

Background Document:
**Identifying Additional Areas Subject to the Mitigation Plan
Requirements Under the Exceptional Events Rule
(Docket ID No. EPA-HQ-OAR-2022-0313)**

U.S. Environmental Protection Agency
April 2022

Table of Contents

1.0	Overview	3
1.1	Mitigation Plan Requirements	3
2.0	Identifying Areas Subject to Mitigation Plans Under the Exceptional Events Rule.....	4
2.1	Initial Areas Subject to Mitigation Plan Requirements	4
2.2	Identifying Subsequent Areas Subject to Mitigation Plan Requirements	4
3.0	Developing Mitigation Plans	5
3.1	Mitigation Plan Components	5
3.2	The EPA’s Review of Mitigation Plans	6
4.0	Conclusion	6

1.0 Overview

This document contains relevant background information supporting the Environmental Protection Agency's (EPA) 2022 Notice of Availability (NOA) and related notification letters disseminated by the EPA to states with areas newly subject to mitigation plan requirements. This document is included in Docket ID No. EPA-HQ-OAR-2022-0313 for the NOA titled, "Identifying Additional Areas Subject to Mitigation Plan Requirements Under the 2016 Exceptional Events Rule." This document describes the steps the EPA followed to identify new areas that will require mitigation plans. Additionally, the required components of mitigation plans are discussed in Section 3.1.

1.1 Mitigation Plan Requirements

According to the 2016 Exceptional Events Rule (Rule), states requesting to exclude data from regulatory determinations due to exceptional events must take measures to protect public health. For areas with historically documented or known seasonal exceptional events, air agencies must develop mitigation plans.¹ The EPA uses recurrence to identify areas that have historically documented or known seasonal events. Mitigation plans ensure that air agencies take appropriate and reasonable actions to protect public health from exceedances or violations of the National Ambient Air Quality Standards (NAAQS).² Mitigation plans protect public health through public notification, minimization of exposure, and relevant source mitigation measures.

The Rule specifies the mitigation plan requirement applies to events of the same type and pollutant (such as high wind dust/particulate matter (PM), wildfire/ozone, fireworks/PM) that recur in a 3-year period that meet either of the following:³

- Three events or event seasons for which air agencies submitted an exceptional events demonstration in a 3-year period; or
- Three events or event seasons that are the subject of an initial notification of a potential exceptional event in a 3-year period regardless of whether the state submits a demonstration.

The initial notification process was first required in the 2016 Exceptional Events Rule.⁴ As noted in the preamble to the Rule, initial notifications may be conveyed as an official letter, electronic mail, or other means of communication from an air agency official with authority to do so. Initial notifications are intended to promote early and frequent communication between air agencies and EPA Regional offices when air agencies first begin to consider developing an exceptional events demonstration.

¹ 40 CFR 51.930(b)(1).

² 2016 Revisions to the Exceptional Events Rule: Update to Frequently Asked Questions, February 12, 2020, pg. 34; <https://www.epa.gov/air-quality-analysis/updated-exceptional-events-rule-faqs>.

³ 40 CFR 51.930(b)(1)(i).

⁴ 40 CFR 50.14(c)(2).

2.0 Identifying Areas Subject to Mitigation Plans Under the Exceptional Events Rule

2.1 Initial Areas Subject to Mitigation Plan Requirements

The preamble of the Rule identified 29 initial areas with historically documented or known seasonal events that required development of mitigation plans. Because the initial notification was a new requirement in the Rule, the EPA could not use it to define how often events recur (*i.e.*, recurrence) for the initial areas that were determined to be subject to the mitigation plan requirements in the same Rule. For those areas, the EPA defined recurrence as:⁵

- Three events or event seasons for which an air agency submitted a demonstration within a 3-year period; or
- Three events or event seasons in a 3-year period that resulted in a NAAQS exceedance or violation for which the air agency had previously flagged events for concurrence in Air Quality System (AQS) (regardless of whether the air agency submitted a demonstration).

Using air quality monitoring data contained within AQS for the period January 1, 2013, through December 31, 2015, the EPA initially identified 29 areas required to submit mitigation plans within 2 years of the effective date of the Rule.⁶

2.2 Identifying Subsequent Areas Subject to Mitigation Plan Requirements

Following promulgation of the Rule, the EPA instituted an internal tracking system and developed implementation tools, notably, the Exceptional Events Submission and Tracking System (EETS), which facilitates the identification of areas for which air agencies submit initial notifications and/or demonstrations. EETS also assists the EPA in identifying areas with recurring events. The EPA used the following steps when developing the list of additional areas identified in the 2022 NOA. (See Attachment A.)

Step 1: Compiled Preliminary List of Areas

The EPA used initial notifications and demonstrations including those submitted through the EETS, data in AQS, and other sources of information to identify recurring events of the same type and pollutants (*i.e.*, high wind dust/PM, wildfire/ozone, fireworks/PM). In the same manner that the EPA analyzed monitoring data for the 3-year period 2013-2015 to identify the initial areas, the EPA analyzed events since 2016 on a rolling 3-year basis (*e.g.*, 2016-2018; 2017-2019; and 2018-2020) to identify additional areas subject to mitigation plan requirements. Areas with three recurring events in a 3-year period were added to this preliminary list of areas.

⁵ 81 FR 68272

⁶ 81 FR 68272, Table 6 - Areas Subject to the Mitigation Requirements in 40 CFR 51.930(b), October 3, 2016.

Step 2: Developed Final List of Areas

The EPA analyzed the preliminary list evaluating event seasons and area boundaries. The EPA evaluated the data to determine if there was a season with multiple events. Known as seasonality, the EPA may treat a season with multiple events of the same type and pollutant as a single event season for purposes of developing a mitigation plan.⁷ For this action, the EPA identified boundaries for areas requiring mitigation plans as county boundaries or, in some cases, the boundaries of an existing nonattainment area.

