitigation and control analyses should not be applied to natural sources.

EPA Response: The EPA is finalizing in regulatory language that a natural event is "…an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role. For purposes of the definition of a natural event, anthropogenic sources that are reasonably controlled shall be considered to not play a direct role in causing emissions." The November 2015 proposal also noted that we do not think that air agencies need to have implemented any controls for windblown dust from never-disturbed, large-scale natural landscapes and that lack of controls on natural sources that contribute to event-related emissions would not disqualify the event from being considered as an exceptional event. Under this definition, small historical

human contributions over time would not preclude an event from being deemed "natural." Alternatively, under this definition, repeated and long-term human activity would preclude the event from being natural. The commenter specifically identifies long-term water diversion and implies that the EPA should consider dust generated from playa exposed as a result of such water diversion to be "natural." The EPA disagrees with the commenter's suggested approach, noting that the legislative history for section 319 of the CAA includes reference to an issue similar to that raised by the commenter. The legislative history notes that dry areas, caused by human diversion of a water body can lead to particulate matter emissions that are the result of anthropogenic activity (*See* Pub. L. 101–549, CAA Amendments of 1990 House Report No. 101–490 Part 1A, May 17, 1990; and discussion of Mono Lake, California therein). The EPA does not intend that "reasonable control" of dust generated from playa exposed as a result of such water diversion is in every situation complete control. Rather, to meet the not reasonably controllable or preventable criterion is a case-specific issue to be determined based on the weight of evidence regarding all the factors that make a control effort reasonable or unreasonable to implement.

Comment: Two commenters (D173, D163) opposed deference to enforceable control measures implemented in accordance with an attainment or maintenance SIP approved within 5 years of the date of demonstration submittal when demonstrating "reasonable controls." Commenter (D173) stated that deference to approved-SIPs is impermissibly backward-looking and static and "illegally skirt[s]" the statutory condition that exceedances/violations must not be reasonably controllable or preventable, regardless of how long a presumption lasts.

EPA Response: The comment incorrectly cites CAA section 319(b)(1)(A)(ii) as requiring that an exceedance or violation be not reasonably controllable or preventable. In fact, CAA section 319(b)(1)(A)(ii) requires that an exceptional event be not reasonably controllable or preventable. CAA section 319(b)(2) then left it to the EPA to identify and promulgate, in a notice-and-comment rulemaking, criteria for determining whether an event meets the not reasonably controllable or preventable criterion. The statute does not bar the EPA from creating presumptions based on recent SIP approvals. The EPA is promulgating in this final action that reliance upon controls in approved attainment and maintenance SIPs is appropriate because SIPs contain the measures and controls that 1) were required at the time of the event and 2) were found to be reasonable and appropriate for inclusion in the SIP. We expect that the EPA's review of the reasonableness of the controls in approving the SIP would include criteria very similar to that which would be applied in a case-by-case review of reasonable controls during an exceptional events demonstration. As we explain in more detail in Section IV.E.2 of the preamble to the final rule, we believe 5 years is an appropriate period for deference to the measures in an approved attainment or maintenance SIP because we do not expect the factors that affect the reasonableness of specific emissions controls would change during that relatively short time period. Further, because SIPs are updated following the promulgation of new or revised NAAQS, reliance on measures in SIPs is not backward-looking or static. Finally, if the air agency has not updated nor the EPA approved the SIP for the relevant pollutant within 5 years of the date of the subject event, the EPA would consider whether

the controls required in the SIP meet the reasonably controllable criteria for exceptional events on a case-by-case basis using a weight of evidence approach.

Comment: Two commenters (D130, D169) stated that the EPA should extend the concept and presumption of "reasonable controls" (*i.e.*, reliance on measures in an attainment or maintenance SIP approved within 5-years) to industrial monitors experiencing exceedances or violations provided the industrial source operating the monitor in question has implemented BACM and these BACM have been incorporated into air quality permits, periodically reviewed, and updated as needed. Commenters note that it is not appropriate that the demonstration required for an industrial monitor be more complex than a State-run monitor.

EPA Response: The provisions of the Exceptional Events Rule govern the exclusion of event-influenced air quality data collected at regulatory ambient air quality monitors. The final rule contains definitions, procedural requirements and requirements for demonstrations that apply regardless of who owns or operates the regulatory monitor. Thus, the demonstration requirements are the same for both industrial monitors and state-operated monitors. The reasonable control presumption – the presumption that an EPA-approved SIP is being implemented and was approved no more than 5 years before the event – applies to data regardless of whether it was collected at an industrial monitor or a State-run monitor.

As we discuss in Section IV.E.2 of the preamble to the final rule, we do not believe it is appropriate to extend deference to BACM contained within individual facility air quality permits. These control measures may or may not be EPA-approved and evaluated using the same rigor as controls in a SIP, FIP or TIP. While the BACM would apply to the permit holder, these measures may not address all of the sources potentially contributing to the monitored exceedance or violation. We do, however, encourage air agencies to identify BACM in air quality permits in the collection of measures that constitute "reasonable" controls for purposes of addressing the not reasonably controllable or preventable criterion.

Comment: One commenter (D139) cited the EPA's proposal that "if a mixture of natural and anthropogenic sources in an upwind state contributed to an event, the downwind state is not required to demonstrate that the anthropogenic sources in the upwind state were reasonably controlled for those sources to be considered to not have directly caused the events." Commenter then stated that, "For any anthropogenic event not subject to the five year SIP presumption, the event should be deemed both unpreventable and uncontrollable if the need for controls was not apparent prior to the event that is the subject of a demonstration."

EPA Response: The point of the comment is unclear. The EPA does not know whether the comment intended to advocate a position that the EPA should consider any emissions of anthropogenic origin that are transported to a downwind state (or tribe) to be considered not reasonably controllable or preventable or whether the comment meant only those transported anthropogenic emissions for which the need for controls was not apparent. In either case, as we discuss in more detail in Section IV.F.1 of the preamble to

the final rule, we would consider interstate-transported emissions of anthropogenic origin to be not reasonably controllable or preventable by the downwind state (or tribe) regardless of the status of the downwind state's SIP and regardless of whether the need for controls was apparent. We are promulgating regulatory language at 40 CFR 50.14(b)(8)(vii) to address this point. This provision states that an air agency does not need to provide case-specific justification to support the not reasonably controllable or preventable criterion for emissions-generating activity that occurs outside of the state's jurisdictional boundaries within which the concentration at issue was monitored. This provision applies only to the "not reasonably controllable or preventable" rule criterion and only for those emissions that originate outside of the air agency's jurisdictional bounds. Air agencies must also identify and assess the contribution from local sources in any exceptional event demonstration. We also note that to be considered for data exclusion, transported pollution must meet all of the Exceptional Events Rule criteria. While transported anthropogenic pollution may be not reasonably controllable or preventable, it must also be event-related AND be either natural or caused by human activity that is unlikely to recur at a particular location. Routine emissions generated by and transported from anthropogenic sources (*e.g.*, emissions of ozone precursors or directly emitted particulate matter (or PM precursors) from one state or foreign country's power plants transported into another state or the U.S.) are not exceptional events. The CAA provides other mechanisms like 179B (for international transport) or 110(a)(2)(D) and/or 126 (for interstate transport) to address these types of emissions.

Comment: One commenter (D154) stated that the language that references "all sources" and "all anthropogenic sources" in proposed 40 CFR 50.14(b)(7)(iv), outlining reliance on approved SIPs for the not reasonably preventable or controllable criteria, should be clarified or eliminated so as to remove any impression that approved controls that are included in a SIP will be second-guessed during an exceptional event determination.

EPA Response: The language identified by the commenter will remain in the final regulatory text as it should not lead to confusion. As explained in the final regulatory text and the preamble to the final rule, the EPA defers to enforceable control measures implemented in accordance with an attainment or maintenance SIP, FIP or TIP. However, this deference only exists for 5 years after the SIP, FIP or TIP is approved and provided the SIP addresses the pollutant and the sources potentially contributing emissions to the exceedance or violation that is the subject of the exceptional events demonstration. We clarify here that by "the SIP addresses" we mean that the SIP, FIP or TIP has considered the emission and air quality impact of the source at issue and has adopted appropriate controls *if any*. We do not mean that the plan must always have controls for that source. However, if there is an event-affected source that the plan gave no consideration to at all, there is no logical basis to presume that no control is the reasonable level of control. See Section IV.E.2 of the preamble to the final rule for further discussion.

Comment: Four commenters (D145, 0088, D152, D164) stated that air agencies should not be required to consider the frequency and severity of a recurring natural event when evaluating the reasonableness of controls. Commenters stated that recurrence should play no part in determining the reasonableness of controls, and air agencies should not be required to implement controls for natural sources of emissions, such as windblown dust

from never-disturbed, large-scale natural landscapes, wildfires on wildland and volcanic eruptions, as well as remote, large-scale, or sudden natural events. The commenters contended that these events are not reasonably controllable or preventable regardless of the frequency of recurrence. Some commenters believe this should be added to rule text.

EPA Response: The EPA disagrees with the comment in part. CAA section 319(b) does not restrict the applicability of the not reasonably controllable or preventable criterion to certain types of events, thus, the "not reasonably controllable or preventable" criterion, and the implementing Exceptional Events Rule language, applies to both events caused by human activity and to natural events. The final rule revisions present that what is "reasonable" for purposes of "not reasonably controllable or preventable" should consider the technical knowledge available to the air agency at the time of the event. We generally agree that an air agency "caught by surprise" by an event of a given type should not be expected to have implemented the same controls prior to an event as an air agency that has been aware that events of a certain type occur with regularity and cause NAAQS exceedances or violations. The CAA as a whole, and section 319(b) in particular, is premised on the idea that states should undertake reasonable actions to control emissions and protect public health. A recurring event informs the air agency that the event has the potential to occur and should spark consideration of appropriate controls and mitigation options. It is logical for recurrence to play a role in determining reasonableness of controls to limit pollutant emissions and protect public health. Exemptions and exceptions apply in addition to, rather than in place of, reasonable controls. In keeping with the EPA's mission to protect public health, we are promulgating in regulatory language the requirement to develop mitigation plans in areas with "historically documented" or "known seasonal" exceptional events.

In 40 CFR 50.14(b)(5),the final rule addresses windblown dust from never-disturbed, large-scale natural landscapes, wildfires on wildland and volcanic eruptions, as well as remote, large-scale, or sudden natural events.

Comment: One commenter (D129) stated that the EPA should waive the requirement that air agencies fulfill the "not reasonably controllable or preventable" measure in the rule for events that cannot be easily shown to have been reasonably controlled or prevented. The commenter stated that approval of the criterion should be automatic by the EPA without the need for air agencies to demonstrate that events such as wildfires, dust storms, and industrial fires were "reasonably controlled and prevented."

EPA Response: CAA section 319(b)(1)(ii) defines an exceptional event as an event that is not reasonably controllable or preventable. The EPA does not have the authority to waive this statutory requirement. However, when the criterion is applied on a case-specific basis, the air agency may explain the difficulty in obtaining more evidence than has actually been collected and presented in the demonstration, and argue that it would be unreasonable for the EPA to expect more evidence to be presented. The EPA will apply a weight-of-evidence approach when reviewing the demonstration.

Comment: One commenter (0096) stated that the proposed revision to the Exceptional Events Rule would require states that experience recurring natural events (*e.g.*, high wind

dust storms or wildfires) in attainment areas to implement an undefined set of emission controls in anticipation of future exceedances. Commenter stated that states should not have to implement an increasing level of control measures that may not be feasible or effective and may not qualify as "reasonable" under the Exceptional Events Rule. Further, the comment explained that some jurisdictions lack the authority to implement regulations that go beyond what is required at the state or federal level. The comment stated that the Exceptional Events Rule is not the proper mechanism for the EPA to identify deficient control measures that do not provide for the attainment and maintenance of a given standard.

EPA Response: The EPA agrees with the comment that the Exceptional Events Rule is not the appropriate mechanism to identify deficient control measures with respect to attaining or maintaining a given NAAQS. The Exceptional Events Rule is, however, the appropriate mechanism to identify those measures that constitute "reasonable controls" for purposes of the "not reasonably controllable or preventable criterion" within the Exceptional Events Rule. In this context, we are promulgating regulatory language that enforceable control measures are "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) implemented in accordance with an attainment or maintenance SIP, FIP, or TIP, (2) if the EPA approved the plan within 5 years of the date of an event, and (3) if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP. We discuss this concept in more detail in Section IV.E.2 of the preamble to the final rule.

Comment: One commenter (D117) stated that the EPA should clarify that the "non-rebuttable presumption" for SIP reliance extends only to whether or not a State is required to revise its SIP prior to the exceptional event. The commenter elaborated that the "consideration of the sufficiency of SIP measures for the relevant pollutant must and should be constrained or the value of any presumption would be substantially eroded."

EPA Response: Given the overall context of this comment within the original comment response to the EPA, which generally advocates for additional flexibility within the final rule revisions, the EPA interprets this comment to mean that the EPA should include in the final rule revisions a provision for deference to controls in an EPA-approved SIP until such time as the state is required to revise the SIP. On this point, the EPA disagrees. The EPA maintains that for 5 years after a SIP is approved, it is reasonable to rely on the measures in that SIP to demonstrate that reasonable controls were in place at the time of the event. As discussed earlier in this RTC document and in Section IV.E.2 of the preamble to the final rule, 5 years represents a reasonable timeframe during which (1) the control measures in a current SIP (or FIP or TIP) address all event-relevant sources of current importance, (2) the control measures that were considered by the air agency and the EPA at the time the EPA last approved the SIP (or FIP or TIP) are the same measures that are known and available at the time of a more recent event, and (3) the conditions in the area have not changed in a way that would affect the approvability of the same SIP (or FIP or TIP) if it newly needed the EPA's approval. Additionally, as discussed in Section IV.E.3 of the preamble to the final rule, we encourage the use of 5 years of data

when developing analyses to support the clear causal relationship criterion because we believe that 5 years of ambient air data represent the range of "normal" air quality.

Comment: A commenter (D125) emphasized that the EPA should take care to ensure there is no requirement for additional controls or mitigating measures, apart from those already required by the SIP, on surfaces that are covered by windblown dust as a result of an uncontrollable high wind dust event.

EPA Response: The EPA disagrees with the comment that the controls in the SIP should always constitute reasonable controls for windblown dust and for dust that is on surfaces due to a recent high wind dust event and has a potential to be re-entrained. As we have previously noted and as we discuss in more detail in Section IV.E.2 of the preamble to the final rule, we are promulgating regulatory language that enforceable control measures are "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions if the controls are: (1) implemented in accordance with an attainment or maintenance SIP, FIP, or TIP, (2) if the EPA approved the plan within 5 years of the date of an event, and (3) if the plan addresses the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP, FIP or TIP. To the extent the SIP meets these identified requirements, we believe that the SIP-included controls would constitute reasonable controls. Otherwise, the reasonableness of additional controls for surfaces that are covered by windblown dust can be assessed on a case-by-case basis. Additionally, as we have previously noted, in keeping with the EPA's mission to protect public health, we are promulgating in regulatory language the requirement to develop mitigation plans in areas with "historically documented" or "known seasonal" exceptional events.

Comment: One commenter (D109) would like specific information as to what Region 7 is doing to evaluate when to exempt states from the usual demonstrations for exceptional events resulting primarily from upwind activity beyond their control.

EPA Response: The EPA Region 7 office, like all of the EPA Regional offices, reviews each demonstration on a case-by-case basis using a weight of evidence approach. Specific actions taken on individual demonstrations are beyond the scope of this rulemaking. The EPA does not believe that the downwind state should be exempt from submitting a demonstration for an event happening in another state because the affected state (*i.e.*, downwind state) needs to present evidence, which the EPA will review, indicating that the event in the upwind state (versus emissions originating in-state) actually caused the noted exceedance or violation. An assertion by the downwind state is insufficient to "exempt" a downwind state from preparing a demonstration.

Comment: Two commenters (D117, D154) stated that the EPA should clarify the reference to "all sources necessary to fulfill the requirements of the CAA for the state implementation plan" in the regulatory provision discussing reliance on an EPA-approved SIP in connection with determinations with respect to the not reasonably controllable or preventable criterion is also not intended to involve a retrospective review of the sufficiency of SIP measures within the 5 year period of time that the EPA will consider such measures to be sufficient.

EPA Response: The commenters are correct. The language "all sources necessary to fulfill the requirements of the CAA for the state implementation plan" is not intended to involve a retrospective review of the sufficiency of the SIP measures for a particular source or type of source. Rather, the language is intended to convey our understanding that in developing the SIP (or FIP or TIP), the air agency considered the emissions and air quality impact of the involved sources and adopted appropriate controls *if any*. We do not mean that the plan must have controls for every source to meet the not reasonably controllable criterion for an exceptional events demonstration. If a SIP meets the previously identified requirements discussed in Section IV.E. 2 of the preamble to the final rule and the requirements at 40 CFR 50.14(b)(8)(v), then the enforceable control measures in such a SIP would constitute "reasonable controls" with respect to all anthropogenic sources that have or may have contributed to event-related emissions for the purposes of an exceptional events demonstration. If a SIP does not address the controls on a specific sources, the reasonableness of controls in an exceptional events demonstration would need to be considered on a case-by-case basis.

Comment: One commenter (D116) supports the EPA's proposal to waive the case-specific justification to support the "not reasonably controllable or preventable" criterion for emissions generated outside of the boundaries of the state within which the exceedance(s) occurred. One other commenter (D172) is concerned that the proposal contains a separate statement that appears to be in conflict with this principle, namely the statement that "If an air agency determines that the Exceptional Events Rule is the most suitable approach to address contributions from transported emissions, then the air agency must consider the point of origin and the sources contributing to the exceedance or violation to determine how to address individual Exceptional Events Rule criteria, specifically the not reasonably controllable or preventable criterion and the human activity unlikely to recur or a natural event criterion." The commenter noted that this statement be changed to fit the EPA's decision to waive the case-specific justification.

EPA Response: What the EPA meant by the quoted language is that in a situation involving interstate transport, the affected state would need to "consider the point of origin" and show that all the sources of the emissions came from sources in another state. The downwind state would also need to "consider…the sources contributing to the exceedance" by showing that it was an event that created the emissions rather than routine natural processes or ongoing anthropogenic activities that clearly do not meet the "not likely to recur" criterion. We discuss this concept in more detail in a response to a previous comment and in Section IV.F.1 of the preamble to the final rule.

Comment: Three commenters (D117, D139, D154) stated that the EPA misinterpreted the CAA by indicating that an air agency must demonstrate that the event was both not reasonably preventable and not reasonably controllable. Commenters stated that the CAA requires an event to be either not reasonably preventable or not reasonably controllable, and either can satisfy the rule.

EPA Response: The EPA disagrees with the comment. As we discuss in Section IV.E.2 of the preamble to the final rule, we maintain that the "not reasonably controllable or

preventable" criterion consists of two factors: prevention *and* control and that to qualify as an exceptional event, the event must satisfy both factors. CAA section 319(b)(1)(A)(ii) is ambiguous regarding whether "not reasonably controllable or preventable" requires a demonstration to show both criteria, or one or the other. Considering CAA section 319 overall, it identifies the limited circumstances in which it is appropriate to exclude air monitor data clearly caused by an exceptional event, balanced with the CAA's goal of protecting human health and the environment with the recognition that air monitoring data that are influenced by an exceptional event that clearly caused a violation or exceedance should be excluded from certain regulatory evaluations. In light of the purpose of CAA section 319, the EPA interprets CAA section 319(b)(1)(A)(ii) as requiring the demonstration to include a showing that the event was both not reasonably controllable and not reasonably preventable. The language "not reasonably controllable" clearly implicates controls, as does "preventable," since an event may be "preventable" by mitigating the conditions under which the event occurs – *i.e.*, by applying controls. Thus, consideration of the circumstances of the event and possible application of controls is appropriate in both contexts, and a separate analysis is required for "not reasonably controllable" and "not reasonably preventable."

In addition, a valid rule of inference known as De Morgan's law recognizes that the negation of a disjunction is the conjunction of the negations – in other words, "not (A or B)" is the same as "(not A) and (not B)." *See, e.g., State v. Nelson*, 842 N.W.2d 443, at 440-41 (Minn. 2014) (finding it reasonable to apply De Morgan's law to statutory interpretation); *Schane v. Int'l Bhd. Of Teamsters*, 760 F.3d 585, 589-92 (7th Cir. 2014) (applying De Morgan's law to address a pension plan dispute, focusing on the context in which the "not…or" phrase was used). Applied to CAA section 319(b)(1)(A)(ii), an exceptional event means an event that is not reasonably controllable and not reasonably preventable. The legislative history supports this logical reading of the statutory language. Congress provided the following rationale for promulgating the exceptional events provisions: "Events such as forest fires or volcanic eruptions, should not influence whether a region is meeting its Federal air quality goals." S. Rep. No. 109-53, at Sec. 1618 (2005) and S. Rep. No. 108-222, at Sec. 1618 (2004). The examples used in the legislative history – forest fires and volcanic eruptions – are *both* not reasonably controllable *and* not reasonably preventable. This interpretation is also supported by the intent of CAA section 319(b), discussed above. We must balance the purpose of CAA section 319 with the CAA's goal of protecting human health and the environment. And we must also recognize that air monitoring data that are influenced by an exceptional event that clearly caused a violation or exceedance may be excluded from certain regulatory evaluations.

Some air agencies that have submitted demonstrations have argued that the "or" in this criterion allows them to choose between showing either prevention or control of the event-related emissions. The commenters who disagree with the EPA's interpretation failed to identify any scenarios or provide any examples of why it is problematic for the EPA to require that an exceptional event must be both not reasonably controllable and not reasonably preventable. However, this type of "or" selection is contrary to the emphasis of CAA section 319(b) on the protection of public health because it would allow air agencies to ignore the opportunity to control the effects of an event they cannot prevent.

