~~**Draft**~~

MEMORANDUM

SUBJECT: Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

TO: Regional Air Directors, Regions I-X

This ~~summary document~~memorandum and its attachments[1] clarify key provisions of the 2007 Exceptional Events Rule (EER) to respond to questions and issues that have arisen since the rule was promulgated. The ~~draft~~interim guidance in this ~~document~~memorandum and the attachments, along with examples of approved demonstrations on the EPA's website[2]~~, are~~ (collectively the "interim exceptional events guidance materials"), is provided to help ensure ~~that the EPA's final guidance provides~~ an efficient and effective process to make determinations regarding air quality data affected by events. ~~The EPA notes that we released a previous version of these draft guidance documents to state, local, and tribal agencies, and to other parties as requested in May of 2011. The EPA incorporated some of the commenters' feedback into these revised draft guidance documents. An accounting of the preliminary comment and response process is documented in the docketed response to comments document.[3] The EPA notes that these draft guidance documents and the exceptional events website present examples to illustrate specific points. The example analyses and level of rigor are not necessarily required for all demonstrations. Please direct comments on these draft guidance documents to Docket ID No. EPA-HQ-OAR-2011-0887 by the comment deadline indicated in the Federal Register Notice of Availability. For guidance-related questions, please contact Beth W. Palma at 919-541-5432.~~ Our intent is to streamline processes and reduce costs for air agencies[4] preparing requests and the EPA offices reviewing these submittals. The EPA is neither setting new policies nor raising novel issues through this guidance.

[1] ~~Attachment 1, "Draft Exceptional Events Rule Frequently Asked Questions" (the draft Q&A document), Attachment 2, "Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule" (the draft High Winds Guidance document), and Attachment 3, "Request for Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule" (the Request for Comments document).~~

[2] Additional information and examples of exceptional event submissions and best practice components can be found at the EPA's Exceptional Events website located at *http://www.epa.gov/ttn/analysis/exevents.htm*.

[3] ~~Response to Comment document entitled, "Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule."~~

[4] References to "air agencies" are meant to include state, local, and tribal air agencies responsible for implementing the EER.

We first released draft exceptional events implementation guidance documents to air agencies, Federal Land Managers, and to other parties as requested, in May of 2011. We incorporated some of the commenters' feedback into the revised draft guidance documents, which were made available for broad public review in a July 6, 2012, *Federal Register* Notice of Availability (77 FR 39959) and in the associated docket (Docket ID No. EPA-HQ-OAR-2011-0887). An accounting of the comment and response process from the 2011 preliminary review is documented in the docketed response to comments document.[5]

One important difference between the interim exceptional events guidance documents released today and the draft guidance documents made available to the public via the July 2012 *Federal Register* Notice of Availability is the EPA's clarification that this interim guidance is intended to provide recommendations and to indicate the EPA's current thinking on exceptional event issues, rather than conveying requirements not already stated in the Clean Air Act (CAA) and the EER. Additionally, the EPA revised the interim guidance materials to correct typographical errors, to make editorial changes to reflect the December 14, 2012, promulgation of the fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), and to reflect terminology consistent with the ongoing ozone NAAQS review.

With this memorandum and its attachments, the EPA's Office of Air and Radiation is simultaneously announcing its intent to pursue revisions to the 2007 EER. We anticipate proposing these rule revisions in late 2013 or early 2014 and finalizing a revised rule in late 2014 or early 2015. As we move forward with a notice and comment rulemaking process, there will be an opportunity for all interested parties, including those that commented during the 2012 public comment period, to raise any issues or concerns. The EPA's regional offices should use the interim guidance as we undertake rule revisions because it is consistent with the EER and the guidance already provided in the preamble to the rule.

The interim guidance materials are based on the following principles:

1. Air agencies should not be held accountable for exceedances due to exceptional events that were beyond their control at the time of the event.
~~1.~~2. It is desirable to implement reasonable controls to protect public health.[6]
~~2.~~3. Clear expectations will enable the EPA and other air agencies to better manage resources related to the exceptional events process.

