

6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA-HQ-OAR-2005-0159; FRL-8907-1]

RIN 2060-AP56

**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:** Final rule.

**SUMMARY:** EPA is finalizing amendments to 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 final rule 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.

**DATES:** This final rule is effective [**INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID number EPA-HQ-OAR-2005-0159. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://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.

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**I. Why is EPA Issuing This Final Rule?**

This final 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.

**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 13562-13563 (March 22, 2007).

**III. What Is the Background for This Action?**

CAA Section 319(b)(2) authorizes EPA to promulgate regulations that govern the review and handling of air quality monitoring data influenced by exceptional events. Under this

authority, EPA promulgated the Exceptional Events Rule (Treatment of Data Influenced by Exceptional Events) (72 FR 13560, March 22, 2007) which 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.

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 parts per million (ppm) on March 12, 2008 with an effective date of May 27, 2008. In accordance with Clean Air Act (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 are to base their recommendations on the three most recent years of complete, certified air quality data, which we expect would be ozone data collected for 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 complete certified air quality data available for each area. This could be ozone data collected during calendar years 2007-2009 where states have submitted complete, certified ozone data for 2009 more quickly than is required. However, in some cases the most recent complete, certified data may cover 2006-2008 or 2005-2007. For these data years, the generic exceptional event flagging

deadline 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 CAA section 319(b)(2) and in the Exceptional Events Rule at 40 CFR 50.14 (c)(2)(vi), to modify the schedule for data flagging and submission of demonstrations for exceptional events data considered for initial designations under the 2008 revised ozone NAAQS.

#### **IV. Public Comment and Agency Response**

On November 20, 2008, the Natural Resources Defense Council (NRDC) provided comments to EPA on a Direct Final Action and the concurrent proposal for this rule. The direct final rule was subsequently withdrawn. A summary of NRDC's comments and the Agency's responses to its comments are shown below.

Comment: NRDC asserts that the Exceptional Events Rule (EER) does not authorize EPA to change the schedule for submission of demonstrations and that EPA lacks statutory authority to revise

the flagging and documentation deadlines in the Exceptional Events Rule. [Comment Letter from NRDC to EPA Docket ID No. EPA-HQ-OAR-2005-0159; Public Comment on EPA Direct Final Rule and Proposed Rule, dated November 20, 2008, at p. 2, para 2.] NRDC notes that although the EER includes provisions for revising the schedule for flagging data, it does not include a similar provision for the submission of demonstrations. Therefore, the commenter concludes that EPA's actions to revise the schedules for flagging and submitting documentation for exceptional events are unlawful. The commenter also cites to certain principles enumerated in the rule that use the word 'timely' as a reason for not revising the schedules for flagging and submission of data. An additional argument that the commenter puts forward for not changing the schedules is that the commenter notes that the EER schedule provides EPA ample time to evaluate exceptional events data before authorizing waiver of the data.

Response: EPA disagrees with the commenter. CAA section 319(b)(2) expressly authorizes EPA to promulgate regulations "governing the review and handling of air quality monitoring data influenced by exceptional events." Pursuant to this authority, EPA promulgated "The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule)" [72 FR 13562-13563 (March 22, 2007)] which sets out the process and substance of EPA's review and handling of the data impacted by exceptional

events. For the review process in the EER, EPA included schedules for flagging, public comment, and submission of documentation related to exceptional events. 40 CFR 50.14(c). As the commenter notes, EPA included a provision stating that it "may revise or set a new schedule for flagging data" when a new or revised NAAQS was promulgated. 40 CFR 50.14 (c)(2)(vi)<sup>1</sup>. From this, the commenter concludes that just because EPA did not expressly include a similar provision for the submission of documentation, it no longer has the authority to revise its own rule. An agency may revise or amend its rules or interpretations provided it follows the appropriate procedures such as notice and comment rulemaking. EPA explained that the reason for amending the schedules was to provide states with time to evaluate their data under the new NAAQS and determine whether such data should be flagged for consideration as an exceptional event. Under the older, less stringent NAAQS, states may have determined that, for purposes of efficiency and resource management, even where exceptional events had occurred, the state would not flag that data because it would not have affected their designation status under the older NAAQS. If however, under the revised NAAQS, certain exceptional events that were not flagged or for which documentation was not