Based on the EPA's review of air quality data and other information, the EPA prepared the final list for inclusion in the notification letters signed by the Regional offices and in the NOA. Attachment A contains the final list of areas.

3.0 Developing Mitigation Plans

3.1 Mitigation Plan Components

The Rule specifies the requirements for mitigation plans. At a minimum, the Rule requires air agencies to develop mitigation plans with the following components:

1. Public notification and education programs for affected or potentially affected communities.
2. Steps to identify, study, and implement mitigating measures, including:
 - a. measures to abate or minimize contributing controllable sources;
 - b. methods to minimize public exposure to high concentrations of identified pollutants;
 - c. processes to collect and maintain data pertinent to the event; and
 - d. mechanisms to consult with other air quality managers in the affected area with regards to appropriate responses to abate and minimize impacts.
3. Provisions for periodic review and evaluation of the mitigation plan and its implementation and effectiveness by the State and all interested stakeholders.⁸

Implementation guidance published by the EPA⁹ states that, if possible, air agencies should notify the public of the actual or anticipated event at least 48 hours in advance. Outreach mechanisms include web site alerts, National Weather Service alerts, telephone or text bulletins, and television or radio campaigns or other messaging campaigns. Public notification and education may include adoption of methods for forecasting/detection, consultation with appropriate health department personnel regarding health advisories and recommended actions to reduce exposure. More information on the required components for an exceptional events

⁷ 81 FR 68272

⁸ 40 CFR 51.930 (b)(2).

⁹ 2016 Revisions to the Exceptional Events Rule: Update to Frequently Asked Questions, US EPA, February 12, 2020, pg. 35; <https://www.epa.gov/air-quality-analysis/updated-exceptional-events-rule-faqs>.

mitigation plan can be found in 40 CFR 51.930(b)(2), and a Mitigation Plan Checklist designed to facilitate the development of a mitigation plan can be found, along with other implementation resources, on EPA's exceptional events website at: <https://www.epa.gov/air-quality-analysis/exceptional-events-implementation-tools-templates-and-links>.

3.2 The EPA's Review of Mitigation Plans

Air agencies with areas requiring mitigation plans must submit mitigation plans to the applicable EPA Regional Administrator within 2 years of notification of this requirement. After this initial 2-year timeframe, even if a demonstration otherwise satisfies the Exceptional Events Rule criteria, the EPA will not concur with an air agency's request to exclude data that have been influenced by an event of the type that is the subject of a required mitigation plan until a mitigation plan for the relevant area has been determined by the EPA to be complete.

The EPA Regional offices review mitigation plans submitted by air agencies for "completeness" (*i.e.*, inclusion of the required components in Section 3.1) and to ensure that the public comment process was followed. However, the EPA does not "approve" the plans. As noted in the Rule preamble, we believe this 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. Further, if air agencies have other pre-existing plans (*e.g.*, emergency episode plans, smoke management plans, or previously developed mitigation plans) that also meet the mitigation plan requirements, then air agencies can submit those plans with a cross-reference explaining how the existing plans also meet the 2016 Rule requirements.

Once an agency has submitted a mitigation plan, the EPA will review each submitted plan and verify that it includes the required elements. The EPA will notify the submitting air agency, usually within 60 days of receipt of the plan, that it has reviewed the mitigation plan and will either verify that the plan contains the required elements or identify any missing elements.

4.0 Conclusion

The 2016 Exceptional Events Rule described the framework for identifying areas subject to the mitigation plan requirements of the Rule but did not establish a specific process for providing notice to states with areas newly identified as being subject to mitigation plan requirements.

This document describes the steps the EPA followed to determine event seasons and identify additional areas subject to the mitigation plan requirements. The EPA generally anticipates following this process every 5 years to identify any new areas with recurring events of the same type and pollutant that require mitigation plans to protect public health.

Attachment A

Additional Areas Subject to the Mitigation Requirements in 40 CFR 51.930(b)^a

Pollutant	AQS Flag ^b	AQS Flag description	State	County/Nonattainment area boundary
Ozone	RT	Wildfire-U.S.	NV	Washoe
Ozone	RT	Wildfire-U.S.	CA	Tehama (Tuscan Buttes)
Ozone	RT	Wildfire-U.S.	CA	Ventura
PM ₁₀	RJ	High Winds	CA	Ventura
PM ₁₀	RJ	High Winds	WY	Campbell
PM ₁₀	RJ	High Winds	WY	Sweetwater
PM ₁₀	RJ	High Winds	NM	Bernalillo
PM ₁₀	RT	Wildfire- U.S.	CA	Santa Barbara
PM ₁₀	RT	Wildfire-U.S.	CA	San Joaquin Valley
PM _{2.5}	RT	Wildfire- U.S.	CA	Butte
PM _{2.5}	RT	Wildfire-U.S.	CA	San Joaquin Valley
PM _{2.5}	RT	Wildfire-U.S.	CA	South Coast
PM _{2.5}	RH	Fireworks	CA	San Joaquin Valley
PM _{2.5}	RH	Fireworks	CA	South Coast
PM _{2.5}	RJ	High Winds	CA	San Joaquin Valley

^a The EPA identified these counties using data submitted through the Exceptional Events Submission and Tracking System, EPA's AQS, and other sources for the January 1, 2016 - December 31, 2020, timeframe. The EPA used these data to identify areas with three events or event seasons within a 3-year period.

^b The complete list of AQS qualifier codes and descriptions is available at <https://www.epa.gov/aqs/aqs-code-list>.