These ~~draft~~interim guidance materials identify the four independent criteria on which exclusion of event-affected data depends, describe the administrative process and associated timing for submittal and review of demonstrations, provide answers to frequently asked questions, and provide previously reviewed demonstrations and best practice components. The EPA recognizes the challenges that air agencies~~7~~ face in preparing exceptional event demonstration packages. The EPA also recognizes the

[5] Response to Comment document titled, "Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule."

[6] With respect to exceptional events, Section 319 of the Clean Air ActCAA states the following guiding principles (among others);

(i) the principle that protection of public health is the highest priority

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(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution

~~[7] References to "air agencies" are meant to include state, local, and tribal air agencies responsible for implementing the EER.~~

limited resources of the air agencies that prepare and submit exceptional event demonstration packages and of the EPA regional offices that review these demonstration packages. One of the EPA's goals in developing exceptional event implementation guidance is to establish clear expectations to enable affected air agencies to better manage resources as they prepare the documentation required under the EER. These interim guidance documents and the exceptional events website present examples to illustrate specific points. The ~~EPA expects submitters to~~example analyses and level of detail are not necessarily needed for all demonstrations. Submitters should prepare and submit the appropriate level of supporting documentation, which will vary on a case-by-case basis using the weight-of-evidence approach. The EPA ~~expects~~anticipates that the resources ~~required~~needed to prepare (and review) packages ~~to~~will decrease as we continue to identify ways to streamline the process and continue to build our database of example demonstrations and analyses. In addition, ~~the EPA acknowledges that certain~~ extreme exceptional ~~event cases~~events may ~~require~~justify a more limited demonstration ~~packages. This necessary case-by-case approach, however, makes the development of general guidance with bright lines difficult~~package.

~~This draft guidance overview document and its attachments are based on the following principles:~~
~~3. Air agencies should not be held accountable for exceedances due to events that were beyond their control at the time of the event.~~
4. ~~It is desirable to implement reasonable controls to protect public health.~~[8]
5. ~~Clear expectations will enable the EPA and other air agencies to better manage resources related to the exceptional events process.~~

Exceptional Event Rule Provisions

On March 22, 2007, the EPA promulgated the "Treatment of Data Influenced by Exceptional Events; Final Rule" (72 FR ~~at~~ 13560) pursuant to the 2005 amendment of ~~Clean Air Act (~~CAA~~)~~ Section 319. This rule, known as the ~~Exceptional Events Rule~~EER, superseded the EPA's previous natural events guidance and those sections of the interim fire policy document that address exceptional events.[9] The EER created a regulatory process codified at 40 CFR parts 50 and 51 (50.1, 50.14 and 51.930). These

~~[8] With respect to exceptional events, Section 319 of the Clean Air Act~~CAA ~~states the following guiding principles (among others);~~
~~(i) the principle that protection of public health is the highest priority~~
~~***~~
~~(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution~~

[9] Previous guidance and policy documents that either implied or documented the need for identifying data affected by an exceptional event include:
i) "Guideline for Interpretation of Air Quality Standards," U.S. EPA, OAQPS No. 1.2-008, Revised February 1977.
ii) "Guideline On the Identification and Use of Air Quality Data Affected by Exceptional Events" (the Exceptional Events Policy), U.S. EPA, OAQPS, July 1986.
iii) "Areas Affected by PM10 Natural Events" (the PM10 Natural Events Policy), memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, to the EPA regional offices, May 30, 1996.
iv) "The Interim Air Quality Policy on Wildland and Prescribed Fires" (the Interim Fire Policy), memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to the EPA regional administrators, May 15, 1998.
v) "Guideline on Data Handling Conventions for the PM NAAQS," U.S. EPA, OAQPS, EPA-454/R-98-017, December 1998.

regulatory sections contain definitions, procedural requirements, requirements for air agency demonstrations, and criteria for EPA approval for the exclusion of air quality data from regulatory decisions under the EER.

The definition of an exceptional event at 40 CFR §50.1(j) repeats the CAA definition, which provides that an exceptional event is one that affects air quality, is not reasonably controllable or preventable, and is caused by human activity that is unlikely to recur at a particular location or a natural event. 40 CFR §50.1(k) further defines a natural event as one in which human activity plays little or no direct causal role. Additional requirements in 40 CFR §50.14(a)(2) and (b)(1) identify that an air agency must demonstrate "a clear causal relationship between the measured exceedance or violation of such standard and the event" and that "an exceptional event caused a specific air pollution concentration in excess of one or more national ambient air quality standards." The rule further requires at 40 CFR §50.14(c)(3)(iv) that the demonstration to justify data exclusion shall provide evidence that the event is associated with a measured concentration in excess of normal historical fluctuations, including background, and evidence that there would have been no exceedance or violation but for the event.

