

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

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To Whom It May Concern:

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) are pleased to submit these comments on the U.S. Environmental Protection Agency's (EPA's) Proposed Rule on the Treatment of Data Influenced by Exceptional Events ("Proposed Exceptional Events Rule"), as published in the *Federal Register* on March 10, 2006 (71 *Federal Register* 12592). STAPPA and ALAPCO are the two national associations of air quality officials in 53 states and territories and more than 165 major metropolitan areas across the United States. As EPA notes in the *Federal Register* notice, this rulemaking was required under Section 319 of the Clean Air Act (CAA), as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A Legacy for Users (SAFE-TEA-LU) of 2005.

Definition of an "exceptional event"

EPA lists the following as examples of events it would consider to be exceptional events: 1) chemical spills and industrial accidents; 2) structural fires; 3) exceedances due to transported pollution; 4) exceedances due to a terrorist attack; and 5) natural events (71 *Federal Register* at 12596-12597).

Exceedances due to transported pollution

With respect to "exceedances due to transported pollution," EPA should make clear that "transported pollution" is pollution caused by a *qualifying* exceptional event in another state transported to the area flagging the data. It does *not* apply to, for example, emissions of ozone or particulate matter (PM) precursors from one state's power plants transported to another state. In

addition, recurring human activities that occur outside the U.S. should be dealt with under section 179B of the Clean Air Act.

Natural events

EPA lists five examples of natural events that would qualify under the Proposed Exceptional Events Rule: 1) volcanic and seismic activities; 2) natural disasters and associated cleanup activities; 3) high wind events; 4) unwanted fires; and 5) stratospheric ozone intrusion (71 *Federal Register* at 12596).

Natural disasters and associated cleanup activities

EPA should clarify which activities are considered “associated cleanup activities” for natural disasters. Do these include burning of any and all debris from a hurricane or tornado? We do not believe burning of manmade debris is appropriate even following a natural disaster, and only trees and limbs that cannot be chipped and thus must be burnt should qualify. Do these associated cleanup activities include reconstruction of homes and buildings destroyed in a natural disaster? We would not support the inclusion of these activities as they are not part of cleaning up and there is time to plan for conducting them in a way that does not lead to air quality exceedances.

In addition, we recommend that flagging of “associated cleanup activities” be considered on a case-by-case basis. Burning of natural debris pollutes the air and affects human health, but this activity may be necessary in order for people to return to their homes and for communities to be rebuilt. Another issue that needs to be dealt with is the length of time activities may be considered as associated with a natural disaster. The more catastrophic the disaster, the longer cleanup activities will go on, and vice versa. These situations are fact-specific and thus cannot easily be dealt with in a rule. We suggest that EPA develop a policy for dealing with natural disasters and associated cleanup activities to address these and other issues.

Unwanted fires

EPA proposes that unwanted fires be defined to include the following: 1) wildfires, which include a) unplanned, unwanted wildland fires, b) unauthorized burns, c) prescribed burns that escape control, and d) other wildland fires “where the primary objective is to suppress the fire as quickly as possible;” and 2) “designated wildland fire use fires, not designated or managed as prescribed fires, or requiring appropriate suppression action by a wildland manager” (71 *Federal Register* at 12597).

STAPPA and ALAPCO support including wildfires as an exceptional event. However, we think “designated wildland fire use fires” should not be treated as exceptional events. These are fires that are “ignited naturally or unintentionally (*e.g.*, as the result of lightning) and [that] are allowed to continue burning without suppression efforts in locations that have been designated in fire management plans as areas where fires are necessary and desirable to accomplish specific resource management objectives.” (Id.)

The Proposed Exceptional Events Rule should not undercut the National Ambient Air Quality Standards (NAAQS) by permitting the flagging of data when a fire could have been controlled to mitigate impacts on public health. If a decision is made that it is more important for forest management reasons to let a fire burn than to control it, then that decision should consider the impact the fire will have on air quality and public health. Accordingly, these types of fires should not be flagged as exceptional events.

Prescribed fires

Prescribed fires are conducted for resource management objectives and are ignited intentionally. EPA proposes that prescribed fires may be considered exceptional events if they meet the criteria of being “unlikely to recur at the same location” or “not reasonably controllable or preventable,” and the “well-managed” prescribed fire is only reasonable alternative for fuel reduction or for dealing with a pest or disease outbreak. (Id.) “Well-managed prescribed fires are those that consider smoke impacts prior to and during the burn, barring unforeseen circumstances, and when the prescribed fire is in compliance with a Smoke Management Plan (SMP).” (Id.)

