

# Final Rule Revisions to the Exceptional Events Rule and Announcement of Availability of Final Exceptional Events Implementation Guidance for Wildfire Events

## FACT SHEET

### ACTIONS

- On September 16, 2016, the U.S. Environmental Protection Agency (EPA) finalized revisions to the 2007 Exceptional Events Rule to address issues raised by stakeholders and to increase the administrative efficiency of the Exceptional Events Rule process. This action also notifies states with areas subject to new requirements for mitigation plans and announces the availability of the final version of the non-binding guidance document, *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, which explains how to apply the rule revisions to wildfire events that could influence monitored ozone concentrations.
- These rule revisions apply to all state air agencies and to local air quality agencies that prepare exceptional events demonstrations. The rule revisions may also apply to tribal air agencies operating ambient air quality monitors that produce regulatory data that may qualify as an exceptional event and to federal land managers (FLMs) and other federal agencies to the extent an affected state or local air agency includes them in preparation of such demonstrations.
- The rule revisions apply to all exceptional event types and all national ambient air quality standards (NAAQS). States, and any tribes that wish, may use these final rule revisions and the associated guidance when developing and submitting their initial designation recommendations for the NAAQS for ozone.
- 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 by 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.
- Consistent with the Clean Air Act (CAA), the EPA is making these updates to clarify and improve the efficiency of the process states and the EPA follow when determining whether to include or exclude air quality monitoring data influenced by an “exceptional event” in the data set used for certain regulatory decisions, such as initial area designation decisions.
- Exceptional events include natural events such as wildfires, stratospheric ozone intrusions and volcanic and seismic activities.

## **Revisions to the Exceptional Events Rule**

- EPA is making the following updates to the Exceptional Events Rule to improve the efficiency of the exceptional events demonstration development and review process:
  - More clearly defining the scope of the Exceptional Events Rule and identifying the types of regulatory actions to which the rule applies
  - Revising the rule language to more closely align with the language in the CAA
    - Removing the rule language commonly referred to as the “but for” criterion
    - Incorporating the statutory “affects air quality” criterion and the regulatory “historical fluctuations” criterion within the “clear causal relationship” element
  - Relying on controls in a state, federal or tribal implementation plan to satisfy the “not reasonably controllable or preventable” criterion provided the EPA has approved the SIP/FIP/TIP within 5 years of the date of an event
  - Clarifying the analyses, content and organization for exceptional events demonstrations
  - Requiring an initial notification by the air agency to the EPA of a potential exceptional event demonstration to ensure a shared understanding regarding the regulatory significance of the demonstration and the expectations for demonstration elements
  - Removing the specific exceptional event-related deadlines that apply in situations other than initial area designations following promulgation of a new or revised NAAQS
  - Identifying in the preamble to the final rule the intended timelines for the EPA’s response at various stages in the exceptional events process
  - Clarifying fire-related definitions and demonstration components
- In keeping with the EPA’s mission to protect public health, the EPA is finalizing new requirements to develop mitigation plans in areas with recurring events. The preamble to the final rule indicates those areas to which this requirement newly applies.
- This final action takes the place of 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 2013 Interim Exceptional Events Implementation Guidance, to the extent the documents are inconsistent. However, the EPA plans to revise these guidance documents to reflect the revisions contained in these Exceptional Events Rule revisions.

## **Notice of Availability of Final Exceptional Events Guidance**

- The EPA is also announcing the availability of the final version of the non-binding guidance document, *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*.
- The *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* includes example analyses, conclusion statements,

and technical tools that air agencies can use to provide evidence that a wildfire event influenced a monitored ozone concentration(s). In particular, this guidance identifies event characteristics (e.g., season of occurrence, fire emissions, the fire's distance from the ozone monitor and the level of ozone concentrations during the fire) that could enable a state air agency to submit a simpler and less resource-consuming demonstration package. The final guidance reflects and explains how to apply the promulgated revisions to the Exceptional Events Rule to wildfire events that could influence monitored ozone concentrations.

### **Communications and Outreach**

- The EPA will host an informational webinar to summarize the key elements of the final rule revisions and the final exceptional events implementation guidance for wildfire/ozone events. We will post the details of this webinar on EPA's exceptional events website at <https://www.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.

### **BACKGROUND**

- On March 22, 2007, the EPA issued the "Treatment of Data Influenced by Exceptional Events; Final Rule" (72 FR 13560) pursuant to the 2005 amendment of CAA Section 319. This rule is known as the Exceptional Events Rule.
- The Exceptional Events Rule contains definitions, procedural requirements, requirements for air agency demonstrations and criteria for EPA approval for the exclusion of air quality data from certain regulatory decisions.
- As a result of our experiences and stakeholder requests related to implementing the 2007 Exceptional Events Rule, the EPA developed and released Interim Exceptional Events Implementation Guidance documents in May of 2013. We simultaneously announced our intent to initiate a notice-and-comment rulemaking process to consider additional changes that could only be accomplished through a regulatory effort.
- Prior to developing the proposed revisions to the Exceptional Events Rule, the EPA held conference calls with air agencies to discuss recent implementation experiences and to better understand currently employed exceptional events implementation processes and practices. As a result of these discussions, the EPA developed a list of best practices for communication and collaboration between the EPA and air agencies and this list is available on EPA's Exceptional Events website. When implemented, these best practices, also available on EPA's Exceptional Events website, will optimize resources and save time during the demonstration development and review process. We have incorporated some of these concepts into the final rule revisions.
- On November 10, 2015, the EPA proposed revisions to the 2007 Exceptional Events Rule (80 FR 72840, November 20, 2015), and announced the availability for public comment of the *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*.

- To solicit input from stakeholders and the public regarding the final Exceptional Events Rule revisions, the EPA held a public hearing on December 8, 2015, in Phoenix, Arizona.

## FOR MORE INFORMATION

- To download a copy of this final rule and guidance, go to the EPA's Exceptional Events website at <https://www.epa.gov/air-quality-analysis/treatment-data-influenced-exceptional-events>.
- This final rule and other associated information are available either electronically at <http://www.regulations.gov>, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room. (Docket ID No. EPA-HQ-OAR-2013-0572)
- The final guidance document and other associated information are available either electronically at <http://www.regulations.gov>, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room. (Docket ID No. EPA-HQ-OAR-2015-0229)
- The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the EPA William Jefferson Clinton West Building, located at 1301 Constitution Ave., NW, Washington, D.C. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
- For further information about the final Exceptional Events Rule revisions, contact Beth W. Palma at (919) 541-5432 or [palma.elizabeth@epa.gov](mailto:palma.elizabeth@epa.gov). For general information regarding the *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, please contact Lev D. Gabrilovich at (919) 541-1496 or [gabrilovich.lev@epa.gov](mailto:gabrilovich.lev@epa.gov).