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<sup>1</sup>The original rule provision was numbered as (c)(2)(v) and is now renumbered to (c)(2)(vi) since the publication of the new Pb NAAQS in October 2008.

submitted, would be relevant to designation under the new NAAQS, EPA believes that these should not be precluded from consideration. In response to the commenter's references to the principles in section 319 that EPA must promulgate regulations that provide 'timely' information to the public when air quality is unhealthy and provide for all ambient air quality data to be included in a timely manner in the air quality database, EPA notes that all the past data are already in the database and states must continue to submit all their data on a timely basis to the database. During the review of the data for purposes of designations, EPA is permitting states a limited time to flag the data and to submit documentation. As noted elsewhere, the public will receive timely information about such flagging and documentation when states provide the public an opportunity to comment before they submit the documentation to EPA. In addition, 40 CFR 51.930 contains provisions for notifying the public when the air is unhealthy. While EPA appreciates the commenter's concern that the Agency should have ample time to evaluate the exceptional events claim, EPA believes that the revised schedule is a realistic and practical one that balances the Agency's needs with the needs of the states.

Comment: The commenter states that the "updated ozone NAAQS and Exceptional Rule" should not be applied retroactively. According to the commenter, EPA's revision to the schedule suggests that

EPA intends to permit retroactive application of the "new ozone NAAQS and new Exceptional Event Rule" to "old monitoring data and to re-brand previous data as NAAQS violations that are excludable from attainment designations. . ." NRDC Letter at p.5. The commenter claims that the amendment to the schedule is unlawful for four reasons. First, according to the commenter because section 319 includes a provision that explicitly keeps in place then-existing guidance until the effective date of the rule (May 21, 2007), the policies would apply to any data generated before that date. The commenter's second point repeats the first proposition that the regulatory text and EPA's construal of that text cannot be applied to events before May 21, 2007. The commenter's third point is that because EPA's pre-existing exceptional events policies applied to data before May 21, 2007, amending the EER is not a proper or lawful vehicle for revising the deadlines submitted pursuant to previous guidance. And finally, the commenter contends that data indicating concentrations above the updated ozone NAAQS, but not of the then-existing standard, cannot constitute an exceptional event. The commenter cites to the EER which permits states to request EPA to exclude data showing "exceedances or violations" of the NAAQS and citing to the definition of an "exceedance" at 40 CFR 50.1 to support their argument that an exceedance for data before May 27, 2008 (the effective date of the revised

ozone NAAQS) means concentrations that exceed the concentration levels of the previous standard. The commenter argues that an air monitoring concentration that exceeds the new standard but did not exceed the then-applicable standard cannot constitute an "exceedance" under the EER for designations under the revised NAAQS. The commenter also contends that although EPA provided some explanation for its actions, it did not amount to a sufficient explanation for its actions. In various footnotes, the commenter notes the differences between the general schedule in the EER and the revised flagging and submission of documentation schedules for ozone, noting that the flagging and submissions would be "barred" under the EER. The commenter also enumerates certain policy reasons for not revising the schedule such as it would provide local air control authorities an opportunity to 'cook the books' and adopt a 'revisionist' approach that led to 'creat[ing]' exceptional events.