Comment: One commenter (D119) stated that exceptional event demonstrations for wildfires should not be required to include a discussion of "reasonably controllable or preventable."

EPA Response: We acknowledge the comment and are promulgating a regulatory provision at 40 CFR 50.14(b)(4) that the "Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from wildfires caused a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Provided the Administrator determines that there is no compelling evidence to the contrary in the record, the Administrator will determine every wildfire occurring predominantly on wildland to have met the requirements…regarding the not reasonably controllable or preventable criterion."

Providing an absolute exclusion from having to show that a wildfire occurring predominantly on wildland was not reasonably controllable or preventable is inappropriate. There may be a situation in which reasonable controls should have been applied to a wildfire occurring predominantly on wildland, as shown by compelling evidence, and we recognize this possibility in the provision at 40 CFR 50.14(b)(4).

Comment: Two commenters (D120, D140) supported the EPA's proposal to acknowledge National Resource Conservation Service (NRCS) Best Management Practices (BMPs) as reasonable controls for agricultural areas and forest lands. One commenter (D140) recommended that the United States Department of Agriculture (USDA), through their state NRCS offices, suggest an appropriate level of conservation measures (identifying the penetration, scale and intensity) for each region. Two additional commenters (D148, D158) stated that BMPs should constitute sufficient reasonable controls for all high wind event-affected sources that have approved BMPs in place.

EPA Response: As we discuss in Section IV.F.4 of the preamble to the final rule we are finalizing guidance in the preamble, that, on a source or area-specific basis, we would accept as "reasonable controls" for purposes of satisfying the not reasonably controllable or preventable criterion for a particular potentially contributing source, those USDA/NRCS-approved BMPs designed to effectively reduce fugitive dust air emissions and prevent soil loss in agricultural applications in cases where these measures have been incorporated into an EPA-approved SIP, FIP or TIP or incorporated into state laws, regulations or local ordinances and where those measures consist of controls specific to the pollutant and potentially contributing source. We do not believe it is appropriate to make a general statement that approved and implemented BMPs constitute reasonable controls in all situations. The EPA will review each demonstration on a case-by-case basis using a weight of evidence approach. While we agree with the comment that identifying the penetration, scale and intensity of appropriate measures on a regional basis would be helpful in assessing reasonable controls, the suggested approach that USDA identify appropriate BMPs is beyond the scope of this rulemaking.

Comment: Regarding prescribed fire events, one commenter (D122) supported that states should be able to satisfy the controllability prong of the "not reasonably controllable or preventable" criterion for prescribed fires through the use of a state-certified Smoke Management Plan (SMP) or through demonstration that a burn manager relied on Basic Smoke Management Practices (BSMP). The commenter stated that the practical implementation of a SMP is likely to provide similar air quality protections as those provided by adherence to BSMPs. Due to the unique nature of each state's fire management programs, and the similarity in air quality outcomes resulting from the use of a SMP or BSMPs, commenter encouraged the EPA to provide flexibility in demonstrating the controllability prong by allowing the use of either a SMP or BSMP.

EPA Response: The final rule aligns with the EPA's understanding of the comment. We are promulgating regulatory language that a prescribed fire must be conducted under an adopted and implemented certified SMP or appropriate BSMP to satisfy the controllability prong of the not reasonably controllable or preventable criterion. We discuss compliance with smoke management programs and the application of BSMP in Section IV.F.2.b of the preamble to the final rule.

Comment: Three commenters (D128, D168, D159) provided feedback on whether there should be a grace or grandfathering period after a SIP call involving a relevant NAAQS, during which the existing SIP continues to be given deference with regard to the reasonableness of controls even though the SIP call is based on a finding by the EPA that the SIP is inadequate. These commenters noted that state agencies should be given time to enact appropriate control measures after the need to do so has been identified and justification is in place to satisfy state laws**.**

EPA Response: The EPA acknowledges commenters' feedback and has incorporated a grace period into regulatory language at 40 CFR 50.14(b)(8)(vi), such that the mere existence of an outstanding SIP call would not terminate deference to the SIP until the due date for the SIP revision has been reached. We have, however, also noted that when the control measures applicable to the exceptional events demonstration are the specific subject of a SIP call under CAA section 110(k)(5), the EPA will immediately begin to evaluate the control measures in place on a case-by-case basis to determine whether emissions were reasonably controlled at the time of the event. We explain this concept in more detail in Section IV.E.2 of the preamble to the final rule.

Comment: One commenter (D156) stated that for areas without recent SIPs, it is essential that the EPA provide clear communication to an air agency regarding the adequacy of controls *before* an event occurs. Moreover, if the EPA identifies potential further controls *after* an event occurs, this should never place a state in the position of having to develop a SIP if those controls would not prevent the exceedance.

EPA Response: As the entity responsible for administering air quality management programs within their borders, states/tribes are primarily responsible for assessing and addressing sources that negatively impact air quality and/or adversely impact human health. This process may involve discussions between the EPA and the air agency. If the EPA formally notifies an air agency of specific expectations regarding reasonable

controls prior to an event, then the EPA would consider these conversations when assessing what the air agency knew at the time the event occurred and what should reasonably have been in place at the time of the event for anthropogenic emission sources that contribute to the event emissions. However, attainment and maintenance SIP requirements are based on an area's designation and classification, not based on conversations regarding exceptional events determinations and reasonable controls. That being said, we agree with the commenter that conversations regarding "reasonable controls" between the air agency and the EPA that take place after an event occurs would not influence what the air agency "knew at the time" of the event, but these post-event discussions could influence an air agency's knowledge with respect to controls for a future event of the same type. We discuss this concept in more detail in Section IV.E.2 of the preamble to the final rule.

We do not agree that a state should be expected to develop and apply controls only when the controls would fully prevent the exceedance. Some controls may only reduce the level of an exceedance yet still be reasonable, such that if the controls have not been applied, the event cannot be considered not reasonably controllable. We are not saying that the controls that need to be in place for purposes of qualifying an event as an exceptional event must always be incorporated into the SIP.

Comment: One commenter (D161) stated that the EPA should revise the rule text to require that, when addressing the "not reasonably controllable or preventable" criterion within a demonstration, air agencies should (1) identify the natural and anthropogenic sources of emissions causing and contributing to the event emissions, including the contribution from local sources, (2) identify the relevant SIP or other enforceable control measures in place for these sources and the implementation status of these controls, and (3) provide evidence of effective implementation and enforcement of reasonable controls, if applicable, in a demonstration. The commenter stated that this revision should increase the clarity of the rule's interpretation and the consistency of the rule's implementation.

EPA Response: We acknowledge the commenter's feedback and agree that these revisions will increase rule clarity. Therefore, we are incorporating these provisions in the regulatory text at 40 CFR 50.14(b)(8)(viii) and providing additional discussion in Section IV.E.2 of the preamble to the final rule.

Comment: One commenter (D168) requested that the EPA clarify what it means by "event emissions, including contributions from local sources" within the proposed language that air agencies should "identify the natural and anthropogenic sources of emissions causing and contributing to the event emissions, including contribution from local sources."

EPA Response: The EPA recognizes that the monitored air quality in any given area is a complex mix of emissions from a variety of different regional and local sources, including emissions from large point sources (*e.g.*, large industrial sources, electric power plants, airports, etc), nonpoint sources (*e.g.*, residential heating, asphalt paving, etc.), mobile sources (*e.g.*, both on- and off-road vehicles, construction equipment, trains, and vessels), natural or biogenic sources (*e.g.*, off-gassing from soil, animals and vegetation)

and events. When an exceptional event occurs, the resulting emissions are in addition to those that would normally be present from other sources. Although the event may cause the exceedance or violation, it is the sum of all emissions (event and non-event) that result in the monitored pollutant concentration.

To qualify for exclusion under the Exceptional Events Rule, an air agency must demonstrate that the event was not reasonably controllable, which inherently includes a showing of "reasonable controls" for all local anthropogenic sources that have or may have contributed to the event-related emissions. Thus, to support the not reasonably controllable showing, the air agency would identify those sources that contribute to the event emissions (*e.g.*, the volcano, the fire, or the high wind dust contributors) as well as those local sources that normally produce emissions of the pollutant that are the subject of the demonstration. We note that by specifying "local" sources we mean those sources that are both within the jurisdiction of the state or tribe and that are in the vicinity of or are located upwind of the monitor with the recorded exceedance or violation. As previously indicated, "local" sources could include, but are not limited to, point sources, nonpoint sources, mobile sources and natural sources. For each "local" source, the air agency should also identify applicable controls, the implementation status of these controls and evidence of effective implementation. We clarify these requirements in Section IV.E.2.c of the preamble to the final rule.

Comment: One commenter (D174) requested additional guidance concerning the type of information that would be appropriate for a case-specific demonstration regarding control technology.

EPA Response: The type of information that would be appropriate for a case-specific demonstration regarding control technology would depend on the source of the emissions and the pollutant being controlled and would apply on a case-by-case basis. The EPA expects air agencies and the EPA to discuss these details and expectations during the Initial Notification of Potential Exceptional Event Process, which we discuss in more detail in Section IV.G.5 of the preamble to the final rule.

2.2.3 Comments on the Clear Causal Relationship Supported by a Comparison to Historical Concentration Data Criterion

Comment: Several commenters (D116, D145, D154) supported the EPA's proposal to eliminate the requirement in 40 C.F.R. 50.14(c)(3)(iv)(C) that an exceptional event demonstration must provide evidence that an "event is associated with a measured concentration in excess of normal historical fluctuations, including background…." One commenter (D116) specifically supported the EPA's proposal to remove the phrase "including background" from the historical concentration criterion. One additional commenter (D115) framed support of this change as supporting deleting the required showing of historical fluctuations for natural events. One commenter (D133) stated that, for coarse PM demonstrations, high wind events should be excluded regardless of historical fluctuation data.

EPA Response: The EPA acknowledges the comment and is removing the requirement to provide evidence that the event is associated with a measured concentration in excess of "normal historical fluctuations including background" and replacing it with a requirement for a comparison of the event-related concentration to historical concentrations. As we explained in the November 2015 proposal, the former phrase is unclear and confusing. For example, "fluctuations in concentrations" can convey either day-to-day or hour-to-hour differences in monitored concentrations, which cannot usefully be compared to an absolute concentration (*i.e.*, monitored concentration at a given point in time) because many absolute concentrations will be larger than the differences between concentrations. Further, the phrase "in excess" could be interpreted to mean that the concentration at issue must be higher than all historical concentrations. The EPA maintains that Congress did not intend this, nor would such an interpretation be reasonable. Concentrations that are exceedances of a standard but are not higher than all concentrations recorded at a particular monitor may be causally connected to an event of the type that Congress clearly identified for treatment as an exceptional event. Finally, the language "including background" is confusing. In many cases, the monitor or monitors intended to represent "background" concentrations are separated from the event-influenced monitoring site by some distance such that the event-influenced monitor and the "background" monitor reflect a different mixture of emissions sources, which could lead to misinterpretation. Additionally, the EPA does not believe that "background" concentrations are relevant for analyses associated with provisions in the Exceptional Events Rule. If an event meets the rule criteria and influences monitored concentrations resulting in an exceedance or violation of a NAAQS, then it could be considered under the Rule provisions, regardless of background contributions.

We discuss this concept in more detail in Section IV.E.3.c of the preamble to the final rule. While we have removed the "normal historical fluctuations including background" regulatory text, we note that the requirement for a comparison of the event-related concentration to historical concentrations applies whether the event is natural or a human activity that is unlikely to recur at a particular location. Just because an event is natural does not mean that this type of information is not informative to assessing whether the event is in fact the cause of the observed high concentration. It could be that anthropogenic sources near the monitor often cause equally high concentrations. Moreover, it is not burdensome on air agencies to require this type of comparison.

Comment: One commenter (D150) asserted that the EPA must do more to highlight the importance of historical data in exceptional events demonstrations, focusing on the USA's history of fire exclusion. The commenter suggested that the EPA must better analyze historical fire issues. Specifically, the commenter stated that the discussion of the temporal scale of 'historical concentrations' is incomplete. According to the commenter, the standard 5-year window of monitored data comparison fails to provide a science-based examination of the potential scale of fire and ecosystem function needed to prevent climate and drought driven emissions impacts in an evidence-based examination. The commenter requested that the EPA recognize that while "land owners and managers and government public safety agencies" may be "strongly motivated to reduce the frequency and severity of human-caused wildfire," significant increases in the use of managed natural ignitions and prescribed fire are needed to accomplish such a reduction.

EPA Response: The commenter does not appear to suggest changes in the text of the final rule or our statements in the preamble that interpret the rule. With respect to the commenter's assertion that the EPA must do more to highlight and analyze the importance of historical fire data, including the country's history of excluding and or suppressing all fire, we note that the 58-page November 2015 *Federal Register* proposal dedicated more than 9 pages specifically to fire-related issues. While our proposal was not intended to be an exhaustive discussion of historical fire-related issues, it was intended to present some of the specific challenges associated with the increasing need for prescribed fire to manage the buildup of fuel loads and to identify approaches to address some of these challenges through revisions to the Exceptional Events Rule. Air agencies can include additional detail regarding the history of fire in their jurisdiction to support the "not reasonably controllable or preventable" and "human activity unlikely to recur in a particular area or a natural event" within an exceptional events demonstration.

Comment: Three commenters (0088, D148, D168) asked the EPA to clarify what it means by "prediction tools." The commenters asked if this means that nonattainment areas should be required to have daily air quality forecasts, which could become a resource intensive and costly burden. The commenters also asked whether the current air quality forecast program at Arizona Department of Environmental Quality (ADEQ), where daily air quality and dust risk action forecasts are created and disseminated to the public for the Metro Phoenix area would suffice. The commenters also wanted to know if air agencies would be expected to conduct photochemical modeling without assistance from the EPA, which would likely be impossible. One commenter suggested that the EPA issue guidelines to address when the EPA may provide assistance when necessary to demonstrate causality. One commenter (0088) recommended that the EPA clearly state its expectations, including whether this means that nonattainment areas should be required to have daily air quality forecasts.

EPA Response: In the November 2015 proposal, the EPA referred to prediction tools because some prediction tools can be used in a retrospective sense to help assess the magnitude of the air quality impact of an event that has happened, by comparing the prediction of "normal" air concentrations to the measured air concentrations. Prediction tools and forecasting approaches are area-specific. The EPA expects air agencies and the EPA to discuss these details and expectations during the Initial Notification of Potential Exceptional Event Process, which we discuss in more detail in Section IV.G.5 of the preamble to the final rule. The EPA remains dedicated to working with states to identify information to include in an exceptional event demonstration.

Comment: Many commenters expressed support for the EPA's proposal to remove the "but for" criterion and agree that using the clear causal relationship required by the CAA is appropriate.

EPA Response: The EPA acknowledges the commenters' support. For the reasons explained in Section IV.B of the preamble to the final rule, we are finalizing our proposed approach to remove the "but for" regulatory language and focus on the "clear

causal relationship" statutory criterion applied to the specific case, using a weight of evidence approach.

Comment: Two commenters (D163, D173) stated that the EPA should not remove the "but for" language, so as to protect public health. One commenter (D173) noted that "but for" is the only reasonable interpretation of "directly due."

EPA Response: The EPA disagrees with the comment's position that "but for" is the only reasonable interpretation of the statutory language that excluded data be "…directly due to exceptional events." The statutory text is ambiguous and, as we explain in Section IV.B.3 of the preamble to the final rule, while we are finalizing our proposal to remove the "but for" regulatory requirement, the "directly due" concept is represented through the totality of the revisions to the Exceptional Events Rule, including the revisions that require a demonstration to show a "clear causal relationship" between "an event(s) and its resulting emissions" and "the monitored exceedance(s) or violation(s)" based on a weight of the evidence. The "weight of evidence" approach, discussed further in Section IV.B of the preamble to the final rule, describes the process by which we evaluate individual exceptional events demonstrations and air agency requests for data exclusion. This approach ensures that only "air quality monitoring data that is directly due to exceptional events" may be excluded from use in determinations by the Administrator. This revised regulatory language, along with our provided example analyses in this preamble (*see* Section IV.E.3 of the preamble to the final rule) and in our associated guidance documents, more clearly conveys the strength and robustness of our intended weight of evidence approach and removes some of the challenges associated with implementing a strict "but for" demonstration.[8]

Comment: Several commenters also support moving the "clear causal relationship" element into the list of criteria that explicitly must be met for data to be excluded, subsuming the "affects air quality" element into the "clear causal relationship" element, removing the term "historical fluctuations" and replacing it with text referring to a comparison to historical concentrations, identifying the types of analyses that are necessary in a demonstration to address the comparison of the event-affected concentration to historical concentrations and clarifying that an air agency does not need to prove a specific "in excess of" fact.

[8] Since promulgation of the 2007 rule, the "but for" criterion has often been interpreted as implying the need for a strict quantitative analysis to show a single value, or at least an explicitly bounded plausible range, of the estimated air quality impact from the event. As a result, some air agencies began using burdensome approaches to provide quantitative analyses in their exceptional events demonstrations to show that the event in question was a "but for" cause of a NAAQS exceedance or violation. In many cases, the "but for" role of a single source or event is difficult to determine with certainty and it is more often the case that the impact of emissions from events and other sources cannot be separately quantified and distinguished.

EPA Response: The EPA acknowledges the commenters' support. For the reasons explained in Sections IV.B and IV.E.3 of the preamble to the final rule, we are finalizing and incorporating into the regulatory definition of an exceptional event the criterion that to be considered for exclusion under the Exceptional Events Rule an event must affect air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation. As the commenters have noted, this language subsumes the "affects air quality" element into the "clear causal relationship" element. In addition, as we discuss in greater detail in Section IV.E.3 of the preamble to the final rule, we are also removing the requirement that a state must submit evidence that the event is associated with a measured concentration in excess of normal historical fluctuations, including background, and replacing it with regulatory text requiring a comparison of the event-influenced concentration to historical concentrations.

Comment: One commenter (D173) maintains that the CAA clearly requires "affects air quality" and "clear causal relationship" to remain two separate requirements.

EPA Response: The EPA disagrees with the comment's position that "affects air quality" and "clear causal relationship" must remain two separate requirements. As noted in the response to the previous comment, the statutory text is ambiguous as to whether the two provisions must remain separate and we are interpreting the text by promulgating regulatory text that subsumes the "affects air quality" element into the "clear causal relationship" criterion. Under the provisions of the 2007 Exceptional Events Rule, the EPA treated the "affects air quality" element as a distinct criterion that air agencies must meet for data to be excluded, and has expected exceptional events demonstrations to conclude that the "affects air quality" condition has been satisfied. However, after carefully considering Congress' intent and air agencies' and the EPA's experience in implementing the 2007 Exceptional Events Rule, we proposed to integrate the phrase "affects air quality" into the clear causal relationship criterion because separately requiring an air agency to provide evidence to support a conclusion that an event "affects air quality" is unnecessary because we are finalizing a mandatory requirement to show a clear causal relationship between an event and an exceedance or violations of a NAAQS. If an air agency makes such a showing, then the event has certainly affected air quality and the demonstration will have, effectively, made the "affects air quality" showing. A full discussion of this issue is included in Section IV.B of the preamble to the final rule.

Comment: Two commenters (0088, D133) advocated that the EPA replace the ambiguous "weight of evidence" with the clearer "preponderance of the evidence" approach, and give substantial deference to the analysis and findings provided by the states. Another commenter (D175) stated that the EPA should either more clearly discuss the term "weight of evidence" or provide a definition of this phrase. An additional commenter (D173) noted that a weight of evidence approach is insufficient because it is too uncertain to protect public health. Still another commenter (D163) stated that weight of evidence demonstrations are often unconvincing, although the commenter did not specify the reason such demonstrations are unconvincing.

EPA Response: In this final action, the EPA is retaining our "weight of evidence" approach to reviewing individual exceptional events demonstrations for the reasons explained in Section IV.C.3 of the preamble to the final rule.

Comment: Three commenters (D154, D119, D174) cautioned against the EPA applying the weight of evidence approach in a manner that is as much a barrier to appropriate data exclusion as the "but for" requirement has been. One commenter (D119) was concerned that if the EPA continues to require quantification of some exceptional event impacts, the EPA should provide methodologies that provide meaningful results and that are useful in situations where speciation data, hourly monitoring data, modeling platforms, or other supporting data are not available, taking into account available technology to each state. One commenter (D139) stated that any quantitative requirement is arbitrary and capricious, particularly with respect to natural events. Two additional commenters (D113, D119) were concerned that some of the sophisticated techniques to show a clear causal relationship will be burdensome, if not impossible, to implement, such as photochemical modeling of wildfires or stratospheric ozone.

EPA Response: Analyses and data to support an individual exceptional events claim will vary based on the specific nature of the event. We expect that air agencies and the appropriate EPA Regional offices will discuss these case-by-case scenarios as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of the preamble to the final rule. As with all exceptional events demonstrations, the EPA will then review each demonstration on a case-by-case basis using a weight of evidence approach.

Comment: Two commenters (D115, D133) stated that the EPA should clarify that installation of new speciation monitors is not required to satisfy the causation requirement for PM events. Conversely, the commenters advocated that the exceptional events requirements should be relaxed where speciation data demonstrate that windblown dust consists predominately of coarse crustal material.

EPA Response: The commenters are correct. Data from speciation monitors are not required to satisfy the clear causal relationship criterion for PM-related events. The EPA encourages air agencies to use speciation data as part of a weight of evidence showing where these data are available as they can strongly support the relationship between windblown dust and a monitored exceedance, as noted by the commenter. The EPA cannot, however, relax CAA requirements as suggested by the commenters regardless of whether speciation data are or are not available.

Comment: One commenter (D179) requests that the EPA clarify that an exceptional event need not be the primary cause of elevated pollutant levels, and that a small pollutant contribution is sufficient for an exceptional events demonstration if that contribution would be decisive of whether there has been a NAAQS exceedance.

