



MATTHEW G. BEVIN  
GOVERNOR

CHARLES G. SNAVELY  
SECRETARY

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

DIVISION FOR AIR QUALITY  
200 FAIR OAKS LANE, 1<sup>ST</sup> FLOOR  
FRANKFORT, KENTUCKY 40601-1403  
Web site: air.ky.gov

February 1, 2016

Attention Docket No. EPA-HQ-OAR-2013-0572  
Environmental Protection Agency  
Mail Code 28221T  
1200 Pennsylvania Ave. NW.  
Washington, DC 20460.

RE: Comments on 40 CFR 50, Treatment of Data Influenced by Exceptional Events,  
Proposed Rule

The Kentucky Division for Air Quality (Division) respectfully submits the following comments in response to the November 20, 2015 Federal Register that proposes revisions to 40 CFR 50, Treatment of Data Influenced by Exceptional Events.

**Definition of an Exceptional Event**

In defining an exceptional event, the Division supports the proposed elimination of the “but for” criterion and incorporation of the “affects air quality” and “historical fluctuations” criteria into the larger “clear causal relationship” criterion. These changes would return the language of the rule to the core statutory concepts of the CAA section 319(b). [*Summary of Major Provisions, 80 FR 72843*]

**Guidance Documents not Provided for Comment**

The proposed rule further interprets CAA section 319(b) as applying to only certain types of regulatory actions because the process and steps specified in the CAA were not clearly intended by Congress to apply to all types of regulatory actions. The proposal goes on to state that there are five types of applicable regulatory actions (area designations, classifications, attainment designations, determinations regarding requests for attainment date extensions, and findings of SIP inadequacy leading to a SIP call), while still recognizing that the Exceptional Events Rule is not the sole governing authority for all data exclusions. [*V.C.2 What types of ambient concentration data and data uses may be affected by the Exceptional Events Rule?, Proposed Changes, 80 FR 72853*] The proposal specifically states “We address this concept in this document in general terms, but we also intend to develop a separate guidance document to provide guidance on when data can be excluded and when they cannot for other specific types of regulatory actions.” [*Summary of Major Provisions, 80 FR 72843*] The decision of EPA to provide a guidance document instead of a distinct proposal on this issue eliminates meaningful comment and participation from the public. EPA must fully propose the changes to other

specific types of regulatory actions in a separate rulemaking or re-propose to include implications of the changes made by included “general terms.”

### **Initial Area Designations and Redesignations**

On 80 FR 72853, the proposed rule states “This action proposes to require that data exclusion associated with the five actions in the above bulleted list (i.e., initial area designations, classifications, attainment designations, determinations regarding requests for attainment date extensions, and findings of SIP inadequacy leading to a SIP call) must follow the provisions in the Exceptional Events Rule.” While the Division understands that the above sentence is an attempt to summarize the referenced bulleted list, use of the terminology “initial area designations” implies that redesignations are not encompassed by the bulleted list. The Division suggests that the rule use the term “designations” instead. *[V.C.2 What types of ambient concentration data and data uses may be affected by the Exceptional Events Rule?, Proposed Changes, 80 FR 72853]*

### **Federal Land Managers and Demonstration Packages**

The Division does not support the proposal to allow Federal Land Managers (FLMs) and other federal agencies to submit exceptional event demonstrations. *[V.A.2 To whom and to what pollutants does the Exceptional Events Rule apply?, Proposed Changes, 80 FR 72848]* While the Division recognizes the importance of working with FLMs to prepare exceptional event demonstrations, the Division asserts that all demonstrations should be submitted to the EPA through the appropriate state, local, or tribal air agency, even if the regulatory air agency delegates the preparation of a demonstration to a FLM. The Division also understands that there may be rare cases when a potential exceptional event occurs on a federally-managed land-parcel that crosses jurisdictional boundaries. In such cases, the Division contends that cooperation between all involved agencies would be needed regardless of the agency actually submitting the demonstration. As such, delegating the responsibility of submitting demonstrations to FLMs is not necessary.

### **Prescribed Fire as a Resource Management Tool**

The Division applauds EPAs recognition of the importance of prescribed fire as a valuable tool for achieving a variety of ecological goals, as well as reducing those fuel loadings that lead to catastrophic wildfires. The proposed rule emphasizes the importance of fostering cooperative relationships with land management agencies.