Response: EPA is not applying either the revised ozone NAAQS or the Exceptional Events Rule retroactively to "old air monitoring data" as the commenter contends. The commenter's statements regarding the revised NAAQS and the applicability of the old NAAQS mischaracterizes the process of designating areas as attainment or nonattainment. EPA promulgated the revised ozone NAAQS on March 12, 2008 and under CAA section 107 states must submit their initial recommendations for designating areas by

March 12, 2009. EPA will issue final designations by March 12, 2010 unless it has insufficient information to issue such designations. In such cases, EPA must make its final designations by March 2011. State recommendations are based on whether the 3-year average of the annual fourth-highest daily maximum 8-hour average O<sub>3</sub> concentration is less than or equal to 0.075 ppm. The 3-year average is computed by using the three most recent consecutive calendar years of monitoring data that meet the monitoring completeness and other requirements of 40 CFR Part 50, Appendix P. Therefore, when states submit their recommended designations to EPA in March 2009 for the revised ozone NAAQS based on the three most recent consecutive calendar years of complete, certified monitoring data they will generally be using data from the 2005-2007 or 2006-2008 periods. When EPA issues final designations in March 2010, states could possibly have complete, certified data for 2009 so that EPA may base its determination on 2007-2009 data years. Thus, EPA is not looking at "old monitoring data" with a view to "re-branding" NAAQS violations as meeting the standard; instead, EPA is evaluating the three most recent years of complete, certified data that exist at the time of the designations, which are the relevant data years as required by 40 CFR Part 50, App. P.

Section 319's interim provision kept in place certain specific pre-existing guidance and rules regarding exceptional

events through the rulemaking period but only until the effective date of the EER. The EER became effective on May 21, 2007 and is applicable to regulatory decisions made after that date including decisions regarding exceptional events for the relevant data years that form the basis for such decisions. The designation of an area as attainment or non-attainment is based on the revised ozone NAAQS (not the older NAAQS) which was promulgated on March 12, 2008 - a year after the promulgation of the EER. The commenter's argument that the EER is not applicable to regulatory decisions under the revised March 2008 ozone NAAQS because it would be a retroactive application of the rule is thus without any basis.

The commenter's claim that for a measured concentration to qualify as an exceedance under the revised ozone NAAQS, it must have been at a concentration level greater than the older NAAQS which is not applicable or relevant to the present designation is clearly erroneous. The current designation determinations are based on the levels established by the revised ozone NAAQS, an "exceedance" in this instance is therefore clearly a concentration that exceeds the revised NAAQS. See 40 CFR 50.1 ("Exceedance with respect to a [NAAQS] means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard"). Thus, the commenter's policy

rationales (such as encouraging local authorities to cook the books) for not amending the schedules are also not persuasive because as explained above, EPA is permitting states to evaluate data under an amended schedule for the purposes of designations under the revised ozone NAAQS.

EPA believes it provided sufficient and appropriate explanation for its action including the explanations that the commenter quotes regarding how a state might not have known the criteria for excluding the data until the level and form of the NAAQS were promulgated. See NRDC Letter at pp.3-4. As for the comments regarding how certain submissions would not be timely under the EER, EPA notes that those reasons further support revising the schedule.

Comment: The commenter states that the revised schedule would unlawfully limit public participation for two reasons. First, the petitioner claims that flagging and submission of detailed documentation cannot have the same deadline because that would not allow for 30-day comment period by states before they submit their documentation. Second, if an event were to occur on December 31, 2009, a 30-day comment period would push the deadline to no earlier than January 31, 2010.

Response: In response to the commenter's second point EPA has modified the proposed deadline for 2009 and is now requiring that for exceptional events claims for 2009 data to be

considered, States must submit their completed documentation within 60 days of the end of a calendar quarter in which the exceptional event occurred or by February 5, 2010 whichever is earlier. This would provide sufficient time for a public comment period and provide EPA sufficient time to review data prior to making designations. As for commenter's first point, EPA anticipates that states generally will flag data before they submit documentation on an exceptional event. However, if a state has put its exceptional events documentation together, notified the public of its intent to flag the data and seek exclusion of the data and provided an opportunity for the public to comment on the demonstration, EPA believes it is not necessary in such instances to preclude consideration of such submissions because the data has not been flagged in the air quality database until the deadline. The more significant issue is whether the state has put together an adequate demonstration and provided an opportunity for public comment and included those comments in the submission to EPA. EPA concludes that the schedule as revised will provide adequate time for all of these steps.