EPA Response: The CAA at section 319(b)(3)(B)(ii) requires that "a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event

caused a specific air pollution concentration at a particular air quality monitoring location." The clear causal relationship criterion establishes causality between the event and a measured exceedance or violation of a NAAQS. We decline at this point to interpret what the comment intended in using the language "small pollutant contribution." We note that if the actual effect of the event were small, it may be very difficult to distinguish the effect of the event with sufficient confidence because many other factors could have produced similar effects. As with the other exceptional events criteria, the EPA will continue to use a weight of evidence approach when reviewing analyses to support a causal relationship between an event and a monitored exceedance. Such an analysis could show that a relatively small contribution caused the exceedance or violation.

Comment: One commenter (D113) expressed that the EPA should use 3 years of data in comparing the event day with historical data, to match the NAAQS. Similarly, rather than use a seasonal or annual review, the commenter advocated that the EPA should require a shorter time frame, such as a month.

EPA Response: As we discuss in Section IV.E.3 of the preamble to the final rule, we encourage air agencies to use 5 years of data when developing analyses to support the clear causal relationship criterion because we believe that 5 years of ambient air data represent the range of "normal" air quality. Using a 3-year period of data might mask (or accentuate) the range of "normal" air quality. For example, 3 years of data might show lower "normal" air quality concentrations than if performing the same trend analysis with 5 years of data. Thus, an event that is slightly above the "normal" 3-year trend might actually be within the range of normal when considering 5 years of data. The inverse could also be true (*i.e.*, 3 years of data might reflect a higher "normal" than would be reflected using 5 years of data).

Comment: One commenter (D119) stated that the EPA should work with the National Oceanic and Atmospheric Administration (NOAA) to ensure that all available forecast data (both images and underlying point forecast data) is archived to facilitate future use in air quality analyses.

EPA Response: The EPA acknowledges the commenter's feedback regarding use of data produced and/or compiled by other agencies. The EPA recognizes that access to some of these data may be limited. Air agencies can raise specific concerns regarding data availability during their discussions with the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of the preamble to the final rule. As with all exceptional events demonstrations, the EPA will then review each demonstration on a case-by-case basis using a weight of evidence approach.

Comment: One commenter (D129) stated that the EPA should identify a threshold above which a concentration would automatically be considered to satisfy the comparison between measured and historical concentrations. Conversely, three other commenters (D145, D138, D161) requested that the EPA remove any percentile requirements in the historical comparison and emphasize that a weight of the evidence approach means that

the air agency and the EPA will discuss how much information may be necessary to demonstrate causation and that states have some flexibility in what is actually a "required" element.

EPA Response: As we discuss in Sections IV.B and IV.E.3 of the preamble to the final rule, the EPA is not identifying a threshold above which a concentration would automatically satisfy the comparison to historical concentrations showing because the EPA has indicated that this showing is not a "test." Rather, a comparison of the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times is extremely useful evidence in an exceptional events demonstration, particularly as part of the evidence available for determining whether an air agency has satisfied the statutory and regulatory "clear causal relationship" criterion. For example, as part of the weight of evidence showing for the clear causal relationship criterion, less documentation may be needed when the concentration at issue is higher than historical values (*e.g.*, above the 98th percentile) while more evidence may be needed when an event-influenced concentration is closer to typical levels (*e.g.*, values less than the historical 75th percentile). As we note in our response to a previous comment, we do not believe that Congress intended that a concentration being considered for exclusion under the Exceptional Events Rule must be above any certain threshold or prove any "in excess of" fact. Air agencies can discuss the analyses appropriate to support the clear causal relationship criterion (and other rule elements) during their discussions with the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of the preamble to the final rule.

Comment: One commenter (D137) stated that the analyses in the proposed Table 3 to 50.14 – Evidence and Analyses for the Comparison to Historical Concentrations should not be required for every demonstration, as these analyses can be an unnecessary waste of resources for certain events. The commenter stated that, for frequent, recurring natural events, air agencies should be able to rely on historical data submitted for similar exceptional events occurring at the same monitor. The commenter urged the EPA to move the table of analyses associated with a comparison to historical concentrations to the preamble as guidance, rather than keeping the table in the regulatory text.

EPA Response: Although the air agency may be able to use data and analyses prepared for similar exceptional events occurring at the same monitor, the air agency will need to include in its analyses the concentration that is the focus of a current exceptional events demonstration. The air agency can include multiple monitor-days requested for data exclusion on a single time series chart prepared as part of the comparison to historical concentrations to support the clear causal relationship criterion. The EPA has removed the regulatory table identifying the specific analyses associated with the comparison to historical concentrations from the regulatory text and included a revised version of the proposed table (*see* Table 2) in the preamble to the final rule as guidance.

Comment: One commenter (D159) stated that experience with the "but for" requirement highlights the importance of clear communication from EPA headquarters when overseeing NAAQS implementation policies. By comparison, the commenter observed

that the EPA often deems important fixes to default models for PSD permitting as "non-default BETA options." The commenter opined that, as with the burdensome measures that inadvertently resulted from the Exceptional Events Rule's "but for" requirement, a lack of clear communication from EPA headquarters down the line regarding BETA fixes often results in permitting authorities requiring PSD permit applicants undertake time-consuming, case-specific efforts to demonstrate a BETA fix's appropriateness.

EPA Response: Clear communication between the air agencies and the reviewing EPA Regional office is critical in successfully implementing the requirements of the Exceptional Events Rule. To facilitate these communications, we are promulgating a requirement that air agencies and the EPA engage in discussions as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of the preamble to the final rule. The commenter's remarks related to BETA fixes and PSD permit applications are beyond the scope of this rulemaking.

2.3 Comments on the Treatment of Certain Events Under the Exceptional Events Rule

Comment: One commenter (0097) expressed support for including fireworks as exceptional events, but encouraged the EPA to take reasonable precautions to minimize the public's exposure to fireworks, such as by alerting the public to potential air quality impacts, and to take the lead in developing outreach materials. Conversely, another commenter (D173) stated that firework displays cannot meet the statutory requirements of an exceptional events demonstration because they are not natural events and they are not unpreventable nor uncontrollable.

EPA Response: The preamble to the 2007 Exceptional Events Rule identified certain event types, including fireworks, that may qualify as exceptional events if all rule criteria are met. In the Section IV.F of the preamble to this final rule, we repeat those event types that first appeared in the preamble to the 2007 Rule and note that we did not propose, nor are we finalizing in this action, any changes to the definition of "exceptional event" to address the listed event types. Our intent in identifying the event types was simply to acknowledge our continued belief that the identified event could still be considered "exceptional." Because we proposed no material changes with respect to the treatment of fireworks under the Exceptional Events Rule, this comment is beyond the scope of this rulemaking. As with all exceptional events demonstrations, the EPA will review each demonstration on a case-by-case basis using a weight of evidence approach.

Comment: One commenter (D128) requested that a period encompassing a power outage should be eligible for an exceptional event demonstration, as there will be increase wood burning in that time period.

EPA Response: The final rule does not prevent a period of high emissions due to increased wood burning following a power failure from being an exceptional event. The issue would be whether the criteria in the rule are satisfied for that particular situation. We do not believe than any provision for categorical or presumed status as an exceptional

event is appropriate as approaches for reasonably reducing emissions in such a situation may be situation-dependent. When an air agency identifies a potential exceptional event for which it is considering preparing a demonstration, it should engage in discussions with the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process, described in more detail in Section IV.G.5 of the preamble to the final rule. Each exceptional event must meet the technical and administrative requirements of the Exceptional Events Rule. The EPA will then review each demonstration on a case-by-case basis using a weight of evidence approach.

2.3.1 Comments on Exceedances Due to Transported Pollution

Comment: One commenter (D173) stated that pollution transport may qualify as an exceptional event if, and only if, its origin is a source that independently qualifies as an exceptional event. The commenter stated that it is arbitrary and unlawful to allow anthropogenic emissions from out-of-state to be considered "not controllable or preventable" without undertaking a case-by-case inquiry to determine whether those emissions sources are in fact "reasonably controllable or preventable" using existing state and federal interstate transport controls, or not-yet-adopted state or federal interstate transport controls in the upwind states. Furthermore, the commenter stated that—in the case of mixed natural and anthropogenic events originating outside of the state's borders, the EPA fails to require the air agency claiming the exceptional event to show that a clear causal relationship exists and that the exceedance is directly due to the exceptional event.

EPA Response: The commenter's recommendation that the origin of the emissions must independently qualify as an exceptional event and that those events must be "not reasonably controllable or preventable" is consistent with the Exceptional Events Rule. The EPA agrees that each exceptional event submitted for consideration under the provisions of the Exceptional Events Rule must independently meet the requirements of the Exceptional Events Rule. In addition to the administrative provisions within the rule, each event must satisfy the following three core statutory elements of CAA section 319(b): the event must affect air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation, the event must be not reasonably controllable or preventable, and the event must be a human activity that is unlikely to recur at a particular location or a natural event. We will evaluate these criteria from the perspective of the air agency affected by the exceedance or violation of the NAAQS and who is submitting the demonstration. In that regard, assuming the emissions are event-related and that emissions originate outside of the jurisdiction of the affected air agency (*i.e.*, they are interstate or international in origin versus intrastate), the transported pollution would satisfy the not reasonably controllable or preventable criterion (under the provision that we are promulgating under 40 CFR 50.14(b)(8)(vii)). As noted in Section IV.E.2 of the preamble to the final rule and in the final regulatory language at 40 CFR 50.14(b)(8)(vii), the EPA maintains that it is not reasonable to expect the downwind air agency (*i.e.*, the state or tribe submitting the demonstration) to have required or persuaded the upwind foreign country, state or tribe to have implemented controls on sources sufficient to limit event-related emissions in the downwind state. These same emissions would only qualify for treatment under the

Exceptional Events Rule if they also satisfy the clear causal relationship criterion and the human activity unlikely to recur at a particular location or a natural event criterion. The requirement to satisfy the clear causal relationship criterion and the human activity unlikely to recur at a particular location or a natural event criterion similarly applies to mixed natural and anthropogenic emissions, as discussed in Section IV.E.2 of the preamble to the final rule.

Comment: One commenter (D168) asked for clarification as to how the EPA will treat emissions from ocean-going vessels such as container ships and large tankers, and argues that all emissions from ships should be considered not reasonably controllable or preventable since they are regulated by international treaties.

EPA Response: Our response to this comment is included in Section IV.E.2.c of the preamble to the final rule.

Comment: Four commenters (D145, D159, D164, D183) raised concerns about international transport. One commenter (D145) stated that it is unreasonable for any state to have to identify all natural and anthropogenic contributing sources of emissions (both local/in-state and out-of-state) to show the causal connection between an event and the affected air concentration values, if the emissions are due to sources outside of the state's jurisdiction. Three commenters (D159, D164, D183) believe that international transport is a natural event, and therefore recurrence should be a non-issue. According to the commenters, the weight of evidence analysis should be satisfied if the evidence shows that an exceedance was caused by out-of-state emissions and that in-state sources are subject to reasonable controls. Several commenters requested guidance for transported pollution similar to the proposed Wildfire Ozone guidance. One commenter stated that the EPA should clarify in regulatory text that "outside of the State's jurisdictional boundaries" includes, but is not limited to, international natural and anthropogenic emissions.

EPA Response: Our response to the comment that international transport is a natural event and the comment regarding international emissions that are outside of an air agency's jurisdiction is included in Section IV.F.1 of the preamble to the final rule. Regarding the commenter's contention that the weight of evidence analysis should be satisfied if supporting documentation shows that an exceedance was caused by out-of-state emissions and that in-state sources are subject to reasonable controls, we note that this comment focuses on only the "not reasonably controllable or preventable" criterion within the Exceptional Events Rule. Section IV.E.2 of the preamble to the final rule discusses the showing required by the "not reasonably controllable or preventable" criterion. Importantly, these same emissions would only qualify for treatment under the Exceptional Events Rule, if they also satisfy the clear causal relationship criterion and the human activity unlikely to recur at a particular location or a natural event criterion. Regarding the request for additional guidance addressing transported pollution, we note that any event/pollutant combination may have the potential to be transported across jurisdictional boundaries (*e.g.*, state, tribal and/or international boundaries). We therefore refer the commenter to existing guidance documents addressing specific event types and

to the general guidance on transported pollution that we provide in Section IV.F.1 of the preamble to the final rule.

We disagree with the comment's contention that international transport will always be a natural event, under the Exceptional Events Rule. "Natural event" is defined at 40 CFR 50.1(k). Further, as we explain in Section IV.E.2 of the preamble to the final rule, for international emissions to qualify as a natural event, they must originate from natural, event-based sources (*e.g.*, wildfire, volcanic activity).

Comment: Three commenters (D123, D141, D149) asked the EPA to clarify a process for demonstrations for states downwind from certain events (*e.g.*, long-duration and larger fires) "which ties to the initial state demonstrations rather than creating multiple demonstrations." Similarly, commenters stated there should be a mechanism for multiple states to submit a combined exceptional event demonstration, which may occur, for example, with Saharan dust or large wildfire events.

EPA Response: Based on reviewing the context of the comments and the comments' references to updated NAAQS, the EPA interprets the language "which ties to the initial state demonstrations rather than creating multiple demonstrations" to refer to an event whose effects could influence the initial area designation decisions or redesignation decisions for multiple states. The EPA further interprets the comments as asking for a path for a single exceptional events demonstration that multiple states can use and a publicly accessible database that contains fire-relevant information that both air agencies and land managers can access and use to support exceptional events demonstrations and other regulatory analyses. In response to these comments, we note that while we are not establishing a specific process to address multiple demonstrations for a single event, we do encourage states and air agencies to coordinate with each other in compiling documentation to support an exceptional events demonstration or demonstrations. The affected air agencies may submit some of the same data and analyses when a single event affects multiple jurisdictions. NAAQS exceedances at different monitors, however, will likely have some unique properties (*e.g.*, unique monitoring locations, different surrounding and potentially contributing sources with varying levels of control, different comparisons to historical concentration patterns, etc.). Air agencies should address these unique characteristics in individual demonstrations or in clearly delineated sections or passages of a joint demonstration. As with all exceptional events demonstrations, each demonstration should address each applicable criterion of the Exceptional Events Rule. The EPA will evaluate each demonstration on a case-by-case basis using a weight of evidence approach.

The EPA recognizes that air agencies may need information to support the development of an exceptional events demonstration for a wildfire or a prescribed fire on wildland and that other state or federal agencies may have this information. We expect to continue working with our federal, state, local and tribal partners to make this information more accessible.

2.3.2 Comments on Wildland Fires – General

Comment: Three commenters (0095, D112, D116) requested specific consideration of the unique situations in different states—notably Kansas—when determining wildland definitions. For example, the commenters stated that the EPA should recognize that Flint Hills is sizable with millions of acres, but unlike those tracts of Western land operated under federal or state jurisdiction the vast majority of Flint Hills land is owned by private landowners.

EPA Response: The technical and administrative requirements within the Exceptional Events Rule apply to all criteria pollutants, to all NAAQS and to all event types. These requirements include the definitions provided in 40 CFR 50.1. The definition we are promulgating for wildland at 40 CFR 50.1(o), along with the guidance provided in Section IV.F.2 of the preamble to the final rule, are sufficient and appropriate for the particular land use situations that exist in Kansas. The EPA will review submitted demonstrations on a case-by-case basis considering the specific merits of each event.

Comment: Four commenters (D114, D129, D116, D140) generally agreed with the proposed definition of wildland noting that codifying the definition of "wildland," "wildfire," and other fire-related definitions as proposed will help reduce ambiguity and increase regulatory certainty. Several commenters did, however, request additional clarity within the definition, specifically asking for clarification of the words "structure" and "widely scattered." One commenter (D116) stated that "widely scattered" should be more specific and offer a specific distance between structures. Three commenters (D140, D112, D116) asked that the EPA modify the definition as follows: "Wildland means an area in which human activity and development is limited in scope, except for roads, railroads, power lines, and similar transportation facilities; fences to limit the movement of grazing animals; and infrastructure to provide supplemental feed or water to grazing animals. Structures, if any, are widely scattered." Another commenter (D109) stated that a place is "wild" when there are minimal ongoing ecological impacts from human activity, not just when humans are infrequently present and their structures are widely scattered. Commenters were similarly divided on whether to incorporate examples of land use types that can be considered to be (or not to be) wildland into the regulatory definition of wildland or retain these examples in guidance in the preamble.

EPA Response: We respond to these comments in Section IV.F.2.a of the preamble to the final rule.

Comment: Two commenters (D123, D149) stated that they appreciate that the EPA clearly states in the proposal that there are no plans to revise the 1998 Interim Air Quality Policy on Wildland and Prescribed Fires. Commenters stated that they further appreciate that this policy is supported by the land management and fire communities, since expectations have delayed further progress towards progressive smoke management approaches.

EPA Response: Responding to comments regarding the continued use of the 1998 *Interim Policy on Wildland and Prescribed Fires* is beyond the scope of this rulemaking.

We noted in our November 2015 proposal that the proposed preamble and rule text incorporated those elements described within the 1998 *Interim Policy on Wildland and Prescribed Fires* that were applicable to implementing the Exceptional Events Rule (*e.g.*, BSMP, SMP, fire-related definitions). We further noted that in doing this, our intent was to decouple implementation of the exceptional events process from potential future revisions to the *Interim Policy on Wildland and Prescribed Fires.* The comments did not identify or recommend any specific aspects of the *Interim Policy on Wildland and Prescribed Fires* that the EPA should have, but did not, incorporate into the Exceptional Events Rule. Rather, the comments simply expressed appreciation for the EPA's clear communication regarding the status (*i.e.*, no planned revisions) of the 1998 policy.

2.3.3 Comments on Wildfires

Comment: Six commenters (D145, D116, D149, D123, D141, D140) supported the proposed definition of wildfire indicating that the definition will help in discussions with air regulators and the EPA and reduce confusion with the public. Other commenters recommended deleting the phrase "a prescribed fire that has been declared to be a wildfire" from the definition because they disagree with allowing burners to "declare" a prescribed fire to be a wildfire. Commenters noted that burn managers might make such a declaration for reasons other than their unanticipated inability to control the deliberately ignited fire. One commenter (D129) stated that the EPA should modify the definition of wildfire so that all fires stated on wildland will be considered natural events.

EPA Response: We address the topic of this comment in detail in Section IV.F.2.b of the preamble to the final rule.

Comment: Three commenters (D117, D148, D168) supported the proposed new approach for wildfires on wildland under which there would be a rebuttable presumption that every wildfire on wildland satisfies the "not reasonably controllable or preventable" criterion, unless evidence in the record demonstrates otherwise. Commenters suggested this is the type of streamlining of the administrative requirements for exceptional events demonstrations that will conserve the limited resources of both the air agencies and the EPA. Another commenter (D119) reinforced this position stating that the "not reasonably controllable or preventable" criterion should not apply to wildfires, regardless of how the land managers choose to address the situation. One commenter (D139) stated that a wildfire that predominantly occurs on non-wildland can be a natural event.

EPA Response: The EPA acknowledges commenters' support and notes that we have promulgated this regulatory language at 40 CFR 50.14(b)(4). The EPA further discusses these changes in Section IV.F.2.a of the preamble to the final rule. We further note in Section IV.F.2.a of the preamble to the final rule that air agencies contemplating preparing fire-related exceptional events demonstrations for fires not on wildland should consult with their reviewing EPA Regional office. The EPA will review submitted demonstrations on a case-by-case basis considering the specific characteristics of each event.

Comment: One commenter (D148) stated that, ultimately, wildfire management decisions fall on fire managers, therefore, air quality regulators should not be held accountable for ensuring that BSMPs are implemented and documented on wildfires.

EPA Response: The comment is outside the scope of the rulemaking because the rule does not identify a party that must ensure BSMPs are implemented and documented. The final rule does not hold air quality regulators accountable for ensuring that BSMP are implemented and documented. It requires implementation and documentation, by some party, as a condition for excluding fire-affected air monitoring data. The EPA recognizes, that in some states, fire management rests with a forestry or public safety agency rather than with an air agency. The final rule requires at 40 CFR 50.14(b)(3)(ii)(B) that if the air agency anticipates satisfying the not reasonably controllable or preventable criterion for a demonstration for a prescribed fire on wildland by employing BSMP (versus having conducted the prescribed fire under a Smoke Management Program), then the air agency, federal land managers, and other entities as appropriate, must periodically collaborate with burn managers operating within the jurisdiction of the State (or Tribe) to discuss and document the process by which air agencies and land managers will work together to protect public health and manage air quality impacts during the conduct of prescribed fires on wildland. Such discussions must include outreach and education regarding general expectations for the selection and application of appropriate BSMP and goals for advancing strategies and increasing adoption and communication of the benefits of appropriate BSMP.

Comment: Two commenters (D144, D143) requested that the EPA clarify the application of definitions of wildfire and wildland to areas of the wildland urban interface (WUI). Commenters indicated that a wildfire can begin in a wildland area and progress through the WUI into suburban areas and air pollution emissions originating in a wildland area can have sub-regional effects beyond the wildland area or WUI. One commenter (D143) stated the rule should clearly state that in those cases, the entire fire progression is a natural event for the purposes of an exceptional event submission.

EPA Response: We clarify in Section IV.F.2.a of the preamble to the final rule that the definition of wildland includes lands that are predominantly wildland, such as land in the wildland-urban interface.

Comment: One commenter (D144) requested that the EPA clarify the terms “burn manager” and “fire manager,” and allow comment on these terms.

EPA Response: We used the term “fire manager” in the proposal (and in the section of the preamble to the final rule that discusses what we proposed) when discussing response to wildfires. We use the term “burn manager” in the sections of the preamble to the final rule (primarily Section IV.F.2.b) and in the regulatory text that discuss management of prescribed fires. In using the term “burn manager” or “fire manager,” we mean the party responsible for supervising a prescribed fire from ignition through fire extinguishing and cleanup, or another party in the same organization who represents, supervises or is supervised by said party and can be a communications pathway to and from such person. For a wildfire, the burn/fire manager would generally mean the incident commander. We

are not including a formal definition in the Exceptional Events Rule because many agencies have their own definition of or terminology for a burn manager, some of which include certification requirements. We are deferring and relying on states to use the appropriate terminology.