### **Wildland Fire Definitions**

The Division supports the incorporation of important wildland fire definitions into the proposed rule. Most importantly, the Division supports the inclusion of the six minimum required elements of a State-Certified Smoke Management Plan (SMP) *[V.F.2.d Treatment of Certain Events Under the Exceptional Events Rule, Prescribed Fire, 80 FR 72872]*, while still recognizing that a mandatory State-Certified SMP may be most appropriate when multiple parties wish to employ prescribed fire at the same time and within the same airshed. *[V.F.2.d Treatment of Certain Events Under the Exceptional Events Rule, Prescribed Fire, 80 FR 72875]* As such, the EPA provides air agencies the flexibility to determine the best methods for limiting impacts of smoke in their state. Furthermore, the Division strongly supports the clarification

that the EPA does not propose that notifications between prescribed fire practitioners and state agencies be a condition for approval of an exceptional event. *[V.F.2.d Treatment of Certain Events Under the Exceptional Events Rule, Prescribed Fire, 80 FR 72874]*

### **Prescribed Fire on Agricultural Lands**

While the proposed rule extensively addresses prescribed fires that occur on wildlands, the proposal is ambiguous in the handling of data related to agricultural land maintenance. The Division suggests that the EPA add more language on the handling of prescribed fire events related to agriculture.

### **Best Smoke Management Practices**

The Division supports the inclusion of the National Wildfire Coordinating Group's common Best Smoke Management Practices (BSMPs) as a table within the rule. *[Proposed Table 2 to § 50.14, 80 FR 72895]* Additionally, the Division strongly supports the EPA's proposal to accept that BSMPs were followed during a prescribed fire based upon a fire manager's statement that an applicable BSMP was employed. Such a statement could be provided via a post-burn report or a letter. *[V.F.2.d Treatment of Certain Events Under the Exceptional Events Rule, Prescribed Fire, 80 FR 72873]*

### **Elements of a Burn Plan**

The Division suggests that *Table 4- Elements that may be Included in Burn Plans and Post-Burn Reports for Prescribed Fires Submitted as Exceptional Events* *[V.F.2.d Treatment of Certain Events Under the Exceptional Events Rule, Prescribed Fire, 80 FR 72873]* should have also been included as a proposed table to § 50.14 on 80 FR 72895.

### **Criteria for the Exclusion of Data**

In attempting to define the concept of "human activity unlikely to recur at a particular location," the Division strongly disagrees with using a periodic benchmark in which the third occurrence of an event would not meet the definition of "unlikely to recur" *[V.E.1 Technical Criteria for the Exclusion of Data Affected by Events, Proposed Changes, 80 FR 72856]*, specifically due to the potential implications on the use of prescribed fire. Such a benchmark directly contradicts the proposal to allow a multi-year land management plan to direct the frequency at which prescribed fire is conducted on a particular parcel of land. Similarly, the use of Air Quality Control Regions (AQCRs) for the purposes of the defining a boundary of a "particular location" *[V.E.1 Technical Criteria for the Exclusion of Data Affected by Events, Proposed Changes, 80 FR 72856]* could also have negative implications on the use of prescribed fire, especially considering that certain AQCRs are very large and could encompass innumerable parcels of land upon which prescribed fires could be conducted. The Division suggests using a receptor-based definition, in which a "particular location" is an ambient air monitoring station.

### **Data Handling in AQS**

Regarding the flagging of data in AQS, the proposed rule states that regulatory changes "would include eliminating the use of the current exceptional events data validation/data qualifier codes: The Request Exclusion flags (R) and the Informational Only flags (I)." *[V.G.4 Other Aspects of Flagging Exceptional Events-Influenced Data and Demonstration Submittal and Review,*

*Flagging of Data, 80 FR 72884]* The Division strongly objects to the elimination of *Informational Only (I)* flags. Foremost, the Division disagrees that the Exceptional Event Rule has any authority over the use of *Informational Only (I)* data qualifiers flags. Furthermore, the Division believes that removal of the *Informational Only (I)* flags would be detrimental to the overall quality of the data. Along with *Quality Assurance Qualifier (QA)* flags, *Informational Only (I)* flags enhance the narrative of a particular dataset. As providers of data, it is our responsibility to provide data-users with as much information as possible. The use or disregard of *Informational Only* qualifier flags should be at the discretion of the data user; as such, instead of eliminating *Informational Only (I)* flags, the EPA should work with air agencies to ensure consistent use of such flags. The removal of *Request Exclusion (R)* flags is inconsequential, as long as a method of flagging Exceptional Events is present.

Again, thank you for the opportunity to provide meaningful comments on the proposed rulemaking. If you have any questions regarding the comments above, please contact Ms. Jennifer Miller, Environmental Scientist V with the Technical Services Branch.

Sincerely,

A handwritten signature in black ink that reads "Sean Alteri". The signature is written in a cursive, slightly slanted style.

Sean Alteri,  
Director