

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA-HQ-OAR-2005-0159; FRL-XXX-X]

RIN 2060-AP28

**The Treatment of Data Influenced by Exceptional Events
(Exceptional Event Rule): Revised Exceptional Event Data
Flagging Submittal and Documentation Schedule for Monitoring
Data Used in Designations for the 2008 Ozone NAAQS****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to amend the Exceptional Events Rule to provide a revised exceptional event data flagging and documentation schedule for ozone data that may be used for designations under the 2008 ozone national ambient air quality standards (NAAQS). The Exceptional Events Rule states that when EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, EPA may revise or set a new schedule for flagging data for those NAAQS. EPA recently revised the primary and secondary ozone NAAQS to protect public health and welfare; the revised standards became effective May 27, 2008. Consistent with the process envisioned in the Exceptional Events Rule, this proposal revises the dates for flagging data and submitting documentation regarding exceptional events under the revised ozone NAAQS. This revised schedule allows EPA to fully consider

state requests for exceptional event concurrence prior to EPA making final designations.

In the "Rules" section of this Federal Register, we are issuing this action as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments. Written comment must be received [**INSERT DATE 45 FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

Public Hearing. If anyone contacts us requesting a public hearing by [**INSERT 10 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**], we will hold a public hearing approximately 30 days after publication in the Federal Register. Additional information about the hearing would be published in a subsequent Federal Register notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0159, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2005-0159.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2005-0159.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection

Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

- Hand Delivery: EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 3334; Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0159. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Thomas E. Link, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-5456; fax number: 919-541-0824; email address:

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I. Why is EPA Issuing This Proposed Rule?

This action provides for a revised schedule to flag data and submit documentation related to exceptional events that influence ozone data which may affect designations under the

recently revised ozone NAAQS. This action creates no additional regulatory requirements compared to those already promulgated in the Exceptional Events Rule. We have published a direct final rule making such amendments in the "Rules" section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If EPA receives an adverse comment, we will take no further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory test for this proposal is identical to that for the direct final rule published in the "Rules" section of this Federal Register. For further information and detailed rationale for this proposal, see the information provided in the direct final rule.

II. Does This Action Apply to Me?

States are responsible for identifying air quality data that they believe warrant special consideration, including data affected by exceptional events. States identify such data by

flagging (making a notation in a designated field in the electronic data record) specific values in the Air Quality System (AQS) database. States must flag the data and submit a justification that the data are affected by exceptional events if they wish EPA to consider excluding the data in determining whether or not an area is attaining the revised ozone NAAQS.

All states that include areas that could exceed the ozone NAAQS and could therefore be designated as nonattainment for the ozone NAAQS have the potential to be affected by this rulemaking. Therefore, this action applies to all states; to local air quality agencies to which a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and, to Tribal air quality agencies where appropriate. The Exceptional Events Rule describes in greater detail to whom the Rule applies in 72 FR at 13562-13563 (March 22, 2007).

III. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete

version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. What Information Should I Know About the Public Hearing?

EPA will hold a hearing only if a party notifies EPA by **[INSERT THE DATE 10 DAYS FOLLOWING PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]**, expressing its interest in presenting oral testimony on issues addressed in this notice. Any person may request a hearing by calling Mrs. Pamela Long at (919) 541-0641 before 5 p.m. by **[INSERT THE DATE 10 DAYS FOLLOWING PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]**. Persons interested in presenting oral testimony should contact Mrs. Pamela Long at (919) 541-0641. Any person who plans to attend the hearing should also contact Mrs. Pamela S. Long at (919) 541-0641 to learn if a hearing will be held.

If a public hearing is held on this notice, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

If held, the public hearing will begin at 10 a.m. and end 1 hour after the last registered speaker has spoken. The hearing

will be limited to the subject matter of this document. Oral testimony will be limited to 5 minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in this notice. The EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

V. What Is the Background for This Action?

The Exceptional Events Rule (Treatment of Data Influenced by Exceptional Events (72 FR 13560, March 22, 2007) sets a schedule for states to flag monitored data affected by exceptional events in AQS and for them to submit documentation to demonstrate that the flagged data were impacted by an exceptional event. Under this schedule, a state must initially notify EPA that data have been affected by an exceptional event by July 1 of the year after the data are collected; this is

accomplished by flagging the data in AQS. The state must also include an initial description of the event when flagging the data. In addition, the state is required to submit a full demonstration to justify exclusion of such data within three years after the quarter in which the data were collected, or if a regulatory decision based on the data (such as a designation action) is anticipated, the demonstration must be submitted to EPA no later than one year before the decision is to be made.

However, the rule also authorizes EPA to revise data flagging and documentation schedules for the initial designation of areas under a new or revised NAAQS. This generic schedule, while appropriate for the period after initial designations have been made under a NAAQS, may need adjustment when a new or revised NAAQS is promulgated because until the level and form of the NAAQS have been promulgated a state would not have complete knowledge of the criteria for excluding data. In these cases the generic schedule may preclude states from submitting timely flags and associated documentation for otherwise approvable exceptional events. This could, if not modified, result in some areas receiving a nonattainment designation when the NAAQS violations were legitimately due to exceptional events.