Comment: Two commenters (D192, D150) stated that generally considering wildfires as exceptional events is improper. One commenter (D192) stated that Congress did not provide a definition of a "natural event" or identify wildfires as natural events. The commenters (D150, D192) stated that only areas with active, ecologically significant fire programs should be allowed wildfire exceptions during annual emissions accounting.

EPA Response: This action does not relate to annual emissions accounting. The comment related to annual emissions accounting is beyond the scope of this rulemaking. Regarding the first part of the comment addressing the consideration of wildfires as exceptional events, the EPA disagrees on the basis that it is reasonable to generally consider wildfires as exceptional events. Further, while Congress did not specifically provide a definition of "natural event" within the provisions of CAA section 319(b), at CAA section 319(b)(1)(A)(iii), Congress did identify both "human activities" and "natural event[s]" as separate activities within the definition of an exceptional event. Further, in the legislative history, Congress characterized forest fires as natural events and stated that "[e]vents such as forest fires… should not influence whether a region is meeting its Federal air quality goals. The section includes requirements for demonstrating the occurrence of such a natural event…." S. Rep. No. 109-53, at Sec. 1618 (2005) and S. Rep. No. 108-222, at Sec. 1618 (2004). Additionally, in CAA section 319(b)(4), Congress required the continued use of previous guidance as an interim provision until the effective date of the 2007 Exceptional Events Rule. One of the guidances identified at CAA 319(b)(4)(A) was the July 1986 Guid[eline] on the Identification and Use of Air Quality Data Affected by Exceptional Events (EPA-450/4-86-007). This document refers to "…severe recurring dust storms, forest fires, volcanic activity, and other natural sources…" and to "(b) Other Natural Events: volcanic eruption, forest fires, high pollen count…." The guidance also states, "Those whose comments and suggestions were solicited generally agree that natural events, other than meteorological events, and unintended anthropogenic events are, by their very nature, exceptional events." Congress also required as interim a second guidance memorandum at CAA 319(b)(4)(B) titled, "Areas affected by PM-10 natural events" (The PM_{10} Natural Events Policy, May 30, 1996). This policy document identified three categories of natural events [that could affect the PM_{10} NAAQS]: volcanic and seismic activity, wildland fires and high wind events. There is no indication that Congress intended that wildfires no longer be considered as natural events within the Exceptional Events Rule.

The EPA also disagrees with the suggestion that "only areas with active, ecologically significant [prescribed] fire programs should be allowed wildfire exceptions…." Ambient data affected by a wildfire should be refused treatment as an exceptional event only if one of rule criteria, which reflect the CAA criteria, is not satisfied. The commenter could be taken as implying that a program of prescribed fire that is ecologically significant should be considered to an essential part of "not reasonably controllable or preventable" for

wildfire, but the commenter gives no support for such a sweeping treatment of the controllability issue.

2.3.4 Comments on Prescribed Fires

Comment: Many commenters support the EPA's policy that prescribed fires can satisfy the Exceptional Events Rule criteria.

EPA Response: The EPA acknowledges the comments' support. We discuss the construct under which prescribed fires on wildland could satisfy the provisions of the Exceptional Events Rule in Section IV.F.2.b of the preamble to the final rule and in the regulatory text promulgated at 40 CFR 50.14(b)(3).

Comment: Two commenters (D114, D148) supported the inclusion of the six minimum required elements of a State-Certified SMP into the text language. Three other commenters (D112, D140, D166) stated the six SMP criteria proposed by the EPA are unnecessarily restrictive and intended to force states into requiring permits for prescribed fire, so they should remain as guidance.

EPA Response: The EPA acknowledges the comments. As we describe in more detail in Section IV.F.2.b of the preamble to the final rule, we are retaining in the preamble to the final rule, as guidance, the components of a certified SMP. In that section of the preamble, we also explain why it is more appropriate for the six SMP elements to serve as guidance rather than being requirements in the regulatory text. We recognized that the SMP elements developed for the 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* do not reflect current fire terminology and that the 1998 Policy recommended that all state-certified SMP include the six identified elements, but did not require that state-certified SMP include all six. For these reasons, it is more appropriate for these SMP elements to serve as guidance rather than regulation.

The EPA also acknowledges the other commenters' concerns that these criteria are "unnecessarily restrictive," but we do not agree. The criteria are not requirements for the design and operation of a SMP. Rather, they merely indicate what features a SMP must have for the SMP to be relied upon to meet the not reasonably controllable or preventable criterion. A state without a SMP may instead rely on the BSMP path for this criterion. Additionally, the authorization to burn element does not mean that a SMP must require permits for prescribed fire to satisfy the not reasonably controllable or preventable criterion. We have clarified that while this component must include a process for authorizing or granting approval for fires with resource benefits, this authorization process may or may not include burn-specific permits. For example, the authorization could be day-by-day and apply to all burners, or to burners in defined areas, with no transaction between the implementing agency and particular burner other than to convey this general information.

Comment: One commenter (D116) agreed with identifying in the rule text language the six BSMP practices identified in Table 2 to 40 CFR 50.14 as being generally applicable

for exceptional events purposes for prescribed fires on wildland and other prescribed fires.

EPA Response: The EPA acknowledges the comment's support and is finalizing regulatory language that a prescribed fire must be conducted under an adopted and implemented certified SMP or appropriate BSMP to satisfy the controllable prong of the not reasonably controllable or preventable criterion. We discuss this concept in more detail in Section IV.F.2.b of the preamble to the final rule. We also note that the proposal identified the BSMP in Table 2 to 40 CFR 50.14, but the final rule identifies these BSMP in Table 1 to 40 CFR 50.14.

Comment: One commenter (D148) interpreted the proposed rule to indicate that if an FLM could have done more to control the air pollution emissions from a prescribed fire or wildfire, but chooses not to, then the fire is not eligible for consideration as an exceptional event. The commenter stated that because the responsibility to reasonably prevent or control air pollution from a wildfire is not a decision that States can make, it is recommended that the EPA allow States to pursue exceptional event demonstrations for any fire irrespective of whether it was reasonable for the FLMs to suppress the fire.

EPA Response: While the comment refers to an air agency pursuing an exceptional events demonstration, we interpret it to actually be a comment about the criteria that the final rule should contain and that the EPA should apply when reviewing a demonstration, because it is clear that an air agency can prepare and submit a demonstration whenever it considers doing so prudent. The proposed rule and the final rule, which are the same in this regard, do not make the approval of a demonstration for a wildfire dependent on whether the FLM could have, should have, or did try to suppress the wildfire or on the degree of success in such effort, unless there is compelling evidence that there were efforts at limiting emissions that would have been reasonable to apply by some party but they were not applied. We expect it will rarely be the case that any party preparing or commenting on a wildfire demonstration will be able to provide such evidence. However, because wildfire situations vary greatly and conceivably emissions from some wildfires could be better managed, the Exceptional Events Rule should not bar the EPA from considering such evidence if it is submitted for a particular fire.

Comment: One commenter (D120) stated that, if the authority to submit demonstrations is granted to FLMs and fire managers as proposed, their agriculture burning program could upset the coalition built between the agriculture landowners and the state of Washington. Commenter stated that Washington's agricultural land owners have already begun to question why they should continue with Washington's integrated and collaborative smoke control effort if the managers of adjoining federal lands are given additional authorities and emissions from their burns may potentially be excluded from the record. In the commenter's view, FLMs, like owners of agricultural land, are focused on resource management, not air quality.

EPA Response: The EPA recognizes the comment's concerns regarding the EPA's proposal that FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA. The EPA received

numerous comments regarding whether FLMs and other federal agencies may submit exceptional events demonstrations to the EPA. After considering these comments and the most effective approach to addressing air quality and protecting public health, the EPA is finalizing a modified version of the proposal, under which FLMs and other federal agencies could prepare and submit exceptional events demonstrations and data exclusion requests directly to the EPA only if the affected state/tribal air agency(ies) concurs. We discuss this concept and our rationale in more detail in Section IV.A of the preamble to the final rule.

Comment: Three commenters (D180, D166, D112) expressed concern that the rule language could discourage private land owners from burning by being overly burdensome. Some commenters stated that "authorization to burn" requirement essentially requires a burn permit. The commenters advocated that the EPA ensure that this does not become a permit requirement. Similarly, some commenters requested that the EPA specify that states should not develop a penalty structure for how prescribed fire is conducted on private land.

EPA Response: As noted in a response to a previous comment, the authorization to burn element within a SMP is not intended to require permits for prescribed fire on wildland. We clarify in Section IV.F.2.b of the preamble to the final rule that, while this component must include a process for authorizing or granting approval for fires with resource benefits, this authorization process may or may not include burn permits, at the state's option. The preamble to the final rule also explains that the elements of a SMP are included as guidance in the preamble rather than as a set of requirements in the regulatory text. Additionally, the Exceptional Events Rule is concerned with satisfying CAA Section 319(b) and neither the statutory provisions within the CAA nor the Exceptional Events Rule imposes a penalty structure, nor is there a need for penalties. Rather, the consequence for submitting an incomplete demonstration would be that the air monitoring data potentially influenced by an exceptional event would not be excluded. Our response above to another comment regarding burn permits provides additional discussion.

Comment: One commenter (D159) stated that the EPA should make it clear in the final rule that prescribed burns undertaken by private landowners consistent with their management plans meet the criteria for being an exceptional event.

EPA Response: We disagree with the comment on this point. Under the approach identified in the comment, any private landowner would effectively have a "shield" for prescribed fires conducted under a land management plan. We believe that the objectives of the management plan and the plan's process for planning and conducting prescribed fire matter with respect to the objectives of the CAA and the Exceptional Events Rule. The existence of identified objectives in a state or private management plan may not be sufficient under the exceptional events process or be consistent with the requirements of CAA section 319(b). Rather, the stated objectives must include those identified in this rule. The EPA is promulgating regulatory provisions that describe the process and requirements by which emissions from prescribed fires on wildland causing an exceedance or violation of a NAAQS can be considered for exclusion under the

Exceptional Events Rule. In finalizing these rule revisions, our intent is to clearly articulate the components needed to satisfy the statutory requirements under CAA section 319(b) and the Exceptional Events Rule We recognize that addressing the prescribed fire-related components of the rule for a prescribed fire on private land may take more original technical analysis and documentation creation/assembly than for a fire on federally managed land, because existing federal land management plans focusing on ecosystem goals may be a better starting point than a private land management plan focusing on economic productivity or other objectives. However, the same criteria should apply to both types of prescribed fire, and neither type of management plan should be a shield that avoids addressing the substantive criteria in the final rule. Section IV.F.2.b includes additional discussion of the use of land management plans in prescribed fire demonstrations.

Comment: Three commenters (D112, D116, D180) stated that the EPA should tailor the rule to the various land management conditions in the US, such as small, privately-owned land, rather than large, federally-owned tracts of land.

EPA Response: The technical and administrative requirements within the Exceptional Events Rule apply to all criteria pollutants, to all NAAQS and to all event types. We believe that the regulatory language within 40 CFR 50.1, 50.14 and 51.930, along with the guidance provided in Section IV.F.2 of the preamble to the final rule, provides sufficient flexibility for the types of ownership and land types that, if affected by fire, would qualify for treatment under the provisions of the Exceptional Events Rule. The commenter did not suggest specific ways to tailor the final rule.

Comment: Many commenters (0009-5, 0087, D112, D114, D118, D123, D140, D141, D114, D149, D159, D121, D190, D192) acknowledged and agreed with the EPA's position that fire plays an important ecological role across the globe. One commenter (D150) stated that the EPA does not advocate for the importance of prescribed fire enough, and should write regulations to encourage prescribed fire for a range of situations. Many of these commenters also support the EPA's proposal to continue allowing prescribed fires to be exceptional events.

EPA Response: The EPA acknowledges the comments' support for the revised regulatory language describing how prescribed fires on wildland can satisfy the technical and administrative criteria within the Exceptional Events Rule. The EPA also acknowledges that the commenters recognize that the EPA acknowledges that the increased use of prescribed fire and managed wildfires can reduce the risk of catastrophic wildfire and restore resilient ecological conditions in our forests and other wildlands. These rule revisions address satisfying CAA section 319(b) and clarify the requirements in the Exceptional Events Rule. Developing regulations (or guidance) to encourage the use of prescribed fire is outside the scope of this rulemaking.

Comment: Commenter (D140) suggests that prescribed fires be considered "not reasonably controlled" if state air agencies have adopted a state SMP or fire managers implement BSMP as specified at the time of burn ignition, because including more

specific criteria for controlling prescribed fires oversimplifies fire management considerations.

EPA Response: As we have previously noted, the EPA is finalizing regulatory language that a prescribed fire must be conducted under an adopted and implemented certified SMP or appropriate BSMP to satisfy the controllable prong of the not reasonably controllable or preventable criterion. We discuss this concept in more detail in Section IV.F.2.b of the preamble to the final rule. That section makes it clear that the SMP or BSMP approach is sufficient, by saying that a state may "rely" on one of these approaches.

Comment: One commenter (D140) stated that the EPA should allow flexibility when state air agencies work with land managers to develop a multi-year plan for the use of prescribed fire with objectives to establish, restore, and/or maintain sustainable and resilient wildland ecosystems. The EPA must allow such land management decisions to be made on a larger scale than individual land owners or lessees.

EPA Response: The final rule does not require that land management decisions be made on the scale of individual land owners or lessees. What matters are the objectives of the planned prescribed fire program.

Comment: Many commenters supported rule language requiring a smoke management plan to be "state certified."

EPA Response: The EPA acknowledges the comments' support and is finalizing the provision that a prescribed fire must be conducted under an adopted and implemented certified SMP or appropriate BSMP to satisfy the controllable prong of the not reasonably controllable or preventable criterion. We believe that if the final rule allowed reliance on a SMP that did not carry the endorsement of the state, there could be SMPs created by various parties that did not have the benefit of careful preparation and review by the public and knowledgeable experts. Such SMPs could be unsuitable to play a role in determining the outcome of the not reasonably controllable criterion in the exceptional events process. If a SMP exists in a state that the state for whatever reason chooses not to certify, a demonstration for a prescribed fire could rely on the BSMP approach. The final rule does not specify any particular unit or level of state government that may certify a SMP, or any process that must be followed to make such a certification, for the SMP to have that status for purposes of the Exceptional Events Rule. Given this flexibility, we do not anticipate difficult process-related hurdles related to certifying a SMP.

Comment: One commenter (D109) stated that the EPA allows SMPs to satisfy the not reasonably controllable or preventable criterion regardless of whether the provisions or policies in the SMP are enforceable. Commenter argued that this is contradictory to the language proposed at 40 CFR 50.14(b)(7)(iv) which requires that control measures specified in a state's SIP related to exceptional events be enforceable. Commenter called for modifying "prescribed fire" to specify that the "applicable laws, policies and regulations" (1) actually exist, (2) are enforceable by, or through delegated authority

from, the state air quality management entity, and (3) are intended to adequately control emissions and impacts at all downwind locations.

EPA Response: Although we are not adopting the language suggested in this comment, the regulatory text at 40 CFR 50.14(b)(3)(ii)(A) ensures that the SMP is in place and is being followed. For a prescribed fire demonstration that employed a SMP to satisfy the not reasonably controllable criterion, it must include a certification from the state that it has adopted and *is implementing* a SMP. This definitional issue is also addressed in Section IV.F.2.b of the preamble to the final rule.

Comment: One commenter (D129) stated that the EPA should not hold air agencies accountable for providing a SMP or other forestry planning documents. The commenter stated that it should be assumed that prescribed burns are initiated with ample research and planning, and therefore are always part of a natural resources plan.

EPA Response: This regulatory action identifies the technical and administrative requirements that must be met for any event to be considered under the provisions of the Exceptional Events Rule. Air agencies have flexibility in implementing the rule elements, including those for prescribed fire on wildland. The proposed and final rule requirements do not mandate that air agencies provide a SMP or any other forestry planning document. Rather, the rule identifies the conditions under which that fire could meet the controllability prong of the not reasonably controllable or preventable criterion within the Exceptional Events Rule. For prescribed fires, those conditions include conducting prescribed fires under a certified SMP or using appropriate BSMP. Addressing whether the prescribed fire was initiated with ample research and planning is beyond the scope of this rulemaking. We do not believe that it would be reasonable for the rule to categorically provide, without exception, that every prescribed fire on wildland, that any of the diverse land managers in the U.S. chooses to conduct, is not reasonably preventable and not reasonably controllable. When a particular prescribed fire or a prescribed fire program is conducted or implemented according to research and planning effort, an air agency should be able to address, without too much difficulty, the not reasonably preventable and not reasonably controllable elements within an exceptional events demonstration using the record from the research and planning and, in some situations, assistance from the land manager.

Comment: One commenter (D150) stated that all the FLMs and other parties that have state fire plans should coordinate with the EPA and state air agencies to make readily available plan components such as the relevant land/resource management plan; information regarding fuel loading, fire regimes and fire return intervals; estimates of acres burned and acres needing the application of fire; emissions information; and estimates of ecological and human benefits. Commenter noted that relevant parties could then use this information when preparing exceptional events demonstrations for fire-related exceedances. Another commenter (D192) also suggested that a collaborative multi-agency partnership is needed to develop a comprehensive approach to increasing fire management for resource benefits, including air regulators, public health officials, land managers, scientists and other key stakeholders as partners.

EPA Response: This comment addresses the implementation of the final rule, rather than the content of the final rule itself or the EPA's statements of interpretation of the final rule. The EPA recognizes that air agencies (and others) may need information to support the development of an exceptional events demonstration for a wildfire or a prescribed fire on wildland and that other state or federal agencies may have this information. We expect to continue working with our federal, state, local and tribal partners to make this information more accessible.

As an example of these collaborative efforts, the EPA, the U.S. Department of the Interior, and the U.S. Department of Agriculture are currently working together to provide the public information on the effects of smoke from fires – including information on steps people can take to reduce their exposure and protect their health from wildfire smoke. Information on current wildfires and air quality is available on the AirNow.gov website at: *http://go.usa.gov/cCc5F*.

In addition, the importance of the smoke management and wildland fire issues has also been recognized by the Wildland Fire Leadership Council, a national-level intergovernmental committee of Federal, state, tribal, county, and municipal government officials convened by the Secretaries of the Interior, Agriculture, and Homeland Security dedicated to consistent implementation of wildland fire policies, goals, and management activities. The EPA is an important contributor to issues being addressed by the Wildland Fire Leadership Council, and our three agencies are actively looking for ways to integrate the EPA's Regional offices and state air quality agencies into discussions around wildland fire.

Comment: One commenter (D109) stated that while there is some justification for the concept that prescribed burning is not reasonably preventable if performed properly for the protection of an ecosystem, the mere existence of a SMP is not sufficient to justify the EPA's workaround of the clear CAA requirements that exceptional events be "not reasonably preventable and not reasonably controllable."

EPA Response: Under both the proposed and final rule, the mere existence of a SMP is not sufficient to satisfy the controllability prong of the "not reasonably controllable or preventable" criterion. Rather, 40 CFR 50.14(b)(3)(ii)(A) establishes that the a state must certify that it has adopted and *is implementing* a SMP and the preamble to the final rule provides, as guidance, that a SMP must be state-certified and include the following components: (i) authorization to burn, (ii) minimizing air pollutant emissions, (iii) smoke management components of burn plans, (iv) public education and awareness, (v) surveillance and enforcement, and (vi) program evaluation. For a prescribed fire conducted under an adopted *and implemented* certified SMP, a state may rely on the SMP to satisfy the controllable prong of the not reasonably controllable or preventable criterion. The EPA will evaluate each demonstration on a case-by-case basis.

Comment: One commenter (D168) requested that the EPA provide additional clarification regarding the "Program Evaluation" component of a certifiable SMP. Commenter stated that it should not be necessary to spend significant resources updating

the SMP regularly in areas where it is rarely used, and other program evaluation methods could be used.

EPA Response: We provide additional clarification of the "program evaluation" component of a SMP in Section IV.F.2.b of the preamble to the final rule.

Comment: One commenter (D109) noted the EPA specifies that, if an exceptional event (exceedance) occurs under the BSMP approach, the state must conduct a review to ensure public health is being protected. The commenter stated that the EPA's rules pertaining to a SMP for prescribed fire must contain a provision for a regular review of actual impacts of the burning on the ecosystem.

EPA Response: As discussed in the response to the prior comment, Section IV.F.2.b of the preamble to the final rule recommends that SMPs include a "program evaluation" component. Assuming the SMP is certified by the state and is being implemented, a state may rely on the SMP to meet the not reasonably controllable criterion. The possibility of requiring every program referred to as a "SMP" have "a regular review of actual impacts of the burning on the ecosystem" is not within the scope of this rulemaking.

Comment: Two commenters (D112, D166) stated that the EPA does not provide enough flexibility to air quality regulators or land managers to approve prescribed fire use on a meaningful scale, and one commenter (D166) reiterates that the "authorization to burn" and "surveillance and enforcement" criteria within a SMP is an attempt to require burn permits. One commenter (D112) suggested that the EPA specify that the "authorization to burn" requirement can be met by describing the natural fire return interval and state promulgation of guidance for optimal conditions to minimize air quality impacts, or that the SMP implements burn regulations on fire-related activities that are nonessential to native ecosystems (*i.e.*, burning of trash and yard waste).