Treatment of Technical Criteria for Exclusion of Data Affected by Events

When considered together, the EER provisions summarized above identify the following six elements that air agencies must address when requesting that the EPA exclude event-related concentrations from regulatory determinations:

- the event affected air quality
- the event was not reasonably controllable or preventable
- the event was caused by human activity that is unlikely to recur at a particular location, or was a natural event
- there exists a clear causal relationship between the specific event and the monitored concentration
- the event is associated with a measured concentration in excess of normal historical fluctuations including background
- there would have been no exceedance or violation but for the event

In reviewing exceptional events demonstration packages, the EPA has found that the following EER elements, along with historical fluctuations, play a significant role in the air agencies' supporting documentation:

1. not reasonably controllable or preventable
2. if the event was caused by human activity, that human activity is unlikely to recur at a particular location[10]

[10] ~~The remaining part of this criterion, "or a natural event" is intentionally omitted here.~~[10] Neither the statutory nor regulatory definition of "exceptional event" requires a demonstration of "unlikely to recur" for natural events.

3. clear causal relationship between specific event and monitored concentration
4. no exceedance or violation but for the event[11]

As described in the ~~draft~~interim guidance ~~documents~~materials, the EPA's technical review of a demonstration package ~~would~~ therefore ~~focus~~focuses on these elements. While the EER requires and the EPA ~~expects~~anticipates complete demonstration packages to contain narrative and evidence supporting all six elements, the EPA's position is that these four elements represent distinct facts ~~that~~for air agencies ~~must~~to demonstrate for the EPA to concur on an event claim.[12] ~~Note that if~~If an event is natural, then the second element ~~is~~(e.g., human activity unlikely to recur) is generally not considered in a demonstration review. In the case of an event that is initiated by a natural process, such as a volcano or high wind dust event, the event would be considered a natural event if sources are entirely natural or contributing anthropogenic sources are reasonably controlled.[13] This concept is explained in more detail in Attachment 2, the ~~draft~~interim High Winds Guidance document.

The EPA recognizes the inherent ~~links~~linkages between all six elements and expects that some sections of a demonstration package (e.g., affects air quality, natural event) may repeat or refer to other sections of the demonstration package (e.g., clear causal relationship, but for). Further, each potential event can have varied and differing characteristics, and thus would usually ~~require~~necessitate a case-specific demonstration and evaluation. Therefore, the EPA would use a "weight-of-evidence" approach in evaluating each element within an exceptional event demonstration package.

In the ~~draft~~interim guidance ~~documents~~materials, the requirement that the event was not reasonably controllable or preventable, which is part of the definition of an exceptional event in both the ~~Clean Air~~

[11] Criteria 1, 3, and 4 on this list, along with historical fluctuations, are considered "independent elements" in the ~~draft~~interim High Winds Guidance document.

[12] ~~While the "historical fluctuations element"~~[12] The EPA generally does not consider the two remaining elements, "affects air quality" and "historical fluctuations," to represent "distinct facts." The EPA believes that the "affects air quality" element is generally satisfied once the air agency satisfies the clear causal and historical fluctuations showings. While the "historical fluctuations" element is considered an independent element, it also plays an important role in the "clear causal relationship" and "no exceedance but for" demonstrations. The EPA will review air agency submissions using a weight-of-evidence approach. The ~~state's~~air agency's role in satisfying this element is to provide appropriate analyses and statistics comparing the event-affected concentration to normal historical fluctuations and conclude that the provided data show that the event was in excess of normal historical fluctuations. The EPA will review the information provided by the air agency. "Normal historical fluctuations" will generally be defined by those days without events for the previous years. The EPA acknowledges that natural events can recur and still be eligible for exclusion under the EER; therefore, events do not necessarily have to be rare to satisfy this element. However, in most cases, the EPA ~~expects~~anticipates that ~~failure of the~~less conclusive "historical fluctuations" ~~element indicates~~comparisons will likely ~~failure for~~indicate less conclusive "clear causal relationship" and/or "no exceedance but for" ~~as well~~relationships.