For example, EPA finalized new standards for ozone of 0.075 ppb on March 12, 2008 with an effective date of May 27, 2008. In accordance with CAA Section 107(b), state Governors must

provide their recommendations to EPA by March 12, 2009 on designating areas as attainment, nonattainment, or unclassifiable with the new standards. States will base their recommendations on the three most recent years of quality-assured air quality data, which could be ozone data collected between calendar years 2006-2008, or 2005-2007. EPA must complete final area designations for these new standards by March 12, 2010. EPA will base its designations decisions on the three most recent years of quality-assured air quality data for each area which would be ozone data collected during calendar years 2007-2009 where states have submitted quality assured ozone data for 2009. However, in some cases the most recent complete data may cover 2006-2008 or 2005-2007. In this example the generic exceptional event flagging schedule for 2005 and 2006 data has already passed and the flagging deadline for exceptional events that occurred in 2007 would be July 1, 2008 - approximately 33 days after the effective date of the revised NAAQS. In addition, the generic schedule would require states to submit demonstrations for 2009 data influenced by exceptional events no later than March 12, 2009, one year before the final designation decisions. This is clearly not possible for air quality data collected from March 13, 2009 to December 31, 2009.

EPA is, therefore, using the authority provided in the Exceptional Events Rule at 40 CFR 50.14 (c)(2)(v), to modify the

schedule for data flagging and submission of demonstration for exceptional events data considered for initial designations under the 2008 revised ozone NAAQS.

VI. What Is This Proposed Rule?

This proposed rule amends the Exceptional Events Rule by providing a revised exceptional event data flagging and documentation schedule regarding claimed exceptional events affecting ozone monitoring data that will be compared to the 2008 revised ozone NAAQS for the purpose of initial ozone designations. In some cases, EPA is extending the otherwise applicable deadline for states to flag data and submit documentation. In other cases, EPA is shortening the otherwise applicable schedule to assure that the exceptional events claims can be fully considered by EPA in the designations decisions.

For air quality data collected in the years 2005 through 2007, this revised schedule extends the generic schedule for flagging data (and providing a brief initial description of the event) from July 1 of the year following the year the data are collected, to December 31, 2008. For data collected in 2008, the revised schedule extends the generic schedule for flagging data and providing a brief initial description of the event to March 12, 2009, to coincide with the deadline for state Governors to submit designation recommendations to EPA. The deadline for submitting to EPA a detailed demonstration to

justify exclusion of data collected in 2005 through 2008 is also being set to March 12, 2009. The deadline for submitting to EPA flagged data with initial descriptions and a detailed demonstration to justify exclusion of data collected in 2009 is being set to January 8, 2010. For data collected in 2008 and 2009 this would give a state less time, but EPA believes still sufficient time, to decide what 2008 and 2009 data to flag, and would allow EPA to have access to the flags and supporting data in time for EPA to develop its own proposed and final plans for designations. (If EPA has insufficient information and extends the designations date beyond March 2010, a new event flagging deadline and detailed documentation submission deadline will be published.) While the new deadlines for submission of a state's demonstration for data collected in 2009 is less than a year before the designation decisions would be made, EPA believes it is a reasonable approach between giving states a reasonable period to prepare the justifications, and EPA a reasonable period to consider the information submitted by the state. With this proposed rule EPA amends section 50.14 (c)(2)(v) to add a tabular schedule of data submittal deadlines, by pollutant, for new or revised NAAQS standards. (PM_{2.5} data submittal schedules revised in March 2007 and presented in this table are for informational purposes only. EPA is not taking further comment on the PM_{2.5} data submittal schedule published in 72 FR 13560,

March 22, 2007.) EPA anticipates providing amendments to the following table to add data submission schedules for new or revised NAAQS standards in the future.

Table 1. Schedule for Exceptional Event Flagging and Documentation Submission for Data to be Used in Designations Decisions for New or Revised NAAQS

NAAQS Pollutant/ Standard/(Level)/ Promulgation Date	Air Quality Data Collected for Calendar Year	Event Flagging & Initial Description Deadline	Detailed Documentation Submission Deadline
PM _{2.5} /24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006	2004-2006	October 1, 2007 ^a	April 15, 2008 ^a
Ozone/8-Hr Standard (0.075 ppb) Promulgated March 12, 2008	2005-2007	December 31, 2008 ^b	March 12, 2009 ^b
	2008	March 12, 2009 ^b	March 12, 2009 ^b
	2009	January 8, 2010 ^b	January 8, 2010 ^b
<p>^aThese dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.</p> <p>^bIndicates change from general schedule in 40 CFR 50.14.</p> <p>Note: EPA notes that the table of revised deadlines <u>only</u> applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.</p>			

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this

action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., where burden is defined at 5 CFR 1320.3(b). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, it does not impose an information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special

district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, it does not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state local or tribal governments or the private sector. This action modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or

tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

This proposal does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the

various levels of government, as specified in Executive Order 13132. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 F.R. 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health

or safety risks.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of modifying previously established deadlines under the Exceptional Events Rule

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211(66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action modifies previously established deadlines under the Exceptional Events Rule.

I. National Technology Transfer Advancement Act

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest

extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It will neither increase nor decrease environmental protection.

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Events (Exceptional Event Rule): Revised Exceptional Event Data
Flagging Submittal and Documentation Schedule for Monitoring
Data Used in the 2008 Ozone NAAQS Designations**

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, National
parks, Wilderness areas.

Dated:

Stephen L. Johnson,
Administrator.