EPA Response: The intent of these revisions to the Exceptional Events Rule is not to approve or disapprove the use of prescribed fire in any particular area. Fire leadership and management is the role of the agency to which those responsibilities have been delegated through legislation. Rather, the EPA seeks to provide such states, and any agencies with which the states coordinate, the framework to determine when emissions from prescribed fires can appropriately be excluded under the Exceptional Events Rule and within the constraints of the CAA. The intent of these revisions is to identify the technical and administrative requirements that must be met for a prescribed fire on wildland (or any other event) to be considered under the provisions of the Exceptional Events Rule. We encourage inclusion of a burn authorization component in a SMP as it indicates that a broad set of perspectives and expertise has been used to determine what level and types of prescribed fires are reasonable at particular times and places. In a state without a state-certified SMP containing an authorization to burn element, the BSMP approach is available.

Comment: One commenter (D192) stated that the air regulatory agencies should abandon the outdated and mistaken regulatory distinction between "natural" and "anthropogenic" ignitions by abandoning the distinction between prescribed fires and wildfires that are

managed for resource benefit in large part because limiting the use of prescribed fire and natural ignitions used for resource benefits is, on its face, an anthropogenic act.

EPA Response: The commenter correctly notes that past and current use or non-use of prescribed fire and the past and ongoing decisions to suppress or to allow some wildfires to burn for resource benefits are both human activities or human decisions. However, many wildfires are ignited by completely natural events such as lightning strikes. Also, after the ignition event (or after the point at which it could have been suppressed) the size and duration of a wildfire and its air quality impacts are dominated by natural factors in a way that is not true for prescribed fire. The CAA at 319(b)(1)(A)(iii) clearly intends to distinguish between "human activities" and "natural event[s]" within the definition of an exceptional event. Based on this distinction, the Act provides different treatment of events with regard to whether the likelihood of recurrence precludes an event from being treated as an exceptional event. We do not believe that there is a single clear meaning of "natural event" in relationship to wildfire on wildland, and that we must interpret the term "natural event" in light of the objectives of CAA section 319(b) and in the context of the NAAQS protection program overall. We do not think it is reasonable to consider a prescribed fire a natural event given the degree of human planning and preparation involved, even if prescribed fire plays some of the roles of natural wildfire. We do think it is reasonable and in keeping with Congressional intent, to consider wildfires on wildland to be natural events and thus to not apply any test for recurrence for them. In the proposed and final rule, we have incorporated provisions that we believe will make the preparation of a demonstration for either type of fire practicable for air agencies working with responsible land managers. The final rule does not directly regulate the application of prescribed fire, even though prescribed fire is not considered a natural event; any such regulation is beyond the scope of this rulemaking.

Comment: One commenter (D166) stated that, regarding the human activity unlikely to recur criterion for prescribed fires, the EPA should not require air agencies to describe the actual frequency with which a burn was conducted. The commenter stated that the proposed rule should be amended to recognize that a state agency may aggregate multiple, private prescribed fires during an event using technology like satellite imagery, and compare the actual frequency of the aggregate burns to the natural fire return interval for a region.

EPA Response: The comment appears to address the possibility that multiple private prescribed fires at about the same time ("during an event") might be considered by the EPA to be many separate "recurrences" of the same event type, and that the EPA might thus conclude that the event is not "unlikely to recur at a particular location." The commenter suggests that the multiple fires be aggregated and considered one occurrence, and then the frequency of such aggregated events would be compared to the natural fire return interval. The commenter did not suggest specific rule language for this purpose. We do not interpret the final rule to prohibit the suggested approach. We note that we approved under the provisions of the 2007 Exceptional Events Rule a demonstration for prescribed fires in the Flint Hills area of Kansas that took such an approach. We are not finalizing rule language regarding such aggregation because we did not propose any

boundaries on the aggregation in time and space. We believe that the appropriateness of aggregation can and should be considered on a case-by-case basis.

We note that with respect to approval criteria other than not likely to recur the EPA is finalizing regulatory language allowing air agencies to aggregate either similar or dissimilar events (*e.g.*, stratospheric ozone intrusion followed by a wildfire or two distinct wildfires) that influence the same NAAQS but that occur on different days for the purpose of determining whether their collective effect has caused an exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours. That is, when considered individually, each event would not separately need to result in an exceedance or violation of a given NAAQS. The collective effect of the aggregated events would, however, need to cause an exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours. Also, as part of this aggregation approach, the air agency must show that each identified event separately satisfies each of the three technical rule criteria (*i.e.*, human activity/natural event, not reasonably controllable or preventable, and clear causal relationship). For the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of a NAAQS with an averaging or cumulative period longer than 24 hours. We do not intend our approach for event aggregation to allow for the aggregation of unnamed events or events that occur over the course of an extended timeframe.

The final rule text also provides that air agencies may aggregate events occurring on the same day and compare the cumulative effects to a NAAQS with an averaging period of 24 hours or less. As previously noted, for the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of the NAAQS and that each identified event separately satisfies each of the three technical rule criteria (*i.e.*, human activity/natural event, not reasonably controllable or preventable, and clear causal relationship). We discuss event aggregation in Section IV.G.1 of the preamble to the final rule.

Comment: One commenter (0087) agreed that the EPA should remove the requirement to consider development of a SMP from the sentence of the existing text of 40 CFR 50.14(b)(3), and agreed that if an air exceedance or violation attributable to prescribed fire occurs, air agencies should consider a wide range of alternatives to address the issue including, but not limited to, development of a SMP or more intensive or frequent use of BSMP.

EPA Response: The EPA acknowledges the comment's support. The EPA is removing the phrase "and must include consideration of development of a SMP" from the sentence that in 40 CFR 50.14(b)(3) of the 2007 Exceptional Events Rule read, "If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP." Additional discussion of our decision to remove this phrase is included in Section IV.F.2.b.iv of the preamble to the final rule.

Comment: One commenter (D110) did not support the proposal (also a feature of the pre-existing rule) that use of BSMPs during a prescribed fire is sufficient to satisfy the not reasonably controllable criterion. Commenter noted that this approach puts the air agency in a reactive mode, rather than the more appropriate role under a SMP approach of determining in advance what actions are appropriate. Commenter stated that, for areas without a SMP that wish to take advantage of the Exceptional Events Rule, the EPA should include in the rule a requirement for a concurrence role for the air agency to ensure that any BSMPs employed appropriately consider and address air quality and public health issues. On the other hand, some commenters supported the EPA's proposal to accept that BSMPs were followed during a prescribed fire based upon a fire manager's statement that an applicable BSMP was employed.

EPA Response: This issue of the air agency's role in the planning of BSMP prior to the initiation of a prescribed fire is addressed in Section IV.F.2.b.iv of the preamble to the final rule.

Comment: One commenter (D114) suggested that Table 4- "Elements that may be included in Burn Plans and Post-Burn Reports for Prescribed Fires Submitted as Exceptional Events" should have also been included as a table to 40 CFR 50.14 (80 FR 72895).

EPA Response: The EPA is not including Table 4 in regulatory text. Because the elements identified in the table are only examples, rather than binding requirements, it is appropriate to present the table in the preamble to the final rule as guidance.

Comment: Commenter (D109) stated the prescribed fire section of the rule needs to include a provision whereby the Administrator has a duty to assess, in the context of the exceptional event determination, (1) whether the state's air quality monitoring system is adequate to determine the true extent of the bad air quality and (2) the health impacts from the prescribed burning.

EPA Response: The EPA acknowledges the comment's concern. It is beyond the scope of this rulemaking to require as part of the EPA's review of an exceptional events demonstration an assessment of the adequacy of an air agency's monitoring network or an assessment of the health impacts that result from prescribed burning. The CAA does not make such an assessment a requirement for the Administrator to approve the exclusion of event-affected data.

Comment: One commenter (D114) stated that, while the proposed rule extensively addresses prescribed fires that occur on wildlands, the proposal is ambiguous in the handling of data related to agricultural land maintenance. The commenter suggested that the EPA add more language on the handling of prescribed fire events related to agriculture.

EPA Response: As the EPA proposed and is finalizing in this rule, the special fire-related provisions apply specifically to fires that occur predominantly on wildland. The general

provisions of the rule text and preamble guidance apply to prescribed fires on other types of land. Air agencies contemplating preparing fire-related exceptional events demonstrations for fires not on wildland, including events related to agriculture, should consult with their reviewing EPA Regional office. The EPA will review submitted demonstrations on a case-by-case basis considering the specific merits of each event.

Comment: Two commenters (D123, D141) stated that guidance is needed for state regulatory agencies and the EPA regions in assessing smoke management approaches, barriers to the use of the Exceptional Events Rule, or those creating significant obstacles to the use of prescribed fire. One commenter (D140) stated that, given the similarities between emissions and transport of pollutants from wildfire and prescribed fire, such guidance should be aggregated with guidance for wildfire events into a single document and should remain as a guidance document only rather than being codified in a rule. One commenter (D167) stated the documentation process for prescribed burns is different than for wildfires, so a separate guidance document may be needed. Commenter asked that the EPA consider developing an exceptional event guidance document for prescribed fires to assist air agencies in determining when a prescribed burn might qualify for exceptional event status and what documentation is required in submitting the request.

EPA Response: This comment addresses the implementation of the final rule, rather than the content of the final rule itself or the EPA's statements of interpretation of the final rule. Based on feedback from interested parties on the proposed rule revisions and the draft Wildfire Guidance, we intend to develop supplementary guidance to assist air agencies in addressing the Exceptional Events Rule criteria for prescribed fire on wildland. This guidance will focus on analyses and supporting documentation recommended to show that prescribed fire events on wildland were unlikely to recur at a particular location and were not reasonably controllable or preventable. We intend to post the draft guidance for prescribed fires and instructions for providing public comment on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events* after finalizing these rule revisions.

Comment: One commenter (D150) urged the EPA to reevaluate the impact of prescribed fire on air quality, and stated that prescribed fire may not be as negatively impactful as assumed.

EPA Response: This comment addresses the implementation of the final rule, rather than the content of the final rule itself or the EPA's statements of interpretation of the final rule. Committing to evaluate the impact of prescribed fire on air quality is beyond the scope of this rulemaking.

2.3.5 Comments on Stratospheric Ozone Intrusions

Comment: Two commenters (D113, D139) expressed concern over the requisite technology to adequately monitor stratospheric ozone intrusions. Regarding stratospheric ozone intrusions, one commenter stated that research-grade CO monitors that can accurately read low CO levels are expensive and not readily available. Commenter added that not all rural high-elevation monitoring sites are suited to host this kind of equipment. One commenter expressed concerns regarding the stratospheric intrusion event demonstration. Commenter stated that Rapid Update Cycle models and the Real-time Air Quality Modeling System, with supplemental satellite data, are theoretically available, but the EPA demonstrates no confidence that state air agencies are sophisticated enough to provide demonstrations based upon such sources.

EPA Response: This comment addresses the implementation of the final rule, rather than the content of the final rule itself or the EPA's statements of interpretation of the final rule. The EPA recognizes that developing an exceptional events demonstration for stratospheric ozone intrusions can be challenging. For this reason, and based on feedback from interested parties, we intend to develop supplementary guidance to describe satisfying the Exceptional Events Rule criteria for stratospheric ozone intrusions. Once available, the EPA intends to post this draft guidance documents on the exceptional events Web site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events*.

Comment: One commenter (D116) stated that, while the preamble to the proposed rule describes an approach and discusses the need for codification on Stratospheric Ozone Intrusion Events, a corresponding section should be included in rule text.

EPA Response: The EPA acknowledges the commenter's feedback and is finalizing a rule provision at 40 CFR 50.14(b)(6) related to satisfying the not reasonably controllable or preventable criteria for stratospheric ozone intrusions. We discuss this provision in more detail in Section IV.F.3 of the preamble to the final rule.

Comment: One commenter (D136) asked whether altitude will be included as a factor in determining an "exceptional event." Commenter supported the inclusion of altitude in the rule and the ability to obtain an exemption when altitude can be determined a contributing factor. The commenter encouraged the EPA to develop rules and processes that consider the vastly diverse environments and geography, in our country, rather than the more common approach of adopting uniform national rules.

EPA Response: The technical and administrative requirements within the Exceptional Events Rule apply to all criteria pollutants, to all NAAQS and to all event types. Although altitude can play an indirect role in some types of events (*e.g.*, stratospheric ozone intrusion events are identified most frequently at high elevation sites where upper tropospheric air is more likely to reach the surface than at lower elevation sites), it does not even indirectly affect all event types. Therefore, we are not specifically identifying altitude as a factor in determining whether an event is an exceptional event. Air agencies

can, however, include a discussion of how altitude contributes to the origination of an event as part of the weight of evidence in their exceptional events demonstration.

2.3.6 Comments on High Wind Dust Events

Comment: One commenter (D117) requested that the EPA codify in rule text that dust entirely from undisturbed areas be excluded under the Exceptional Events Rule. Another commenter (D115) suggested that the EPA state more clearly that the reasonable control and mitigation analyses need not consider natural sources in high wind events, rather than leaving states to assume they need to identify and evaluate controls for each natural source.

EPA Response: While we are not promulgating rule text of the sort recommended in the comment, the final rule does not require states to evaluate controls for each natural source in every demonstration with the same rigor as for anthropogenic sources. The technical and administrative requirements within the Exceptional Events Rule apply to all criteria pollutants, to all NAAQS and to all event types. Because all events must meet certain requirements to qualify for consideration under the provisions of the rule, the EPA cannot uniformly exclude data influenced by any type of event without first considering the circumstances and merits of the underlying event. We can, however, clarify the provisions that apply in certain circumstances and to certain event types. For example, in Section IV.D of the preamble to the final rule, we identify that we generally consider wildfires, stratospheric ozone intrusions, volcanic and seismic (*e.g.*, earthquake) activities, natural disasters (*e.g.*, hurricanes and tornados) and windblown dust from natural, undisturbed landscapes to be natural events. Then, in Section IV.E.2 of the preamble to the final rule we provide a step-wise process and example conclusory language that could be used when preparing evidence to support the not reasonably controllable or preventable criterion within an exceptional events demonstration for a natural event.

Comment: Regarding the definition of ‘‘high wind threshold’’ as the minimum threshold wind speed capable of causing particulate matter emissions from natural undisturbed lands in the area affected by a high wind dust event, two commenters (D113, D116) generally supported the EPA's proposal to require a threshold of sustained winds of 25 miles per hour (mph) for areas in Western states, and agree that air agencies should be able to provide evidence of a different threshold, if appropriate. Another commenter (D117) did not support the 25 mph threshold, arguing that it should be much lower or nonexistent, as even 12 mph can cause dust events. This commenter noted that the EPA should indicate in the rule that the variable nature of high wind dust events necessarily includes a case-by-case determination. Still another commenter (D148) recommended that, rather than promulgating the high wind threshold as rule text, the threshold should remain as guidance and serve as an indicator for the level of rigor needed for a given exceptional event. This commenter stated that the EPA should allow shorter averaging periods, such as the 2 minute averaging that the National Weather Service does for their hourly reports, to determine the sustained winds. The commenter also noted that wind gusts can overwhelm controls and generate blowing dust. Commenter stated that events

with sustained winds slightly below 25 mph but with wind gusts at much higher speeds should be given just as much consideration and weight as an event with sustained wind speeds of 25 mph but no significant wind gusts. Commenter stated that the turbulent nature related to strong wind gusts should be an important part of the weight of evidence that the EPA considers when determining whether controls were overwhelmed during an event. Commenter suggested that Doppler radar wind speed data, when available, should be considered suitable estimates of surface wind speeds when other National Weather Service (NWS) wind data are unavailable near source regions for windblown dust. Another commenter (D116) stated that, if the EPA finds that hourly average wind speeds should be the basis for establishing and comparison to a High Wind Threshold, this should be codified within the rule.

EPA Response: As we discuss in Section IV.F.4 of the preamble to the final rule, we are finalizing regulatory text that we will accept a threshold of a sustained wind of 25 mph for areas in the western U.S. provided this value is not contradicted by evidence in the record when we review a demonstration. We are also including regulatory language that air agencies can develop as an alternative to the 25 mph high wind threshold, their own area-specific high wind threshold that is more representative of local/regional conditions. We further note that we included guidance on both threshold development and determining wind speeds in the Interim High Winds Guidance.[9] States wishing to set an alternate area-specific high wind threshold should do so in accordance with 40 CFR 50.14(b)(5)(iii) and should consult with their EPA Regional office. None of the specific approaches recommended by the commenters, including use of 2-minute averages from NWS, are precluded by the final rule or the EPA's guidance. The final rule defines "high wind threshold" and establishes the presumption of a value for areas in the western U.S. but does not address how actual variable winds are to be compared to the threshold or how the comparison affects the determination of whether a high wind event is an exceptional event. These are questions that the EPA will address in the implementation of the final rule.

Comment: One commenter (D130) noted that the proposed changes to the Exceptional Event Rule refer to a NEAP as a potential tool for assessing the "reasonably controlled" criterion (80 FR 72860) and stated that an hourly average wind speed of 20 mph was established by the Wyoming Air Quality Division as the high-wind threshold in the NEAP for the Powder River Basin in Wyoming. Commenter stated that, while the NEAP is no longer implemented for exceptional event determinations, the 20 mph threshold has been retained as a standard against which high-wind dust events are evaluated.

EPA Response: This comment addresses the implementation of the final rule, rather than the content of the final rule itself or the EPA's statements of interpretation of the final

[9] *See* Appendices A2 and A3 in the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule.* U.S. EPA. May 2013. Available at *http://www2.epa.gov/sites/production/files/2015-05/documents/exceptevents_highwinds_guide_130510.pdf* for additional information on the development of a high wind threshold.

rule. As we discuss in Section IV.F.4 of the preamble to the final rule, areas with NEAPs that include a high wind threshold that meets the criteria identified in the Interim High Winds Guidance may be able to use the previously developed threshold as an area-specific high wind threshold. Air agencies should consult with their EPA Regional office when developing alternate high wind thresholds for a particular area.

Comment: Several commenters (D117, D140) specifically stated that events like haboobs should not require detailed exceptional events submissions, and the EPA should provide rule language to that end. These commenters supported the proposal that large-scale, high-energy and/or sudden high wind dust events be considered "not reasonably preventable and not reasonably controllable." Another commenter (D148) noted that events involving "high energy," such as microbursts, need not be large scale. Also, one commenter (D120) requested that the EPA clarify that haboobs can occur outside of the American southwest. Conversely, another commenter (D171) stated that haboobs should not be exempt from the requirement to demonstrate that anthropogenic sources were reasonably controlled. This commenter stated the proposed rule fails to adequately define what constitutes a "remote, large-scale, high energy and/or sudden high wind dust event." Commenter stated that it is entirely predictable that if the EPA were to adopt a rule exempting these "haboobs" from the "not reasonably controllable" demonstration, every dust storm in the southwest will soon be identified as a "haboob." Another commenter (D173) stated that a "high wind event" exists only where the wind is both "high wind" and sufficiently high to cause a monitored violation even in light of the implementation of whatever measures are "necessary" to protect public health (meaning, at minimum, BACM).

EPA Response: As we discuss in Section IV.F.4 of the preamble to the final rule, we are finalizing regulatory language to apply a case-specific approach when considering reasonableness of controls for large-scale and high-energy high wind dust events. In response to commenter feedback, we have removed the phrase "such as haboobs in the southwest" because we agree with the commenter that haboobs can occur in areas other than the southwest. We have also defined the criteria that would qualify a given event for this case-specific approach. We would assess demonstrations for events that do not meet these criteria on a case-by-case basis using a weight of evidence approach.

Comment: Some commenters (D130, D169) referred to 80 FR 72845 where the EPA indicates that the EPA will continue to rely on statements in the preamble to the 2007 Exceptional Events Rule that the District of Columbia Circuit Court concluded to be a "legal nullity." Commenters questioned whether the EPA has the authority to apparently ignore the findings of the court and suggested that the EPA provide additional support for taking this approach.

EPA Response: The 2007 Exceptional Events Rule preamble noted that "[t]he EPA's final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where (1) the dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or

from anthropogenic sources outside the State." The EPA's citation of this statement in the proposal was not intended to mean that the EPA is relying on the cited passages of the 2007 action as having any legal effect as of the initiation of this rulemaking. We noted in the November 2015 proposal that although this language still reflects the EPA's interpretation of what might be appropriate under the Exceptional Events Rule, the D.C. Circuit determined the language to be a legal nullity. We note that the D.C. Circuit determined the language to be a legal nullity because the preamble made statements about what the final rule said about high winds and ambient particular matter concentrations, but in actuality the EPA did not specifically address high winds or ambient particulate matter concentrations in the promulgated regulatory language in 40 CFR 50.14 in the 2007 rule. The Court did not address the merits of the substance of the language in the 2007 preamble and did not say that the EPA could never establish such language in rule text using notice-and-comment rulemaking. Therefore, the D.C. Circuit's reasoning with respect to the 2007 preamble language does not apply to this revised final rule, which incorporates language into the regulatory text that addresses high winds and that is consistent with the preambles of the proposed and final rules. In finalizing this language, we have considered and responded to comments on the issues that are involved.

Comment: One commenter (D175) stated that the EPA should clarify in the final rule that compliance with State approved air quality permits, fugitive dust control plans, and reclamation requirements under the Surface Mining Control and Reclamation Act would be reasonable controls on theses anthropogenic sources of emissions.

EPA Response: As we discuss in more detail in Section IV.E.2 of the preamble to the final rule, we do not agree with the commenter that we should universally extend the deference to controls in a SIP, FIP or TIP to BACM or fugitive dust control plans contained in air quality (or surface mining reclamation) permits. Control measures in air quality permits may or may not be EPA-approved and evaluated using the same rigor as controls in a SIP, FIP or TIP. Also, the BACM in an air quality permit apply to the permit holder and not to all sources potentially contributing emissions to a monitored exceedance or violation. While we are not deferring to BACM controls in air quality permits, we encourage air agencies to include descriptions of these measures in the collection of controls that they believe constitute "reasonable" controls for purposes of addressing the not reasonably controllable or preventable criterion. The EPA will determine whether we concur on a case-by-case basis.