We note as a preliminary matter that prescribed fires do not appear to qualify for treatment as an “exceptional event” under section 319 of SAFE-TEA-LU. Section 319 defines “exceptional event” as one that “is not reasonably controllable or preventable” and – not or – “is an event caused by human activity that is unlikely to recur at a particular location or a natural event.” It is not clear to us how prescribed fires could be considered “not reasonably controllable or preventable” since they are started purposefully by humans.

Nevertheless, if EPA decides to treat prescribed fires as exceptional events in this rule, STAPPA and ALAPCO strongly believe that the exceptional events rule should support the development and implementation of SMPs that avoid or minimize impacts on public health. A well-designed and executed SMP should preclude the need for flagging data because the fire will have been managed to avoid exceedances. We recognize, however, that in some cases even a well-designed and implemented SMP may not completely mitigate all impacts on air quality and thus cause an exceedance. EPA proposes to allow “exceedances to be discounted that have been flagged by a State as having been caused by prescribed fires used for purposes of resource management provided that the State certifies that it has adopted and is implementing a certified SMP as described in [EPA’s “Interim Air Quality Policy on Wildland and Prescribed Fires.”]” (71 *Federal Register* 12597.) We support this, with the following caveat: if prescribed fires are causing exceedances on a consistent basis, then a state’s SMP needs to be reexamined since the SMP is not working as intended. We note that EPA’s Wildland Fire Policy calls for states to review the effectiveness of the SMP if NAAQS are violated as a result of prescribed fires, and, if there are additional violations, EPA will call for the SMP to be made part of the State Implementation Plan and be federally enforceable. We support this requirement and recommend that it be made part of the exceptional events rule. Prescribed fires conducted via a certified SMP that nevertheless burn out of control despite best efforts to contain them may also qualify for flagging; those that are allowed to burn, consistent with our view on wildfires allowed to burn, should not.

An issue not addressed in EPA's proposal is prescribed fires that begin in one state but affect air quality in another state. The affected downwind state should not be precluded from being able to flag data just because an upwind state that started a fire does not have an approved SMP and thus cannot flag the data.

“Affecting” air quality

EPA proposes three options for determining whether an exceptional event has affected air quality:

- Option 1: To be eligible for concurrence, flagged values must be above the 95th percentile of non-event days for the calendar quarter, based on the previous three to five years.
- Option 2: Days between the 75th and 95th percentile would also be eligible for exclusion, pending more substantial demonstration (95th/75th percentile tiered approach).
- Option 3: General case-by-case evaluation without threshold criteria. This is EPA's current practice.

(71 *Federal Register* at 12598-12599).

STAPPA and ALAPCO support a modified Option 2. Option 2 provides more flexibility than Option 1 but still contains benchmarks for easily determining what “affects air quality.” However, EPA should also permit states to request that EPA consider flagged values below the 75th percentile, with the understanding that these will receive greater scrutiny and require more explanation from a state.

EPA should recognize that there is likely not a “clean” baseline of non-event days. A state may not have flagged all data affected by exceptional events because of resource considerations involved in supporting a flag, when the data had no regulatory implications at the time of the exceptional event.

Use of a “but/for” test

EPA is proposing to not allow air quality data to be excluded except where states show that exceedances or violations of applicable standards would not have occurred “but for” the influence of exceptional events (71 *Federal Register* 12599). STAPPA and ALAPCO generally support this proposal, but we note that this test does not cover two situations well: 1) nonattainment areas calculating design values or 2) areas attempting to qualify for the limited maintenance plan option outlined in an August 2001 memo, “Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas.” We suggest that EPA, in consultation with states and localities, consider developing guidance to cover these specific situations.

Timelines for flagging data and submitting demonstrations

EPA proposes three options for deadlines for states to flag data affected by exceptional events and to submit supporting documentation:

- Option 1: Early flagging by states (within 90 days after the end of the calendar quarter in which the event occurred) & demonstration submission (within 90 days after flagging)
- Option 2: Early flagging (90 days) & delayed demonstration submission (up to three years)
- Option 3: Delayed flagging and demonstration submission (no later than six months prior to regulatory determination)

(71 *Federal Register* 12599-12600.)

STAPPA and ALAPCO believe that the schedules and procedures should be different for a) exceedances of short-term (e.g., daily) NAAQS and b) exceedances of annual NAAQS that do not exceed the short-term NAAQS concentration. For example, the current daily standard for fine PM (PM_{2.5}) is 65 micrograms per cubic meter (µg/m³) and the current annual standard is 15 µg/m³. If there is an exceptional event, monitor readings of 65 or greater would clearly be of concern, whereas readings between 15 and 64 may only be of concern with respect to the annual PM_{2.5} standard. States need to conserve limited resources by requesting exclusion of data affected by exceptional events only when failure to exclude such data would likely have regulatory consequences. A single daily value exceeding the short-term (e.g., 24-hr) NAAQS is sufficiently likely to have regulatory consequences that states should begin the process of flagging and requesting exclusion as soon as the data are confirmed by as valid by Quality Assurance (QA). However, the regulatory significance of a single daily value exceeding the annual NAAQS cannot be estimated without considering all other daily values, since every daily value influences the annual mean.