[13] ~~Human~~The EPA will generally consider human activity ~~would be considered~~ to have played little or no *direct* ~~causal~~ role in causing ~~the entrainment~~emissions of the dust generated by high wind for purposes of the regulatory definition of "natural event" if contributing anthropogenic sources of dust are reasonably controlled, regardless of the amount of dust coming from these reasonably controlled anthropogenic sources, and thus the event ~~would be considered a natural event~~could be considered a natural event. In such cases, the EPA believes that it would generally be a reasonable interpretation of its regulations to find that the anthropogenic source had "little" direct causal role. If anthropogenic sources ~~contributed significantly to a measured concentration (or if emissions from anthropogenic sources alone would have resulted in an exceedance or violation of the NAAQS) and these same emissions from anthropogenic sources are affected by an event and~~of windblown dust that are reasonably controllable but that did not have those reasonable controls applied at the time of the ~~event, then~~high wind event have contributed significantly to a measured concentration, the event would not be considered a natural event. See footnote 11, 72 FR 13566.

~~Act~~CAA and the EER, would mean that if a set of control measures ~~*could*~~*should reasonably have been in place* for contributing sources at the time of the event, then ~~they~~it *must* have been in place for the event to qualify as an exceptional event under the EER. ~~This~~ Whether a set of controls should reasonably have been in place is event-, time-, and place-dependent, and involves judgement by the air agency when preparing the demonstration and by the EPA when reviewing the demonstration. The EER requirement for reasonable control applies to all events but is more complicated for high wind dust events because ~~the event~~these events typically ~~includes~~include both natural and anthropogenic sources of dust. In contrast, an event such as a lightning-induced wildfire generally does not include an anthropogenic contribution to the event.[14] Among other factors to consider, reasonableness would need to be judged in light of the technical information available to the air agency at the time the event occurred. The EPA ~~would expect for~~anticipates that nonattainment areas ~~to~~ already have the technical information needed to reasonably control anthropogenic sources in their jurisdiction. ~~It would be important that each demonstration package address the question of reasonable controls.~~ Generally, the EPA does not expect areas classified as attainment, unclassifiable, or maintenance for a NAAQS to have the same level of controls as areas that are nonattainment for the same NAAQS. Also, if an area has been recently designated to nonattainment but has not yet been required to implement controls, the EPA will expect the level of controls that is appropriate for the planning stage. Regardless of attainment status or natural/anthropogenic source contribution, each demonstration package should address the question of reasonable controls. ~~As with the other elements, whether an event was not reasonably controllable or preventable would be evaluated on a case-by-case basis.~~ In general, reasonable controls would not include any control on emissions-generating activity outside of the state or tribal boundaries of the state (or tribal lands) within which the concentration at issue was monitored. As with the other elements, whether an event was not reasonably controllable or preventable would be evaluated on a case-by-case basis. If and when the EPA takes a regulatory action that hinges on a decision to exclude data under the EER, the EPA will consider and appropriately respond to any public comments on whether the event was "not reasonably controllable or preventable."

Timing of EER Demonstration Package Submittal and Review

The EPA understands that the initial identification of data affected by exceptional events and the subsequent preparation, submittal, and review of demonstration packages is a resource intensive process. Delays in processing and making decisions on submitted packages create regulatory uncertainty and potentially increase the workload for both the submitting air agency and the EPA. In addition, the backlog of pending actions makes retrieval of data to support new submittals potentially more difficult. Further, air agencies and the EPA often face timelines by which they must make regulatory decisions that can be affected by the inclusion or exclusion of event-affected data.

The EPA will work with air agencies as they prepare complete demonstration packages that meet the requirements of the EER. In an effort to streamline this identification, preparation, submittal, and review process, the EPA has developed the following ~~draft~~interim guidelines.

[14] The EPA recognizes that wildfires and emissions from wildfires are generally not reasonable to prevent or control. Although the EER requires documentation of this criterion for all event types, the EPA believes that it will generally be sufficient for air agencies to provide a brief statement to document the "not reasonably controllable or preventable" criterion for wildfires. See Question 20b of the *Interim Exceptional Events Rule Frequently Asked Questions* document for example language.