Comment: Some commenters (D116, D115) stated that requiring controls on high wind dust events will place an unreasonable burden on agencies preparing demonstrations to quantify, compare, and prove the dust-generating equivalency of controlled anthropogenic sources with natural undisturbed land. One commenter (D115) expressed concern about how a state might show that controls in an area are "as resistant to high winds as natural undisturbed land area" and suggested that the EPA should provide guidance on how it expects states to fulfill this criterion.

EPA Response: The comment does not accurately describe what the EPA has proposed and is finalizing. The EPA is not creating a new requirement in this rulemaking that there

be controls on sources contributing to high wind dust events. Rather, the EPA is requiring that to be considered under the provisions of the Exceptional Events Rule, anthropogenic sources causing and contributing to the (high wind dust) event emissions must have *reasonable* controls applied. We recognize that the comment applies in this context also. We discuss the general concept of reasonable controls in more detail in Section IV.E.2 of the preamble to the final rule and we discuss the application of the not reasonably controllable or preventable criterion to high wind dust events in Section IV.F.4 of the preamble to the final rule.

Comment: One commenter (D133) stated that it appears that under this proposal, dust controls in a recently approved SIP generally would be accepted as sufficient to satisfy the control criterion, provided that affected sources are in compliance. Commenter (D133) stated that, in cases where there are no applicable requirements or the applicable requirements have not been satisfied, the control criterion may not be satisfied. Commenter stated that high wind events should be excluded regardless of whether they include windblown dust from anthropogenic sources, provided the sources are in compliance with existing control measures, and mitigation measures should be limited to cases where the anthropogenic contribution is determined to be significant and reasonable control requirements have not been satisfied.

EPA Response: As we state in Section IV.E.2 of the preamble to the final rule, the EPA is promulgating a regulatory provision saying that, so long as the appropriate federal, state or tribal air agency is not under an obligation to revise the SIP or FIP or TIP for an attainment or maintenance area for the event-related pollutant, the EPA would consider (*i.e.*, give deference to) enforceable control measures implemented in accordance with such a SIP or FIP or TIP, approved by the EPA within 5 years of the date of the event, that address the event-related pollutant and all sources necessary to fulfill the requirements of the CAA for the SIP or FIP or TIP to be reasonable controls with respect to all anthropogenic sources that have or may have contributed to the monitored exceedance or violation.[10] If the relevant air agency is under an obligation to revise its implementation plan with respect to the specific enforceable control measures applicable to the exceptional events demonstration due to a SIP call pursuant to CAA section 110(k)(5), the EPA will evaluate on a case-by-case basis the control measures in place to determine whether emissions were reasonably controlled at the time of the event. We also note that air agencies must provide evidence of effective implementation and enforcement of reasonable controls, if applicable. Commenter correctly notes that if

[10] Under CAA section 110(c), the EPA is required to issue and enforce a FIP if a state fails to develop, adopt and implement an adequate SIP. States may also choose to adopt the federal plan as an alternative to developing their own plan. If a federal plan is implemented in a state, the state may still, at a later date submit a plan to replace the federal plan either in whole or in part. States may take over the administrative and enforcement aspects of a federal plan rather than leaving it to the EPA. Similarly, under the Tribal Authority Rule (TAR) at 40 CFR 49, tribes can develop their own plans (*i.e.*, TIPs) to implement the CAA provisions. Rather than develop their own TIPs, tribes can request that the EPA develop a FIP.

applicable requirements are not satisfied, then the not reasonably controllable or preventable criterion may not be satisfied. In addition to satisfying the not reasonably controllable or preventable criterion, the air agency must address and satisfy the other rule criteria for an event to be considered under the provisions of the Exceptional Events Rule. We discuss in Section V of the preamble to the final rule the mitigation requirements for areas experiencing recurring events.

Regarding a situation mentioned in the comment in which the SIP does not have applicable requirements for dust controls, we clarify that such a SIP might still be given deference for purposes of the not reasonably controllable criteria (assuming all other conditions are met) if the record of the EPA's approval of that SIP made it clear that there were not reasonable dust controls that could be included in the SIP. As with all exceptional events demonstrations, the EPA will review each request under the Exceptional Events Rule on a case-by-case basis using a weight of evidence approach.

Comment: One commenter (0098) requested the EPA to clarify whether blowing dust events caused by man-made water diversion in such locations as the Owens Dry Lake and Mono Lake respectively will be exempt from the proposed rule. The commenter stated that the EPA needs to ensure that future man-made diversions which may cause future exceptional events due to water diversions/wind-blown dust, such as the Salton Sea, will have equal protection under the NAAQS for protection to local Tribal and Environmental Justice communities.

EPA Response: As we have noted in the response to a previous question, under the regulatory definition of natural event that we are finalizing (*i.e.*, a natural event is "…an event and its resulting emissions, which may recur at the same location, in which human activity plays little or no direct causal role."), repeated and long-term human activity would preclude an event from being natural. The EPA notes that there is legislative history to the effect that particulate matter emissions resulting from long-term water diversion are due to human activity (*See* Pub. L. 101–549, CAA Amendments of 1990 House Report No. 101–490, May 17, 1990; and discussion of Mono Lake, California therein). A dust event associated with Owens Dry Lake or Mono Lake could, however, qualify for status as an exceptional event under the provisions of the Exceptional Events Rule as a "human activity unlikely to recur at a particular location" provided all of the rule criteria are also satisfied. In this action, we are taking no position on how the "unlikely to recur" criterion bears on an event associated with the cited areas. As with all exceptional events demonstrations, the EPA will review each request under the Exceptional Events Rule on a case-by-case basis using a weight of evidence approach. Additionally, as we discuss in Section V of the preamble to the final rule, some areas experiencing recurring events may be subject to the mitigation requirements that we are promulgating in this action.

Comment: Commenter (D139) stated that, for reasons of limitations on agency authority and expertise, the EPA should not intrude further into land management practices by considering the degree of penetration, scale and intensity with which BMPs constitute reasonable controls in high wind event-affected areas.

EPA Response: The EPA is not intruding into land management practices by considering the degree of penetration, scale or intensity with which BMP must have been applied during a high wind dust event for an exceedance attributable to a high wind dust event to be excluded under the provisions of the Exceptional Events Rule. As is fully within our authority, we are only identifying those criteria that must be met for an event to satisfy the requirements of the Exceptional Events Rule. Section IV.F.4 of the preamble to the final rule discusses our guidance with respect to BMPs. As with all exceptional events demonstrations, the EPA will review each request under the Exceptional Events Rule on a case-by-case basis using a weight of evidence approach.

2.4 Comments on Other Aspects of Flagging Exceptional Events-Influenced Data and Demonstration Submittal and Review

2.4.1 Aggregation of Events and Demonstrations with Respect to Multiple NAAQS for the Same Pollutant

Comment: Eight commenters (0097, D126, D137, D154, D164, D167, D168, D174) supported allowing multiple day events to be aggregated and also allowing for multiple pollutants to be addressed in one exceptional events demonstration, to both properly account for exceedances caused by multiple events and to remove the burden of multiple demonstrations. One commenter (D173) opposed allowing the aggregation of events occurring on different days to be aggregated for the purpose of determining whether their collective effect has caused an exceedance or violation. Commenter stated this approach is not the aim of the exceptional events provisions of CAA section 319, and such a revision would have dire consequences for air quality. Commenter stated this is unlawful, arbitrary and capricious. One commenter (D164) further noted that multiple exceptional events should be considered in a single demonstration as long as there is a clear causal relationship between the exceptional events and an exceedance of a NAAQS.

EPA Response: The EPA's practice has been to allow multiple pollutants to be addressed in one exceptional events demonstration, as this only serves to streamline the demonstration process for air agencies; it does not alter the demonstration requirements or the Exception Events Rule criteria. We acknowledge the comments' support for this approach. It is also the EPA's practice to allow unrelated events to be included in one demonstration document if they are independently addressed. This also does not alter the demonstration requirements or the Exception Events Rule criteria, and only serves to streamline the process by making common use of technical and background material, allowing one review process at the state and the EPA levels, etc.

With regard to aggregation of events such that their effects would be considered together to allow an outcome that would not be reachable if events were considered in isolation, as we discuss in additional detail in Section IV.G.1 of the preamble to the final rule, the EPA is finalizing regulatory language that allows air agencies to aggregate either similar or dissimilar events (*e.g.*, stratospheric ozone intrusion followed by a wildfire or two distinct wildfires) that influence the same NAAQS but that occur on different days for the purpose of determining whether their collective effect has caused an exceedance or

violation. That is, when considered individually, each event would not separately need to result in an exceedance or violation of a given NAAQS. The collective effect of the aggregated events would, however, need to cause an exceedance or violation. Also, as part of this aggregation approach, the air agency must show that each identified event separately satisfies each of the three technical rule criteria (*i.e.*, human activity/natural event, not reasonably controllable or preventable, and clear causal relationship). For the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to an elevated concentration or concentrations and that, together, the cumulative effect of the events caused the exceedance or violation. We do not intend our approach for event aggregation to allow for the aggregation of unnamed events or events that occur over the course of an extended timeframe. The final rule text also includes a statement that air agencies may aggregate events occurring on the same day and compare the cumulative effects to a NAAQS with an averaging period of 24 hours or less. As previously noted, for the clear causal relationship showing, the air agency would need to definitively show that each discrete event contributed to the elevated concentrations and that, together, the cumulative effect of the events caused the exceedance or violation of the NAAQS and that each identified event separately satisfies each of the three technical rule criteria (*i.e.*, human activity/natural event, not reasonably controllable or preventable, and clear causal relationship).

We disagree with the second comment's assertion that such aggregation is unlawful. Allowing aggregation of different events provides the states with the flexibility to address complicated exceedances that are exceptional in nature. CAA section 319(b) is silent on event aggregation, and does not explicitly or implicitly state that exceedances must only be due to a single event. Nor is there anything indicating that Congress intended for the EPA to block exceedances from treatment under the Exceptional Events Rule simply because the exceedance was caused by a complex interplay of events or their aggregate effects on a long-term average concentration. Because the statute is ambiguous on the issue, it is reasonable for the EPA to interpret CAA section 319(b) as allowing the Exceptional Events Rule to permit event aggregation. The EPA has considered the purpose of CAA section 319(b) and the overall context and determined that allowing aggregation is consistent with the Congressional intent that states may exclude air monitoring data that violates or exceeds an applicable NAAQS and is due only to natural events and not-likely-to-recur anthropogenic events that are reasonably controlled. Routine emissions, including biogenic emissions of ozone precursors from vegetation and soils, do not meet the definition of an exceptional event. This remains true for a demonstration that aggregates emissions from numerous events.

As stated in the preamble to the final rule, and the response to this comment, the air agency's clear causal relationship showing would need to definitively show that each discrete event contributed to the elevated concentrations on specific days and that, together, the cumulative effect of the events caused the exceedance or violation. These events would still be required to comply with all other Exceptional Events Rule criteria.

We acknowledge that a possible outcome is that an area affected several times by events in a year might avoid designation as nonattainment, or may be determined to have attained a NAAQS, and thus not be required to adopt additional emission controls, while

it may have been so required were aggregation not allowed, but we believe this is consistent with the CAA.

Comment: Two commenters (D126, D167) requested that the EPA provide procedures or guidance for aggregated events demonstrations.

EPA Response: The EPA acknowledges the commenters' concerns about adequate guidance. We provide a specific approach to aggregating wildfire-related events that occur in different locations on the same day in the Wildfire Guidance, which we are releasing concurrently with this action. The aggregation methodology in the Wildfire Guidance applies for purposes of determining whether a given wildfire could use a tiered approach to satisfy the clear causal relationship criterion in a demonstration for an ozone standard (*i.e.*, either a 1-hour or an 8-hour standard). The EPA is examining what other guidance may be relevant and important as we implement the revised Exceptional Events Rule. Increased communication through the initial notification process will ensure that air agencies will receive adequate information from their Regional EPA office when these issues arise.

Comment: Several commenters (D117, D119, D128, D137, D148, D154, D168) supported the proposal that a successful demonstration with respect to any NAAQS for a given pollutant would suffice to qualify the data in question for exclusion with respect to all NAAQS for that pollutant. One commenter (D173) disagreed, stating that finalizing a proposed "approved for one NAAQS approved for all NAAQs for the same pollutant," would create pathways for easier exceptional events approvals when such approvals violate the statute and undermine the ability of Americans to rely on air quality pronouncements generally. Another commenter (D161) also disagreed, saying that each NAAQS is unique in that each has primary and secondary standards that have their own averaging times, levels, and forms, and should thus be considered on a case-by-case basis. The commenter stated that these primary and secondary standards protect human health and the environment in their own unique manner. The commenter opined that this uniqueness separates and distinguishes each NAAQS from every other NAAQS, yet all of the NAAQS work together to protect human health and the environment.

EPA Response: In the final rule, we are retaining our current approach to excluding data on a NAAQS-specific basis with the certain limited clarifications for certain measurements and certain NAAQS that area related to the use of the level of the NAAQS for one averaging period in the demonstration focusing on a different-period NAAQS for the same pollutant (*see* section IV.G.1.b of the final rule preamble). CAA section 319(b)(3)(B)(ii) refers to "the measured exceedances of *a* national ambient air quality standard" (emphasis added); CAA section 319(b)(3)(B)(iv) references excluding data from use in determinations with respect to "exceedances or violations of the national ambient air quality standards." These passages do not clearly say that the EPA must allow data to be excluded for the purposes of all NAAQS for a given pollutant if the conditions for exclusion are satisfied for one of the NAAQS but not all of them. These passages also do not clearly say that the EPA may allow such exclusions. Even assuming *arguendo* that that the passages permit the EPA to allow such exclusions, we believe that we would be undermining the public health and welfare purpose of the NAAQS if we

were to allow such broad exclusion. As one of the comments noted, each NAAQS with a distinct averaging period is part of what is needed for public health protection. The exclusion of data with a certain averaging period because of exceptional event effects should not implicate regulatory determinations and planning associated with any other NAAQS simply because it has the same averaging period as the NAAQS for which data was excluded. The Exceptional Events Rule criteria must be met for each period and for each separate NAAQS for data to be excluded. The CAA directs that protection of public health is the highest priority. The commenters in favor of broad exclusion did not provide a legal or public health protection basis for their recommendations. Therefore, neither the final rule nor the preamble to the final rule includes language or guidance for the proposed "approved for one NAAQS approved for all NAAQS for the same pollutant" concept.

Comment: One commenter (D161) did not recommend that the EPA allow air agency staff to compare the 24-hour concentrations of any NAAQS pollutant to a NAAQS level defined for a longer period as part of a weight-of-evidence showing for the clear causal relationship with respect to the NAAQS with the longer period. The commenter stated that such an "apples to oranges" comparison will increase the uncertainty, and simultaneously decrease the quality, of the demonstration.

EPA Response: We do not believe that using the level of a longer-period NAAQS in an assessment of whether the criteria of the Exceptional Events Rule are met with respect to a shorter-period NAAQS will increase uncertainty or decrease the quality of a weight-of-evidence demonstration, versus using only the level of the shorter-period NAAQS. The same types of analysis would logically be presented. For example, an air agency could support the clear causal connection aspect of a 24-hour $PM_{2.5}$ concentration demonstration by showing that an event caused the concentration to change from being below 12 $\mu g/m^3$ to being above that level. Or it could support the demonstration with respect to the same point using the actual 35 $\mu g/m^3$ of the 24-hour $PM_{2.5}$ NAAQS. The commenter does not explain how this additional, very clear, option for the state would increase uncertainty or reduce the quality of a demonstration. The preamble to the final rule cites the EPA's previous guidance that contained a table, which gives precise instructions regarding the cross-averaging periods that can be compared and exactly how to make such comparisons.

2.4.2 Comments on the Exclusion of Entire 24-hour Value Versus Partial Adjustment of the 24-hour Value for Particulate Matter

Comment: Two commenters (D148, D168) supported excluding all data from a calendar day when any data from that day is excluded and the averaging time for the NAAQS is 24 hours or longer. One commenter (D161) recommended that the EPA codify in the rule text its current approach of flagging all 24 one-hour $PM_{2.5}$ and PM_{10} data obtained via monitor instruments within a given event-affected day. Another commenter (D157) disagreed with the EPA's recommendation that states flag all 24 measurements when seeking concurrence for a continuous particulate matter monitor. In response to the EPA's statement that concurrence for only some hours in a 24-hour period could result in

a seemingly valid, but uncertain, 24-hour value, the commenter noted that air agencies submitting such demonstrations should use Informational flags to indicate that the 24-hour average should be used with a certain degree of caution. The commenter believes that only hours associated with the event should be excluded.

EPA Response: As we discuss in Section IV.G.3 of the preamble to the final rule, we are finalizing regulatory language to exclude all 24 1-hour values within a given event-affected day for $PM_{2.5}$ and PM_{10} data obtained via monitor instruments that provide 1-hour measurements when any data from that day is excluded and the averaging time for the NAAQS is 24 hours or longer. While one of the comments referred to codifying the current approach for flagging data, we understand this comment as intending to be about excluding data and not merely flagging data, and our final rule is consistent with the recommendation interpreted this way. The commenter who disagreed with the EPA's recommendation that states flag all 24 measurements is referring to a recommendation in past guidance; with planned changes in AQS to automatically exclude all data from a day as described, this recommendation will no longer appear in the EPA's subsequent guidance because such flagging will not be needed as a "work around" the current AQS processing logic. With regard to the comment regarding retaining data from the non-affected part of a day and applying an informational flag, rather than excluding it as will be done under the final rule, we note that such informational flags can be applied because the data will remain in AQS, but that regulatory and certainty requires a more objective process for excluding data for regulatory decisions rather than leaving a decision maker to consider a host of such informational flags.

2.4.3 Comments on the Flagging of Data

Comment: Many commenters supported the removal of the general schedule timelines associated with initial event flagging and exceptional events demonstration submission. One commenter (D184) specifically asked the EPA to allow states to delay submission of air quality data until after they have fully recovered from the event in question.

EPA Response: We acknowledge this support and have removed the general schedule timelines associated with initial event flagging and exceptional events demonstration submission. As we explain in more detail in Sections IV.G.4 and IV.G.6 of the preamble to the final rule, we are removing the general schedule deadlines for submitting exceptional events demonstrations because the timelines that appeared in the 2007 Exceptional Events Rule[11] for event flagging and demonstration submittal were not always appropriate because an air agency may not have known that data influenced by an exceptional event caused a design value exceedance until 3 years after the event occurred, which could occur after the demonstration submittal deadline had passed. As reflected in

[11] *See* the language at 40 CFR 50.14(c)(3)(i) that required air agencies to "…submit a demonstration to justify data exclusion to EPA not later than the lesser of, 3 years following the end of the calendar quarter in which the flagged concentration was recorded or, 12 months prior to the date that a regulatory decision must be made by EPA."

the promulgated regulations, we believe it is more appropriate to rely on the case-by-case timelines established by the reviewing EPA Regional office as part of the Initial Notification of Potential Exceptional Event process. These timelines are based, in part, on knowledge of the event and timing of the potentially-influenced regulatory determination.

To the extent that the second point of the comment is about submitting air concentration data themselves, *i.e.*, the requirements of 40 CFR part 58, it is outside the scope of this rulemaking. We do, however, believe that the approach to establishing timeframes for demonstration submittals that we describe in this response can be used to address the situation of an air agency in an area that is recovering from the effects of an event.

Comment: Two commenters (D116, D128) supported eliminating the "informational only" and/or "request exclusion" flags provided air agencies retain the ability to flag data impacted by events, even if an exclusion package will not be submitted. One commenter (D148) was uncertain that removing those flags is the best solution, as there would be value in being able to flag data with the informational qualifier code of "I", such as "IJ" for high winds, to communicate that the data are representative of a high wind event, regardless of whether that day's data ends up being part of a pursued exceptional events demonstration. One commenter (D114) objected to the elimination of I flags noting that the removal of the "I" flags would be detrimental to the overall quality of the data. This same commenter, however, stated that removal "R" flags is inconsequential, as long as a method of flagging exceptional events is present. Commenter (D116) supported the elimination of the "I" and "R" codes provided that Primary Quality Assurance Organizations could still flag event-influenced data and provided a list of event type codes is maintained. This commenter stated that flags give the data user a full and accurate description of not only quality-related issues with data, but also external circumstances that may have influenced the data. The commenter further explained that removing flags that could clarify for a data user those circumstances that influenced the data could lead to biases and false conclusions when analyses are conducted with AQS data. Commenter stated that using the existing filters on concurred values in AQS do not accurately represent data influences because the EPA does not act on all submitted demonstrations. Commenter asked that the EPA enable their public data repository to clearly show the qualifier code or the Event Type code and the Event Type description associated with queried data.

EPA Response: We acknowledge the commenters' input. Based on the importance of informational flagging to users of these data, we are retaining the use of informational flags in AQS. Although we are also retaining the use of "R" codes within AQS, the application of these flags will change as we make modifications to AQS to accommodate the revisions to the Exceptional Events Rule. See Section IV.G.4 of the preamble to the final rule for more detail. We will also consider the commenter's feedback as we implement changes associated with these rule revisions.

Comment: One commenter (D116) supported the proposal that the AQS would be modified to allow the air agency to associate specific AQS sites and potentially affected monitors and specific data points with a given event as so described. Commenter stated that if the EPA modifies AQS, all modifications and changes should be clearly

announced, made available to air regulatory agencies, and guidance should be provided on the proper use of any new AQS modifications or features. Commenter requested the EPA update the AQS guidelines on the flagging process for all changes associated with exceptional events flagging in AQS, and requests that the guidelines answer the following questions: (1) Would these additions be placed as fields within the Maintain-Events form of AQS, (2) If a latitude and longitude are requested for a geographic scope, would the centroid of the event (*e.g.*, wildfire) satisfy the requirement. (3) How would the geographic scope element work for a high wind dust event? (4) Are there any plans to incorporate the uploading of other documents (*e.g.*, maps) to AQS in the future? (5) Was this description simply meant for the Initial Notification document?