Comment: The commenter notes that the EER has been challenged and that the United States Court of Appeals for the D.C. Circuit heard oral argument in NRDC v. EPA, Nos. 07-1151 & 08-1057(consolidated) on October 10, 2008 and an opinion is still

pending. The commenter states that given that there is a possibility that certain portions of the rule may be vacated and/or remanded to the Agency, the agency must delay finalizing its proposed amendment to the rule until after the D.C. Circuit announces its decision.

Response: The challenges to the rule cited by the commenter did not raise any issues relating to deadlines for flagging or submissions of documentation relating to exceptional events. The commenter has not brought to EPA's attention any support for its assertion that EPA "must" delay modifying the EER in the manner proposed by the commenter, and EPA is unaware of any such restriction. Therefore, EPA believes that its limited revision of the rule specifically only to address the deadlines related to flagging and submission of documentation is not at odds with and should not interfere with the Court's review of the challenge to the rule on other grounds.

#### **V. What Are The Amendments Included In The Final Rule?**

This final 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 **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. For data collected in 2008, the revised schedule accelerates the generic schedule for flagging data and providing a brief initial description of the event to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. The deadline for submitting to EPA a detailed demonstration to justify exclusion of data collected in 2005 through 2008 is also being set to **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. 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 60 days after the end of the calendar quarter in which the exceptional event occurred or February 5, 2010, whichever date occurs first. 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 to submit documentation relating to exceptional events, and would allow

EPA to have access to the flags and supporting data in time for EPA to evaluate the states recommendation and issue final designations. 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 final rule EPA amends §50.14 (c)(2)(vi) to add a tabular schedule of data submittal deadlines, by pollutant, for new or revised NAAQS standards. (PM<sub>2.5</sub> 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<sub>2.5</sub> data submittal schedule published in 72 FR 13560, March 22, 2007.) EPA anticipates providing amendments to the following table to add flagging and 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 <sub>2.5</sub> /24-Hr Standard (35 µg/m <sup>3</sup> ) Promulgated October 17, 2006	2004-2006	October 1, 2007 <sup>a</sup>	April 15, 2008 <sup>a</sup>
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008	2005-2007	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>
	2008	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>
	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first <sup>b</sup>	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first <sup>b</sup>
<p><sup>a</sup>These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.</p> <p><sup>b</sup>Indicates change from general schedule in 40 CFR 50.14.</p> <p>Note: EPA notes that the table of revised deadlines only 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>			

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4,

1993) and is therefore not subject to review under the EO.

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. 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 final rule 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.

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 final rule 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.

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.

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

This action is not subject to the Executive Order 13211 (66

FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved 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 final rule 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.

#### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

**List of Subjects in 40 CFR Part 50**

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone Particulate Matter, Sulfur oxides.

Dated: May 13, 2009

Lisa P. Jackson,  
Administrator.

For the reasons set forth in the preamble, part 50 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart A—General Provisions

2. Section 50.14 is amended by revising paragraph (c)(2)(vi) to read as follows:

§50.14 Treatment of air quality monitoring data influenced by exceptional events.

\* \* \* \* \*

(c) \*\*\*

(2) \*\*\*

(vi) When EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS: Table 1 provides the schedule for submission of flags with initial descriptions in AQS and detailed documentation and the schedule shall apply for those data which will or may influence the initial designation of areas for those NAAQS. EPA

anticipates revising Table 1 as necessary to accommodate revised data submission schedules for new or revised NAAQS.

**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 <sub>2.5</sub> /24-Hr Standard (35 µg/m <sup>3</sup> ) Promulgated October 17, 2006	2004-2006	October 1, 2007 <sup>a</sup>	April 15, 2008 <sup>a</sup>
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008	2005-2007	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>
	2008	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>	[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] <sup>b</sup>
	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first <sup>b</sup>	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first <sup>b</sup>

<sup>a</sup>These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

<sup>b</sup>Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines only 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.

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