Accordingly, the associations recommend the following:

1) For exceedances of the short-term NAAQS, we support a modified version of Option 1 (Early Data Flagging and Demonstration Submission) in which states may request extensions of up to 180 days (rather than proposed 90 days) for submitting demonstrations in support of requests for exclusion. The longer extension time may be needed in some cases for more detailed data analysis such as chemical speciation of filter samples, or for state-mandated public review and comment processes.

2) For exceedances of the annual NAAQS that are not also exceedances of the short-term NAAQS, data flagging should be completed not later than 180 days following the close of the 4th quarter of the year in which the event occurred. Since up to 90 days after the end of the year may be required for all the yearly data to be validated by QA, this leaves an additional 90 days for a state to analyze the influence of exceptional event days on the annual mean and determine which events have potential regulatory consequences. Supporting demonstrations should be submitted not later than three years following the end of the calendar year in which the event occurred.

Documentation

The Proposed Exceptional Events Rule does not contain any specific requirements for documentation but rather states that EPA will follow a “weight of evidence” approach. EPA asks whether there should be any minimum demonstration requirements. (71 *Federal Register* 12601-12602.)

STAPPA and ALAPCO support a “weight of evidence” approach. We also recommend that EPA headquarters work with state and local agencies to establish national guidance for documentation followed by a collaborative process between each EPA regional office and its constituent state and local agencies to develop regional criteria based on the national guidance. This process would provide more consistency among the EPA regional offices than currently exists.

Requirements for public notification of an exceptional event and protection of public health during and after an exceptional event

EPA’s preferred option is for 1) prompt public notification that an event is occurring or is expected to occur; 2) public education on how to reduce individual exposures to air pollution due to an event; 3) implementation of reasonable measures to protect public health, which could include mitigation of significant contributing anthropogenic sources, if present, or otherwise minimizing or abating public health impacts; and 4) as part of a state’s demonstration backing up a flag, a state would need to submit appropriate documentation that it provided appropriate public notice and public education concerning the event and that it took reasonable measures to abate or minimize the exposure of the public (71 *Federal Register* 12602-12603).

We support EPA’s preferred option. It provides for a state to take reasonable steps to alert and protect the public during exceptional events. A state can tailor its actions to the event in question. This is preferable to submitting a detailed plan in advance that cannot anticipate every exceptional event. However, we advise a slightly different approach on public notification for events that cause monitor readings above a long-term (annual) standard but below the short-term (daily) standard. For these types of events, media alerts would not be needed unless the pollutant concentrations reached the Air Quality Index (AQI) threshold for “Unhealthy for Sensitive Groups.” For example, for PM_{2.5}, the AQI level is set at 40 µg/m³.

In addition, consistent with EPA’s policy for natural events, which required development of Natural Events Action Plans (NEAPs), we support the development of a mitigation plan for natural events that are expected to recur. This plan would be created after such an event. This plan would include Best Available Control Measure (BACM) requirements for contributing anthropogenic sources, as currently provided for in EPA’s PM₁₀ Natural Events Policy. States with existing approved NEAPs would not need to develop new ones for the natural events covered in the NEAPs.

Fireworks

Fireworks are not explicitly covered by section 319 or this rulemaking. However, EPA proposes as a policy matter to treat certain types of fireworks events in a manner similar to exceptional events. Specifically, where states can show that the use of fireworks displays is integral to significant traditional national, ethnic or other cultural events (e.g., 4th of July celebrations, Chinese New Year), EPA is proposing that air quality data associated with such events could be excluded from regulatory determinations. For such events, public health protection efforts may be appropriate. EPA requests comment on the treatment of fireworks and any requirements that should apply. (71 *Federal Register* 12606.)

EPA acknowledges that fireworks clearly do not fit within section 319 since they are not an “event caused by human activity that is unlikely to recur at a particular location.” Neither are they “not reasonably controllable or preventable.” Congress gave no indication in SAFE-TEA-LU that it wanted fireworks treated as an exceptional event. In light of this, EPA should instead consider 1) creating a performance standard for fireworks to promote development of low-polluting fireworks; and 2) working with states and localities to develop mitigation strategies to deal with the air pollution created by fireworks, including public education campaigns.

We hope you will consider carefully these perspectives as you proceed with the final rulemaking. If you have any questions, please feel free to contact either of us or Amy Royden-Bloom, Senior Staff Associate of STAPPA/ALAPCO, at 202-624-7864

Sincerely,



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