EPA Response: This comment is beyond the scope of this rulemaking.

Comment: Two commenters (D116, D119) stated that it is not completely clear what the EPA is proposing relative to the two character event codes (*e.g.*, the "I" and "R" codes) for flagging of data impacted by an exceptional event. One commenter stated the EPA appears to be proposing to remove the event codes that begin with "I" and "R" but all other event codes will remain. Another commenter stated it is unclear as written whether the EPA intends to restrict event type flags to only those data qualifying under the narrow scope of the Exceptional Events Rule proposal, or if agencies can continue to inform data users of anomalous events influencing the data via flagging.

One commenter (D119) referred to 80 FR 72884, first column, and stated the proposal does not clearly state exactly how an interested but uninformed data user will be able to determine that data have been impacted by an exceptional event. Commenter stated the initial notification process, as described, does not indicate how the existence of the notification will be designated in AQS, if at all. Commenter stated that data users should be able to easily determine what data are impacted by exceptional events. Commenter stated that the EPA's focus should be on retaining the capability of identifying exceptional event impacted data in the most direct and unambiguous manner possible.

EPA Response: As previously stated, the EPA is retaining the use of both "I" and "R" flags within AQS. Parties interested in viewing monitoring data reports that include (or exclude) exceptional events will continue to have this functionality through the "Monitor Values Report" available on the EPA's AirData Web site at *https://www3.epa.gov/airdata/ad_rep_mon.html*. We are, however, modifying the AQS process by which air agencies can build events and associate different monitors and monitor values to an individual event. See Section IV.G.4 of the preamble to the final rule for more detail.

2.4.4 Comments on the Initial Notification of Potential Exceptional Event

Comment: While many commenters expressed support for more robust communications between air agencies and the EPA, two of these commenters (0088, 0093) also encouraged the EPA to provide feedback to state agencies in response to their initial notification quickly, rather than at the end of a 90-day period because prompt feedback

from the EPA could affect how the agency allocates human and monetary resources to the exceptional events effort. One commenter (D145) stated that the EPA regions always seem to want more and more information and withhold “completeness determinations” until the last moment, and therefore suggested that the EPA incent the State to provide as much information as it can by requiring the EPA to memorialize its decision, including a list of any incomplete items, by thirty days following receipt of the State’s Initial Notification. Another commenter (D111) stated that the Initial Notification should also identify a target decision date based on the EPA’s input. Commenter (D156) stated that the timeframe in which the EPA expects to respond to these initial packages should be more definitive rather than simply stated in guidance as an "expected" period of time.

EPA Response: To provide more regulatory certainty for all involved parties compared to the situation since 2007, the EPA is finalizing the Initial Notification process as proposed. As guidance, the preamble to the final rule explains that the EPA intends to formally respond (via email or letter) to an air agency’s Initial Notification within 60 days of receipt of the Initial Notification. We discuss these issues and response timeframes in more detail in Section IV.G.7 of the preamble to the final rule.

Comment: Eight commenters (D125, D148, D152, D111, D128, D168, D186, D188) did not agree with making initial notifications mandatory noting that the process could be overly burdensome. One commenter (D157) specifically requested that the EPA replace the word "shall" to "should" in 40 CFR 50.14(c)(2) to signify that these requirements are recommended but not mandatory in obtaining concurrence for an exceptional event. Another commenter (D117) claimed that requiring “regular communications” between the air agency and the EPA is “regulatory overreach” because it could increase the documentation needed for an exceptional event submittal. This commenter also noted that because the EPA provided no rationale for why such communications should be part of the regulatory text, the EPA should delete this requirement in its entirety.

EPA Response: As previously stated, the EPA is finalizing the Initial Notification process as proposed to provide more regulatory certainty for all involved parties, relative to the situation since 2007. The Initial Notification process includes a requirement for air agencies to engage in communications with the EPA regularly and in particular once they identify a potential event; for air agencies to flag data within AQS, if appropriate; for the EPA to identify a demonstration submittal date that considers the nature of the event and the anticipated timing of the regulatory decision that may be affected by the exclusion of the flagged data; and an option for the appropriate EPA Regional official to waive the Initial Notification process. The waiver process can be used to deal with any situation in which a state has for good reason not provided the initial notification.

The regular communications that are a required part of the Initial Notification process are central to the increased efficiency and reduced burden of this rule. It is vital that air agencies and the EPA engage in regular communications to identify those data that may have been influenced by an exceptional event, to determine whether the identified data affect a regulatory determination, and to discuss whether an air agency should develop and submit an exceptional events demonstration.

Comment: One commenter (D145) stated that notifications should be in writing. Commenter stated that the EPA should be required to initiate conversations with the State agencies regardless of the "completeness" of the notification so as to avoid confusion about whether or not a notification has been received and will be processed.

EPA Response: The final rule does not prevent an air agency from using a meeting to make its initial notification if it chooses. An air agency that prefers to use a letter or email may do so. The EPA agrees with the comment that decisions or specific direction provided by the EPA Regional office to the affected air agency should be communicated in writing. The preamble to the final rule explains that these communication from the EPA will be by letter or email. We did not propose any "completeness" hurdle for initial notifications and the final rule does not include any such hurdle. We discuss this process in more detail in Section IV.G.5 of the preamble to the final rule.

Comment: One commenter (D145) agrees with the proposed codification of regulatory notification, as it is minimal. However, the commenter stated that certain information (*i.e.*, most recent design value including and excluding the event-affected data, information specific to each monitored day as identified in Table 5, which appeared in the preamble to the proposed rule) is indicative of whether an exceptional event has occurred and is not critical to the initial notification. Commenter stated that it is more reasonable to assume that this information will be shared in subsequent conversations if it is required, as some exceptional event submittals will not require this much detailed information. Commenter recommends that the content of the notification should remain minimal and that the EPA clarify in its final action that "all" of the information itemized above is not necessary at the time of initial notification, but that providing it if it is readily available could help the State and the EPA determine whether an event should be treated as an exceptional event.

EPA Response: The EPA acknowledges the comment's support for initial notifications and its concerns about the specific content of these notifications. We did not propose any rule text that would require particular content in the initial notification and there is no such requirement in the final regulatory language. We are providing example content of an Initial Notification in the preamble to the final rule. The EPA Regional offices may implement procedures within their regions to assist with event identification, prioritization and processing. We discuss the Initial Notification process in more detail in Section IV.G.5 of the preamble to the final rule.

Comment: One commenter (D168) requested that the EPA either modify the rule language or provide guidance to require the EPA to consider the resources available to the air agency when setting the due date and/or providing technical assistance to the agency to meet the deadline set by the EPA.

EPA Response: The EPA does not agree with the suggestion to include regulatory language requiring the EPA to consider the available resources of the affected air agency when establishing target dates for demonstration submittal. As we noted in the proposal and the preamble to the final rule, the EPA will establish a target date for demonstration submittal, which the EPA will communicate in writing, after discussing the specifics of

the potential event with the affected air agency and after considering the nature of the event, the anticipated timing of the regulatory decision, the target date for demonstration submittal proposed by the air agency as part of their Initial Notification (if provided), and the available time for both the air agency's preparation of the demonstration and the EPA's review. We believe this process adequately addresses the commenter's concerns without the need for regulatory text. The final rule does not bar the EPA from considering and approving a demonstration that is submitted after the target date. However, if the target date is missed it may be more difficult for the EPA to review the demonstration as resources planned to be available as of the target date may not be as available later.

2.4.5 Comments on the Submission and Content of Demonstrations

Comment: Five commenters (D175, D174, D159, D162, D167) supported the EPA's proposal to remove the general schedule and deadline provisions for submitting exceptional event demonstrations. Commenters stated this proposed revision will be beneficial as it grants the states much needed additional time to exclude exceptional events that have the potential to lead to design value exceedances and would also allow the EPA time to make more informed decisions concerning air quality events.

EPA Response: The EPA acknowledges and agrees with the comment's characterization of the benefits resulting from this change. The EPA has adopted its proposal into the final regulations. We provide a detailed discussion regarding the general schedule deadlines in Section IV.G.6 of the preamble to the final rule.

Comment: One commenter (D173) stated that the proposed schedule extensions for exceptional events flagging and documentation seem reasonable to the extent that they will not delay designations for attainment and nonattainment. Commenter stated there is no reason to provide an extended deadline for exceptional events that purportedly exceeded current NAAQS levels.

EPA Response: We interpret this comment to mean that revising the schedule for exceptional events demonstration submittal is reasonable provided that any related extension does not also extend the date by which an area is required to attain a NAAQS. As stated in Section IV.G.6 of the preamble to the final rule, while the deadline for demonstration submittal might be longer than it would have been under the previous deadline of "the lesser of 3 years following the end of the calendar quarter in which the flagged concentration was recorded or 12 months prior to the date that a regulatory decision must be made by EPA," we are not changing the timing of the regulatory actions in which the affected data may be used. Many of these deadlines are statutorily established and cannot be changed by regulation. Because the EPA is also accountable for these statutory deadlines, the effect of this scheduling revision is compressing the timeline for the EPA's review.

Comment: One commenter (D116) stated there is a discrepancy between Sections 50.14(c)(3)(i) of the proposed Treatment of Data Influenced by Exceptional Events and the new National Ambient Air Quality Standard for Ozone (80 CFR 65291, October 26,

2015). Commenter stated the language in the proposed Treatment of Data Influenced by Exceptional Events states: " *... submit a demonstration to justify data exclusion to the Administrator according to the schedule established under paragraph (c)(2)(i)(B).*" Commenter stated the same section within the National Ambient Air Quality Standard for Ozone states: "*... submit a demonstration to justify data exclusion to EPA not later than the lesser of 3 years following the end of the calendar quarter in which the flagged concentration was recorded or 12 months prior to the date that a regulatory decision must be made by EPA. A State must submit the public comments it received along with its demonstration to EPA.*"

Commenter stated that another discrepancy is that section 50.14(c)(2)(iii) in the Ozone Rule states: "Flags placed on data as being due to an exceptional event together with an initial description of the event shall be submitted to EPA not later than July 1st of the calendar year following the year in which the flagged measurement occurred, except as allowed under paragraph (c)(2)(vi) of this section." Commenter stated that in the proposed Treatment of Data Influenced by Exceptional Events, section 50.14(c)(2)(iii) is "Reserved."

Commenter requested clarification on which language will be used when the new Treatment of Data Influenced by Exceptional Events is finalized. The commenter supported the language that is written in the Ozone rule.

EPA Response: The EPA appreciates the commenter's careful review of the regulatory language that appeared in the 2015 Ozone NAAQS[12] and in the proposed revisions to the Exceptional Events Rule.[13] In the final Ozone NAAQS we promulgated schedules for flagging event influenced data and exceptional events demonstrations that could influence initial area designations decisions. In the ozone action, we did not make changes to other language in the Exceptional Events Rule, other than to delete provisions made obsolete by the passage of time. In the regulatory text portion of the proposed revisions to the Exceptional Events Rule at 80 FR 72896, we used five asterisks (*****) to indicate the scheduling changes that we had promulgated in 40 CFR 50.14(c)(2)(vi) in the 2015 Ozone NAAQS. We also proposed to remove the language at 40 CFR 50.14(c)(2)(iii) and reserve that sub-paragraph because this provision in the 2007 Rule addressed flagging data by July 1 of the calendar year following the year in which the flagged measurement occurred and we proposed to remove this provision. Because of the overlapping timing of these actions (*see* footnotes below), these changes may have appeared to conflict with each other. The Federal Register notice for final revisions to the Exceptional Events Rule contains the regulatory text in its entirety as amended by the 2015 Ozone NAAQS final rule and then the final Exceptional Events Rule, and will remove any ambiguity about what provisions apply going forward.

Comment: One commenter (D122) encouraged the EPA to ensure in rule language that as part of any regulatory action or SIP call requiring design values, states will be given

[12] 80 FR 65292 (October 26, 2015).
[13] 80 FR 72840 (November 20, 2015).

the opportunity and time to flag past data and submit an exceptional event demonstration. Commenter stated that, due to the long time between exceptional events and regulatory actions, a state may not have submitted a demonstration for an event which might impact future design values.

EPA Response: The EPA acknowledges the commenter's concern, recognizes that there may be a delay between the data years (potentially including exceptional event-influenced data) and the ensuing regulatory determination, and notes that it is for this reason that we are removing the flagging and demonstration deadlines in the final text of the Exceptional Events Rule. We intend to work with states to identify the past data that may influence a regulatory action or SIP call, so that state resources are not spent flagging and preparing demonstrations for data that may have been affected by an exceptional event but that are too old to bear on the regulatory action.

Comment: One commenter agreed that the requirement for a "conceptual model" is helpful because it gives meaning to the proposed "weight of the evidence approach" that the Agency intends to apply to State demonstrations of exceptional events. Commenter urged the Agency to change the nomenclature of the proposed requirement in the final rule to a phrase other than "conceptual model."

EPA Response: We acknowledge the commenter's support for using a "conceptual model" and the commenter's recognition that it supports the "weight of the evidence approach." As we discuss in Section IV.G.6 of the preamble to the final rule, we are, however, retaining the terminology "conceptual model" because this best conveys our intent: that the air agency describe the "story" or "executive summary" of the event by providing an overview of the technical information in the demonstration and identifying relevant quantitative information critical in satisfying the Exceptional Events Rule criteria. In most cases air agencies will support the discussion in the narrative conceptual model with tables and maps.

2.4.6 Comments on the Timing of the EPA's Review of Submitted Demonstrations

Comment: Many commenters referenced issues regarding timely determinations. Multiple commenters (D152, 0090-9, 0090-3, D116, D117, D125, D156, D159, D164, D174, D175, D188a) expressed concern over the timeliness of the EPA's review of demonstrations and argued that the rule should include regulatory language to govern the timing of review to reduce or eliminate issues regarding prioritization and backlogs, and so that areas are not held in perpetual nonattainment. Commenters noted that the EPA should provide timelines by which it would review the submissions and concur, dismiss, or officially request additional information from the air agencies. Five commenters (D174, D121, 0093, D110, D128, D164) argued that the EPA should codify a requirement for the EPA to send a completeness letter within 120 days of receipt of demonstration and a deadline for the EPA to concur on a submittal or provide an explanation for non-concurrence that is 12 months after the submittal of a complete demonstration. Two commenters (D117, D183) argued that the EPA could consider a "default" approval mechanism whereby a request would be considered to be granted

absent the EPA's objection by a date certain. One commenter (D129) similarly argued that the EPA should have requirements to respond to an air agency's exceptional event demonstration submittal within 90 days, otherwise there would be automatic approval. One commenter (D159) argued that the EPA should create self-imposed deadlines and provide publically-accessible and transparent updates on the status of its review of a state's exceptional event submission.

EPA Response: Although we are not promulgating timelines in rule language for the EPA's response to submitted demonstrations, we are identifying in the preamble to the final rule the following intended response timelines: a formal response to the Initial Notification (*see* Section IV.G.5 of the preamble to the final rule) within 60 days, initial review of an exceptional events demonstration with regulatory significance within 120 days of receipt (*see* Section IV.G.7 of the preamble to the final rule), a decision regarding event concurrence/nonconcurrence within 12 months of receipt of a complete demonstration (*see* Section IV.G.7 of the preamble to the final rule), and a "deferral letter" within 60 days of receipt of a demonstration that the EPA determined during the Initial Notification process to not have regulatory significance (*see* Section IV.G.7 of the preamble to the final rule). The commenters have not advanced any argument that the EPA is required to create deadlines for its own actions or to provide for default approvals of demonstrations on which the EPA has not acted. Nor does CAA section 319(b) require the EPA to act on a demonstration. Doing so would not advance the purposes of the Exceptional Events Rule relative to the outcome we expect given the changes in the EPA's rules, our guidance and our practices that we are implementing. Section IV.G.7 of the preamble to the final rule contains a detailed discussion of these issues. We provide additional discussion in our response to the comment that follows.

Comment: Two commenters (0088, D133) supported the EPA's proposal to officially terminate review of demonstrations that, due to a passage of time, will not have regulatory significance, and one commenter (0088) supported the prioritization of exceptional events determinations that affect near-term regulatory decisions, as priority should be given in the areas of the greatest need. However, other commenters (D172, D185, D188a, 0088, D115, D137, D144, D154, D133) argued that the EPA must provide clear procedures and specific timelines for itself in rule text for the administration of demonstrations so that state efforts are not unduly timed out. One commenter (D129) argued that the EPA should not require the resubmittal of a demonstration after it is deemed inactive. One commenter (D138) supported the EPA's proposal to allow states 12 months to provide new evidence, but suggested that the EPA commit in rule language to notify a state of any shortfalls and give 12-months to address those issues.

EPA Response: As discussed in Section IV.G.7 of the preamble to the final rule and in the prior comment response, the EPA is not promulgating rule language with specific timelines for itself regarding reviewing demonstrations. However, the EPA is identifying response timelines that we intend to follow during the Initial Notification and demonstration review processes. As we stated in Section IV.G.5.b of the preamble to the final rule, the EPA intends to acknowledge receipt shortly after receiving an air agency's Initial Notification and then formally respond to the Initial Notification within 60 days. The EPA response will provide the EPA Regional office's best assessment of the priority

that can be given to the submission once received, any case-specific advice the EPA may have to offer for the preparation of the demonstration, and the target date for demonstration submittal. As stated in Section IV.G.7, although the EPA anticipates ongoing discussions with the air agency, if the EPA has not received information from the air agency in response to the EPA's request for additional information, then at least a month before the expiration period, the EPA will remind the air agency in writing (*e.g.*, a letter or email) of the upcoming deadline. The EPA will work with individual air agencies to address those situations where a response is insufficient or where an air agency needs additional time to prepare needed analyses or assemble identified information. However, the EPA disagrees with the comment that the EPA should commit to internal deadlines in rule language. We are accountable for many statutorily-established deadlines for regulatory action. We also note that promulgating timelines for action might not have the intended result of expediting the EPA's action because it could force both the air agencies and the EPA to focus their efforts and limited resources on demonstrations that ultimately have no regulatory significance. Or, promulgated timelines could cause the EPA to act on determinations in the order in which they were received instead of allowing the EPA to prioritize demonstrations for nearer-term regulatory actions or mandated regulatory actions. We provide additional discussion in our response to the comment above.

Regarding resubmittal of a demonstration after it is deemed inactive, the EPA disagrees with the comment's characterization of resubmitting a demonstration. As stated in Section IV.G.7 of the preamble to the final rule, if the air agency has not responded within this 12-month timeframe, then the EPA's review of the demonstration will terminate. As explained in the preamble to the final rule and in this RTC document, we believe 12 months is sufficient time to address outstanding issues in an exceptional events demonstration. We are requesting resubmittal of a lapsed package to allow an air agency to address any additional issues that may have arisen since the original submittal.

Comment: Five commenters (0097, D111, D129, D151, D159) disagreed with the EPA's intention to terminate review of backlogged demonstrations when they are no longer significant, and several commenters request that states be allowed to review the backlog. One commenter (D129) argued that, if the EPA is unable to review all demonstrations, it should create an acceptable template for abbreviated demonstrations that may not have regulatory significance. One commenter (0097) expressed concern that terminating review will allow the EPA to defer consideration of a submittal until after it ceases being significant. One commenter (D116) argued that the EPA must always provide a concurrence or non-concurrence, as demonstration submittals are crucial for data utilized for permitting and regulatory decisions at the state level.

EPA Response: The EPA is committed to acting on exceptional events demonstrations that have regulatory significance and meet the administrative and technical provisions of the Exceptional Events Rule. As stated in Section IV.G.7 of the preamble to the final rule, the EPA has taken numerous steps to improve the exceptional events process and we maintain that, given limited resources, both the air agencies' and the EPA's efforts should focus on the development and review of those demonstrations that affect regulatory determinations. Thus, the EPA does not intend to review demonstrations that do not—or

that no longer—have regulatory significance. However, the EPA may review other actions on a case-by-case basis if determined by the EPA to have regulatory significance based on discussions between the air agency and the EPA Regional office during the Initial Notification of Potential Exceptional Event process.

2.4.7 Comments on Dispute Resolution Mechanisms

Comment: Many commenters have asked for a dispute resolution mechanism by which to challenge any disagreement between the air agency and the EPA (D111, 0093, 0095, 0096, 0099, D121, D126, D129, D148, D151, D156, D164, D167, D183, D168, D186). Commenters provide many different options for a dispute mechanism, such as the ability to present concerns to the EPA headquarters staff directly, presenting conditions to a third party with technical expertise to provide for an independent review of the air agencies' submittal the EPA Regional office review, or working with the EPA to develop another formal process that considers stakeholder feedback. Two commenters requested that each demonstration should be judicially appealable (D185, D188a).

EPA Response: As explained in Section IV.G.8 of the preamble to the final rule, we are not promulgating a dispute resolution mechanism, because the currently available elevation measures and the EPA's internal mechanisms adequately ensure that parties can resolve conflicts arising in exceptional events demonstrations.

2.5 Comments on Mitigation

Comment: Two commenters (D173, D163) supported requiring all areas to develop mitigation plans to address exceptional events, which should incorporate all sources of pollution that contribute to violations or exceedances of the NAAQS. One commenter (D173) stated that the section 319(b)(3)(A) obligation is especially critical because it makes clear that mitigation or even preventative measures *"necessary"* to safeguard public health must be taken regardless of the source of air pollution. One other environmental commenter (D109) argued that a SMP cannot suffice for a mitigation plan, as the EPA should be required to receive and approve a mitigation plan independent of a SMP, and it must be federally enforceable, otherwise public health will not be protected.