1. Identification of data affected by exceptional events in the EPA's Air Quality System (AQS) – The EPA is aware that air agencies routinely review their air quality monitoring data, which may result in the identification of certain data being affected by an exceptional event. Although air agencies may flag any data in AQS that they wish to flag, the EPA encourages air agencies to flag only data that might have a regulatory consequence and for which an approvable demonstration is likely.[15] Should air agencies wish to flag values for informational purposes, the EPA prefers that they use the AQS flags intended for this purpose.

2a. Air agency submittal of letter of intent to submit a package *(optional)* – To promote early communication, the EPA suggests that air agencies provide a letter of intent to submit a demonstration package for flagged data in AQS as soon as possible, if possible within 12 months from the event occurrence, after the air agency identifies the event(s) as being significant.[16] This initial notification can assist both the air agency and the EPA in the planning and prioritization process.

2b. Air agency notification of intent to submit a package *(optional)* - Air agencies choosing not to submit a letter of intent are still encouraged to contact their EPA regional office more informally to alert it of the forthcoming demonstration submittal.

3. EPA response to air agency letter of intent – The EPA anticipates responding to the air agency's letter of intent within 60 days of receipt. The EPA response will provide the regional office's best assessment of the priority that can be given to the submission once received and any case-specific advice the EPA may have to offer for the preparation of the demonstration.

4. Air agency submittal of exceptional event demonstration packages[17] – Air agencies should prepare a technical demonstration package, taking into account the information in the EPA's guidance documents, which shows that a particular air quality monitored value(s) ~~is~~was influenced by an exceptional event. The EPA acknowledges that ~~certain~~ extreme exceptional ~~event cases~~events may ~~lessen the technical burden associated with~~justify more limited demonstration packages. Air agencies that believe their demonstration packages are tied to near-term regulatory actions should submit their demonstration packages well in advance of the

[15] ~~States~~Air agencies should place flags and an initial event description in AQS either in accordance with the special schedules promulgated with new or revised NAAQS or in accordance with the general AQS data submission schedules (i.e., within 90 days of the end of the previous quarter) but not later than July 1st of the calendar year following the event in which the flagged measurement occurred. Note that for data certification purposes, ~~it is~~we recommended ~~to flag~~flagging data prior to ~~submittal of~~submitting data certification (May 1st).

[16] The Letter of Intent is an optional step and the EPA recognizes that ~~states~~air agencies may need additional time to prepare and submit demonstration packages particularly where the basis of the exclusion is violating an annual standard or a 3-year design value. Similarly, ~~a state~~an air agency could consider submitting an annual letter of intent if annual submittal makes sense for resource planning or for historically seasonal events. If ~~a state~~an air agency decides to submit a letter of intent, the EPA recommends that it be submitted as expeditiously as possible after the ~~state~~air agency identifies the event or events as having significance.

[17] The general schedule in the EER allows ~~states~~air agencies to submit packages up to 3 years following the end of the calendar quarter in which the event occurred, or 12 months prior to the date that a regulatory decision must be made by the EPA. When the EPA promulgates a new or revised NAAQS, we may change this schedule to allow air agencies to flag and submit documentation for data relevant to the new/revised NAAQS.

regulatory deadline. Air agencies should also identify the relationship between the exceptional event-related flagged data and the anticipated regulatory action in the cover letter that accompanies their initial submittal package to the reviewing EPA regional office.

5. EPA prioritization of submitted demonstration packages – The EPA will generally give priority to exceptional event determinations that may affect near-term regulatory decisions, such as state implementation plan (SIP) submittal actions, ~~National Ambient Air Quality Standards (~~NAAQS~~)~~ designations, and clean data findings.

6. EPA review of prioritized demonstration packages – The EPA generally intends to conduct its initial review of a submitted exceptional event demonstration package within 120 days of receipt. Following this initial review, the EPA will generally send a letter to the submitting air agency that includes a completeness determination and/or a request for additional information, a date by which the supplemental information should be submitted (if applicable), and an indicator of the timing of the EPA's final review. The EPA encourages air agencies to provide supplemental information ~~if needed and requested by~~for which the EPA asks. The EPA anticipates a 60-day response time for states to provide additional requested information.[18] The EPA intends to make a decision regarding event concurrence ~~within 18 months of submittal of a complete package, or sooner~~as expeditiously as necessary if required by a near-term regulatory action~~.~~, but no later than 18 months following submittal of a complete package. Determinations on ~~Exceptional Event~~exceptional event demonstrations do not constitute final agency action until they are relied upon in a regulatory decision such as a finding of attainment or nonattainment which will be conducted through notice-and-comment rulemaking procedures.