EPA Response: In this final action, the EPA is promulgating regulatory elements for mitigation plans for areas with known, recurring events. The EPA does not necessarily require that air agencies prepare *new* plans. Rather, as stated in Section V of the preamble to the final rule, if an air agency has developed and implemented a contingency plan under 40 CFR part 51, subpart H, Prevention of Air Pollution Emergency Episodes, that meets the requirements of 40 CFR 51.152, and that includes provisions for events that could be considered "exceptional events" under the provisions in 40 CFR 50.14, then the subpart H contingency plan would likely satisfy the mitigation requirements promulgated for the Exceptional Events Rule at 40 CFR 51.930. If the identified basic elements are included and addressed, including the element for public comment, then other types of existing mitigation or contingency plans may also satisfy the mitigation plan requirements. For example, if an area has developed a natural events action plan or a high

wind action plan covering high wind dust events, this plan likely would satisfy mitigation elements for high wind dust events. Smoke management plans and/or forest management plans might also satisfy the mitigation elements for prescribed fires and wildfires. Most air agencies likely have sufficient, established processes that meet the public notification and education element, and which can be easily adapted or modified to meet the mitigation elements included in this action.

The EPA disagrees with the comment's contention that public health will not be protected unless the EPA requires independent mitigation plans that are federally enforceable. The EPA is finalizing implementation provisions that provide for the EPA's review and verification of the mitigation plans' inclusion of the required elements and to ensure that the development of the mitigation plan included a public comment process. We would not formally review the substance of the plan in the sense of approving the details of the specific measures and commitments in the plan. We will, however, review each submitted plan and verify that it includes the required elements. Within 60 days of receipt of such a plan, the EPA plans to notify the submitting air agency that we have reviewed the mitigation plan and verified that it contains the required elements. This process guarantees that the mitigation plan components are present and public health is protected.

Comment: Nine commenters (D152, D111, 0093, 0096, 0099, D116, D117, D125, D148) urged the EPA to make no changes to the rule, but continue the current approach that provides flexibility and deference to states in determining the most appropriate mitigation and public notification efforts and mechanisms. One commenter (D168) stated that mitigation plans should only be recommended, and only when an event persists across several years. Six commenters (D167, D152, D116, D120, D125, D148) disagreed with the EPA's proposal to recommend or require states develop formal mitigation plans for historically documented or known seasonal events, as state specific requirements already accomplish this, and any requirements would be redundant, superfluous, and overly burdensome. Two commenters (D117, D125) stated that requiring a mitigation plan as a precondition for approval is overly burdensome, contrary to the intent of the CAA and beyond the EPA's authority. One commenter (D119) specifically focused on mitigation plans as a regulatory requirement being inappropriate and overly burdensome for wildfires. One commenter (D139) stated that the EPA has no authority to require or approve state mitigation plans, or condition approval on such plans. One commenter (D117) argued that the EPA has no legal basis to impose more mitigation requirements for areas with frequent events than areas with infrequent events.

EPA Response: For the reasons discussed in Section V of the preamble to the final rule, we are promulgating new mitigation-related regulatory language at 40 CFR 51.930 requiring the development of mitigation plans in areas with "historically documented" or "known seasonal" exceptional events. These regulations are consistent with the EPA's mission to protect public health. Additionally, the principles included at CAA section 319(b)(3)(A) provide the EPA with authority to establish these requirements.

Comment: One commenter (D167) specifically noted that requiring public health notifications for events is duplicative, as air districts already typically do this in

emergencies. Commenter noted that providing notifications of annual standards would be impractical, as these can last weeks at a time.

EPA Response: As we have previously noted, the mitigation requirements that we are promulgating apply only to areas with "historically documented" or "known seasonal" exceptional events as we define in Section V of the preamble to the final rule. These newly required mitigation plans require the following components: public notification and education programs; steps to identify, study and implement mitigating measures; and provisions for plan review and evaluation. Air agencies subject to these provisions that already provide public health notifications for events may or may not need to take additional action with respect to the requirement to address public notification and education.

With respect to the comment's suggestion that notifications for annual standards is impractical, we agree. We also believe that public notification is not necessary when the pollutant concentrations exceed or violate a 3-month rolling average or an annual average as these exceedances/violations reflect cumulative effects and in many cases the cause of the exceedance or violation is long past. We have clarified this point by adding regulatory language requiring public notification for exceedances or anticipated exceedances of short-term NAAQS. We also added regulatory text and a footnote in the preamble to the final rule to define "short-term" as a NAAQS with an averaging time that is less than or equal to 24-hours

Comment: One commenter (D148) stated that the proposed Mitigation Plan requirement would create a new, heavy burden on States, and the workload for developing a Mitigation Plan seems like it could be similar to that of developing a SIP, and would be duplicative of a SIP.

EPA Response: Section 319(b)(3)(A) of the CAA identifies five principles that the EPA must follow in developing implementing regulations for exceptional events: (i) Protection of public health is the highest priority; (ii) Timely information should be provided to the public in any case in which the air quality is unhealthy; (iii) All ambient air quality data should be included in a timely manner in an appropriate federal air quality database that is accessible to the public; (iv) Each state must take necessary measures to safeguard public health regardless of the source of the air pollution; and (v) Air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses. While developing mitigation plans in certain circumstances could increase workload for certain areas, mitigation plans advance the EPA's mission to protect public health and best implement the principles included in CAA section 319(b)(3)(A). We discuss the mitigation provisions in more detail in Section V of the preamble to the final rule.

Comment: Five commenters (0097, D116, D121, D126, D168) supported reviewing mitigation plans for completeness only. Several commenters argued that there should be no mitigation plans, but in the case that there are mitigation plan requirements, the EPA should review them for completeness only.

EPA Response: The final rule follows the review option identified as Option 1 in the proposal, which includes the EPA's review and a completeness determination, but not the EPA's "approval" of the plan content, as discussed in the comments and responses section. This option maximizes the flexibility of the air agency while providing for the protection of public health through the EPA's review of the required plan content and through the required public review process.

Comment: One commenter (D161) recommended that the EPA require mitigation plans only when an event type persists across several years, as this approach makes better use of limited state and local agency resources than does requiring mitigation plans in all instances. Two commenters (D126, D167) recommend the EPA require a mitigation plan *after* (rather than *with*) the second occurrence within a 3-year period. One commenter notes that requiring agencies to have a mitigation plan submitted with the second occurrence would inadvertently call for agencies to develop a plan for a possible one-of-a kind occurrence. Commenter stated that the mitigation plan after the second occurrence would be consistent with the EPA's intent to avoid plan development for one-of-a-kind type of events. Another commenter (D116) similarly stated that the proposal language that states "a second event of a given type within a 3-year period would subject the area to 'having a history'" and would therefore require a mitigation plan is inconsistent with the EPA's proposal for determining the "unlikely to recur" criterion by having three events within the same 3-year period, and is just as arbitrary.

EPA Response: As fully explained in Section V of the preamble to the final rule, regarding recurrence, we are finalizing the benchmark of three event-containing seasons in 3 years, which would subject the area to "having a history" and, therefore, needing a mitigation plan. We measure the 3-year period backwards from the date of the most recent event. The requirements of this section will apply regardless of the event/pollutant combination and regardless of whether the event type is the focus of specific recurrence circumstances within this rule for the "human activity unlikely to recur at a particular location or a natural event" criterion.

Comment: One commenter (0088) noted that notifying the public at least 48 hours in advance of an event may be infeasible for localized events.

EPA Response: The EPA agrees with the comment's concern, and is including the following language, as guidance, in Section V.B.2 of the preamble to the final rule: "If possible, air agencies would notify the public of the actual or anticipated event at least 48 hours in advance of the event using methods appropriate to the community being served. (The EPA recognizes that for some event types, a 48-hour advance notice may not be possible as some events occur suddenly and/or may not have been forecast.)"

2.6 Comments on Environmental Justice

Comment: One commenter stated it believes it is clear that Tribes may be affected by exceptional events, and, in the final rule and guidance, the EPA should address how it will notify and consult with Tribes about exceptional events. This commenter stated that

the proposed rule and the draft guidance fail to properly account for the need to specifically notify Tribes when an exceptional event is predicted or is occurring that will affect air quality on their Reservations so that the Tribes can take appropriate actions to prepare their communities. Commenter asserted that States should be specifically directed to notify Tribal governments within the state of the possible effects on air quality. Commenter stated that affected Tribes should also be specifically given the opportunity to comment on exceptional event demonstrations before the state submits them to the reviewing EPA Regional office. Commenter stated that, when the EPA Regional office receives an initial notification, as the Tribes' air agency, the EPA should evaluate whether the potential exceptional event may affect the air quality of any Tribe within the Region and, if that is the case, the EPA should consult with the Tribal government about the potential event which was in the notification. Commenter stated this is especially important when the Tribe's Reservation is downwind of the event, but outside the state where the exceptional event is expected or is occurring, and where the state is not required to provide public notification.

EPA Response: In developing this rule, the EPA held public meetings attended by tribal representatives and separate meetings with tribal representatives to discuss the revisions proposed in this action. The EPA also provided an opportunity for all interested parties to provide oral or written comments on potential concepts for the EPA to address during the rule revision process. Summaries of these meetings are included in the docket for this rule. The EPA received comments on this action from multiple tribal organizations, requesting clarification on how this action includes and protects federal tribal communities. Several components of exceptional events demonstrations include notifying the public of potential concerns, and the rule revisions require that air agencies conduct a public comment process, and submit documentation of the process as part of the demonstration. The Exceptional Events Rule addresses the commenter's concerns through the public comment process for both the rule revision and the exceptional events demonstrations, outreach efforts, and notification requirements.

Several components of exceptional events demonstrations include notifying the public of potential concerns. For example, 40 CFR 51.930(a) requires a state requesting to exclude air quality data due to exceptional events to: "Provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed an applicable ambient air quality standard." As indicated, the required notice is a public notice and not notice to specific entities. Although the rule does not require states to provide individual notice to anyone, including tribes, tribes can receive the publicly available notice. The notice is also generally retrospective in nature, *i.e.*, it deals with things that have already happened, rather than things that are expected to happen in the future. The exception is where a state can reasonably anticipate that conditions may result in an exceptional event that is likely to cause air quality concentrations that exceed an applicable ambient air quality standard. Even in such circumstances, the required notice is generally a public notice and not a notice to specific entities. A forward looking public notification is provided as part of the mitigation plan for states that have "historically documented" or "known seasonal" recurring exceptional events. *See,* 40 CFR 51.930(b)(2)(i). That notice, which is required whenever air quality concentrations exceed or are expected to exceed a NAAQS with an averaging time that is less than or equal to 24-hours as a result of such

an event, must be provided to all affected or potentially affected communities, including tribes. *Id.* The mitigation plan must also include a public education program. *Id*.

Finally, the rule revisions require that air agencies conduct a public comment process, and submit documentation of the process as part of any exceptional events demonstration. Tribes will have the same opportunity to participate in the public comment process as anyone else. The commenter appears to misapprehend the nature of an initial notification. The initial notification is intended to notify the EPA Regional office of the state's intent to submit a demonstration so that the EPA Regional office and state personnel can discuss the data that the state wants to exclude and make an initial determination regarding whether the identified event has regulatory significance and will likely be acted upon. This is again a backward looking process, *i.e.*, the event itself has already occurred. As a result, there is no opportunity during the exceptional event demonstration submittal process to evaluate prospectively whether a potential exceptional event may affect tribal air quality. The Exceptional Events Rule addresses the commenter's concerns generally through the public comment process for both this rule revision and the exceptional events demonstrations, outreach efforts, and notification requirements.

Comment: One commenter (D152) objected to the EPA's comment in the preamble that this action does not have tribal implications as specified in Executive Order 13175 and it would not have a substantial direct effect on one or more Indian tribes. The commenter stated the Gila River Indian Community (the Community) has received TAS, has an approved TIP, and, with some exceptions, is subject to all the same requirements under the CAA and its regulations, as a State. Therefore, the commenter stated that this action, as proposed, will likely have a substantial direct effect on the Community and its resources as stated in the discussion above and believes this action does fall within the confines of Executive Order 13175. Commenter stated the Community does not wish to pursue government-to-government consultation at this time; however, the Community does reserve the right to pursue government-to-government consultation as the final rule is developed.

EPA Response: As stated in the preamble to the final rule, this action does not have tribal implications as specified in Executive Order 13175. It should not have a substantial direct effect on one or more Indian tribes. The Community is not required to implement the provisions in the Exceptional Events Rule. The purpose of the program is to allow, but not require, air agencies to request that air quality data due to exceptional events be excluded in evaluating data from a regulatory air quality monitor, *i.e.*, an air quality monitor which meets the requirements in 40 CFR part 58. Furthermore, these regulatory revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in characterizing air quality and developing plans to attain the NAAQS, and these revisions to the regulations do not modify that relationship. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA held public meetings attended by tribal representatives and separate meetings with tribal representatives to discuss the revisions proposed in this action. The EPA also provided an

opportunity for all interested parties to provide oral or written comments on potential concepts for the EPA to address during the rule revision process. Summaries of these meetings are included in the docket for this rule. The EPA received comments on this action from multiple tribal organizations, requesting clarification on how this action includes and protects federal tribal communities. The Exceptional Events Rule addresses these concerns through the public comment process for both the rule revision and the exceptional events demonstrations, outreach efforts, and notification requirements.

3.0 Responses to Legal, Administrative and Procedural Issues and Misplaced Comments

Comment: Four commenters (D148, D115, D125, D188) encouraged the EPA to continue to work with others to continue improving the processes for evaluating an event, developing the exceptional event documentation, and for the EPA's reviewing, providing feedback on, and acting on event demonstration submittals. One commenter stated that numerous improvements are needed and urged the EPA to work closely with state air officials, particularly in the Western U.S., to make the process more workable well before finalizing the rule. One commenter (D115) urged the EPA to delay the final rule until they have worked collaboratively with the states to develop a rule that is workable for all parties. One commenter (D188) stated this proposed rule can and should go further to streamline the process. The commenter stated that, to help solve this, Senator Jeff Flake introduced the Commonsense Legislative Exceptional Events Reform Act of 2015 (S. 638) that contains specific reforms including a clear timeline to require the EPA to review states' exceptional events documentations. One commenter (D169) stated that the regulated community cannot properly evaluate such a complex rule without implementation guidance. Commenter stated the rule should be improved and republished as a proposed rule with implementation guidance where the public has another opportunity for review and comment.

EPA Response: The EPA acknowledges that interpreting and implementing the Exceptional Events Rule has been a challenging process both for the air agencies developing exceptional events demonstrations and for the EPA Regional offices reviewing and acting on these demonstrations. The EPA maintains that the process of developing the revisions that we are now promulgating has been collaborative as evidenced by the steps we have taken through the years. As a result of stakeholder-identified concerns and the EPA’s own experience related to implementing the 2007 Exceptional Events Rule, in 2010 the EPA began developing the Draft Exceptional Events Implementation Guidance, which we released in May of 2011 to interested air agencies, FLMs, other federal agencies and other parties upon request, for preliminary review to solicit comment and help ensure that the EPA’s final guidance provided an efficient and effective process to make determinations regarding air quality data affected by exceptional events. The EPA incorporated the commenters’ feedback, as appropriate, into revised draft guidance documents, which were made available for broad public review in a July 6, 2012, *Federal Register* Notice of Availability (77 FR 39959) and in

the associated docket (Docket ID No. EPA-HQ-OAR-2011-0887).[14] In May 2013, after a round of review and comment by the general public, the EPA finalized the Interim Exceptional Events Implementation Guidance and made these documents publicly available on the exceptional events Web Site at *http://www2.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events.*[15]

With the release of the Interim Exceptional Events Implementation Guidance, the EPA simultaneously acknowledged the need to consider additional changes that could only be accomplished through a notice-and-comment rulemaking to revise the 2007 Exceptional Events Rule. To inform the development of proposed rule revisions, the EPA hosted exceptional events listening sessions in August and November of 2013 for interested air agencies, FLMs, other federal agencies, regional planning organizations, non-governmental organizations and other members of the public. Then, between September 2014 and March 2015, we hosted conference calls with some air agencies and the EPA to discuss additional implementation concerns and to better understand currently employed exceptional events implementation processes and practices. In addition to incorporating some of these concepts into these final rule revisions, we developed a list of best practices for communication and collaboration between the EPA and air agencies as a result of these discussions.

We considered feedback received at these listening sessions and the previous public comments on the Interim Exceptional Events Implementation Guidance in the development of our November 2015 proposed revisions to the 2007 Exceptional Events Rule. Following the proposal, we hosted outreach webinars in addition to our public hearing. These actions have been in addition to regular updates at planning association meetings and regional, national, or industrial association meetings.

In short, we have made a concerted effort to actively collaborate and consider stakeholder feedback in these rule revisions by following an open and transparent process to produce needed regulatory revisions and implementation guidance. We expect to follow this same process as we implement these rule revisions.

Comment: One commenter (D168) stated this rulemaking should supersede all previous rule language and guidance on the treatment of exceptional events. Commenter stated that, if the EPA determines this is not appropriate, the EPA should include specific lists of guidance documents that will be superseded and guidance documents which will still be valid to remove any confusion on the part of state, local and tribal agencies and the

[14] The EPA established Docket ID No. EPA-HQ-OAR-2011-0887 for the July 2012 notice of availability for the Draft Exceptional Events Implementation Guidance and has incorporated this docket into the record for this action.

[15] The Interim Exceptional Events Implementation Guidance includes: the *Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events,* the *Interim Exceptional Events Rule Frequently Asked Questions* (the Interim Q&A document), and the *Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (the Interim High Winds Guidance document).

EPA Regional offices. Commenter noted that throughout the preamble of the proposed rule, the EPA refers to several previous guidance documents.

EPA Response: This final action supersedes the 2007 Exceptional Events Rule and all natural events and exceptional events data handling guidance developed prior to the 2007 Exceptional Events Rule. This final action also supersedes the sections of the 2013 Interim Exceptional Events Implementation Guidance that address regulatory text discussed in this rule until such time as the EPA can revise these documents to reflect the revisions contained in these Exceptional Events Rule Revisions.

Comment: One commenter (D152) requested the EPA clarify the terms international, interstate, state, State, Tribe, air agency, state air agency, tribal air agency, and areas of Indian Country.

EPA Response: These terms are either defined or clarified in the preamble to the final rule. For example, in Sections III and IV.A of the preamble to the final rule, we explain the relationship between states, tribes and air agencies (*see* specifically footnote 3). Section IV.F.1 of the preamble to the final rule discusses both international and interstate emissions.

Comment: One commenter (0093) urged the EPA to prepare and docket a comparison of the 2007 Exceptional Events Rule with the proposed regulatory text in strikeout/underline format to facilitate a more focused review.

EPA Response: In response to the commenters feedback, the EPA prepared and docketed a redline/strikeout document comparing the proposed rule revisions to the 2007 Exceptional Events Rule. This document appears as document number EPA-HQ-OAR-2013-0572-0176 and was received by the docket office on January 21, 2016 and posted to the docket on February 9, 2016.

Comment: One commenter (D113) stated that the purpose of the Exceptional Events Rule is to ensure that a state is never required to develop a SIP to manage uncontrollable sources of air pollution.

EPA Response: The purpose of the Exceptional Events Rule is to govern the review and handling of air quality monitoring data influenced by events that affect air quality, are not reasonably controllable or preventable, are caused by human activity unlikely to recur at a particular location or a natural event, and are determined by the Administrator to be exceptional events in accordance with CAA section 319(b).

Comment: Thirty-six commenters generally supported the EPA's efforts to improve the Exceptional Events Rule. Commenters encouraged the EPA to promulgate the Rule so that these procedural improvements will be available when states submit designation recommendations under the recently-promulgated 2015 ozone National Ambient Air Quality Standard (NAAQS). One commenter (D138) elaborated on this comment by stating that the EPA should allow for initial exceptional events submittals for the 2015 Ozone NAAQS to be supplemented as necessary to meet the Exceptional Events Rule

requirements unless the Exceptional Events Rule is finalized at least five to six months prior to the October 1, 2016, deadline for state designation recommendations and exceptional event demonstrations. Commenter stated that, ideally this rulemaking would have been on the same timeline as promulgation of the 2015 Ozone NAAQS to implement the exceptional event statutory objective.

EPA Response: The schedule promulgated in the 2015 Ozone NAAQS establishes the following dates for exceptional events demonstration submittals: October 1, 2016 (for demonstrations for 2013-2015); May 31, 2017 (for 2016 demos); May 31, 2018 (for 2017 demos, if the EPA invokes the 3rd year allowed in the Act). Air agencies should submit demonstrations in accordance with the rule in effect at the time of the submission. Given the close proximity of the *Federal Register* publication date of this revised rule, which also serves as the effective date of this action, with the demonstration submittal deadline for data influenced by exceptional events that could be used in the initial area designation decisions for the 2015 Ozone NAAQS, we are intentionally adjusting the deadline for 2013-2015 demonstrations that would otherwise be due October 1, 2016. As we identify in Table 2 to 40 CFR 50.14, exceptional events demonstrations must be submitted to the EPA on the later of (1) sixty days after the effective date of the final Exceptional Events Rule or (2) the date that state and tribal recommendations are due to the Administrator. This rule is being promulgated in advance of the October 1, 2016 deadline for the 2015 Ozone NAAQS designations, providing stakeholders with sufficient notice of this updated submission deadline. Air agencies should work with their EPA Regional offices as they develop all exceptional events demonstrations.

Comment: One commenter (D168) requested that the EPA publish example submissions for various event types as they are evaluated and receive the EPA's concurrence or nonconcurrence.

EPA Response: The EPA maintains a website with examples of approved submissions at *https://www.epa.gov/air-quality-analysis/exceptional-events-submissions-table* and will continue to maintain and update this exceptional events submissions table. These examples may help air agencies develop demonstration packages; however, they may not contain the minimum level of data or case-specific analyses necessary for all exceptional events demonstrations of the same event type. The EPA also encourages air agencies to consult with their EPA Regional office for further guidance on specific demonstrations.