Interim Exceptional Events Rule Frequently Asked Questions Document (Attachment 1)

The "~~Draft~~Interim Exceptional Events Rule Frequently Asked Questions" document (the ~~draft~~interim Q&A document) provides ~~draft~~interim responses to questions that have arisen since the ~~EER was~~EPA promulgated the EER. The questions are grouped into six broad areas. The EPA encourages those involved in flagging data and preparing demonstration packages to review the ~~draft~~ questions and answers~~,~~ and to provide input regarding their usefulness and appropriateness and regarding additional questions which need answers. The following bullets identify key points of interest in the ~~draft~~interim Q&A document:

- Natural events, such as volcanic eruptions, do not have to be infrequent to qualify as exceptional events under the EER~~.~~ (see Question 1 of the interim Q&A document). Frequent events with natural triggers that have a contribution from anthropogenic activities that are reasonably controlled could be eligible "exceptional" events, provided the events meet the demonstration requirements for the technical criteria.

- The EER does not prohibit air agencies from flagging individual concentration values below the level of the NAAQS. However, in general, only such data that contribute to a violation of the

[18]The EPA recognizes that ~~states~~air agencies may need more than 60 days to prepare and submit some types of supplemental information. The EPA ~~is willing to~~will work with air agencies on supplemental timeframes; however, the mandatory timing of the EPA actions may limit the response time the EPA allows.

NAAQS are excludable. Questions 29-31 ~~of the draft Q&A document~~ describe the few, limited situations in which concentration values below the level of the NAAQS contribute to violations of the NAAQS.

- An event that an air agency has concluded is associated with a measured concentration "in excess of normal historical fluctuations" will be reviewed using a weight-of-evidence approach. The comparison of the measured concentration to normal historical concentrations will also influence how much information is needed to successfully meet other technical elements. For example, when the observed concentration is high compared to historical concentrations, the EPA may ~~require~~need less additional evidence to demonstrate the "but for" finding. ~~The draft Q&A document provides~~ Questions 1-5 provide recommendations for showing how the observed concentration compares to the distribution of historical concentrations.

- Question 6 ~~in the draft Q&A document~~ describes types of evidence that could be submitted as part of a demonstration showing that an ozone exceedance would not have occurred but for the effect of a fire event. In particular, statistical or photochemical dispersion model predictions of the ozone concentration that would have occurred in the absence of the fire would be a relevant type of evidence, provided the demonstration package is transparent about the technical basis for the model and its uncertainties. Also, as noted below, the EPA intends to develop a separate draft document to provide guidance ~~document~~ in preparing demonstrations for ~~fire~~wildfire-related events that influence ambient ozone concentrations.

- Not every natural or infrequent anthropogenic event that affects air quality is a true "exceptional event" under the definition of that term in the ~~Exceptional Event Rule.~~EER. Ambient data affected by an event that does not meet the "but for" criterion cannot be excluded under the authority of the ~~Exceptional Events Rule~~EER even if in all other respects the event meets the definition of an exceptional event. The ~~Exceptional Events Rule~~EER does not address data handling associated with events that are not considered "exceptional" under the EER, and does not provide the EPA with authority to exclude such data. Yet, the event-related concentration could still ~~impact~~influence design values. An air agency incorporating the event-related concentration in a design value used for a prospective attainment demonstration might seem to need more emission reductions to attain the NAAQS by its attainment deadline than is actually the case. The EPA plans to more formally address this topic on a pollutant/NAAQS basis, the first of which will be ozone guidance in the preamble of a soon-to-be-proposed rulemaking on SIP requirements for areas designated nonattainment for the 2008 ozone NAAQS. Until the planned guidance for a pollutant and NAAQS of interest is issued, air agencies should consult with their EPA regional office if they face this situation. The EPA further discusses this issue in Question 13 ~~in the draft Q&A document~~.

- To remove any possible confusion, the passages of the preamble that were declared to be a legal nullity by the court that reviewed the EER are specifically identified in Question 20 ~~in the draft Q&A document.~~[19] .[20] While air agencies cannot rely ~~solely~~ on these passages as the EPA

[19] ~~See *NRDC v. EPA*, No. 07-1151 (D.C. Cir. 3/20/09).~~
[20] See *NRDC v. EPA*, No. 07-1151 (D.C. Cir. 3/20/09).

guidance on interpretation of the EER, this ~~draft~~interim guidance overview document and its attachments are consistent with those sections.

- The EPA identifies in Question 28a ~~of the Q&A document~~ currently existing mechanisms that air agencies can use at various points in the exceptional events process to resolve disagreements regarding non-concurrence on submittal packages.

Interim High Winds Guidance Document (Attachment 2)

The attached "~~Draft~~Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds ~~under~~Under the Exceptional Events Rule" (the High Winds Guidance document) ~~when finalized will be~~is a resource for air agencies when flagging data and preparing demonstrations packages for high wind dust events that have affected ~~PM_{10} and $PM_{2.5}$~~particulate matter concentrations~~.~~ – both particles less than or equal to 10 micrometers (µm) in diameter (PM_{10}) and $PM_{2.5}$. The ~~draft~~interim document applies the provisions of the EER, the general guidance conveyed in this memorandum, and the general guidance ~~conveyed in this draft guidance overview document and in the draft~~in the interim Q&A document to the particular situation of a high wind dust event. While the document is specific to high wind dust events, it outlines how the EPA generally intends to implement the preparation and review process for exceptional events and, therefore, may have relevance for other types of exceptional events. The following are some of the highlights of the ~~draft~~interim High Winds Guidance document:

- In nonattainment areas, a reference point for considering what constitutes reasonable control of wind-blown dust during high wind events would be the set of measures that are identified as Reasonably Available Control Measures (RACM) or Best Available Control Measures (BACM) in the approved SIPs of other areas with similar wind-blown dust conditions, depending on area classification. ~~USDA best~~ U.S. Department of Agriculture (USDA) / Natural Resources Conservation Service (NRCS)-approved conservation management practices designed to effectively reduce fugitive dust air emissions and prevent loss of soil during high winds could also be considered ~~if applicable to the~~. All dust ~~source. Also, RACM~~ -related control measures and/or ~~BACM~~dust suppression measures in an area's own approved SIP should be considered part of the ~~reasonable~~ set of controls that would have been reasonable to have been in place at the time of the event. The assessment of whether an event was not reasonably controllable will be made on a case-by-case basis ~~considering all the facts.~~. Like other elements included in an exceptional events demonstration, when the EPA takes a regulatory action that hinges on a decision to exclude data under the EER, the EPA will consider and appropriately respond to any public comments on whether the event was "not reasonably controllable or preventable."

- Reasonable controls generally would not need to be implemented for wind-blown dust from undisturbed natural landscapes or previously disturbed landscapes that are being allowed to return to natural conditions.

- For purposes of qualifying for the exclusion of data affected by wind events with sustained wind speeds above 25 miles per hour (or above another threshold determined to be appropriate for a particular area), the demonstration of reasonable controls applied to disturbed landscapes and

other anthropogenic sources of dust could be less rigorous because: (1) the contribution from natural undisturbed lands is likely to be high and, (2) at such high wind speeds many available controls would have been ineffective in significantly reducing wind-generated dust emissions.

- In response to commenter feedback, the EPA has ~~developed and~~ added the *optional* prospective controls analysis~~ as a means of documenting~~, which air agencies can prepare to document *existing* controls and ~~reaching up-front agreement as to what constitutes "reasonable" controls~~facilitate the EPA's review and evaluation of the not reasonably controllable and preventable criterion. In the prospective controls analysis, the air agency would provide information on attainment status, identify natural and anthropogenic windblown dust sources and emissions, provide the status of SIP submittals and their implementation (if applicable), and identify the wind speed up to which the collective windblown dust controls are expected to be effective. Air agencies would submit their prospective controls analysis in advance of an air agency submittal and the EPA review of any specific demonstration submittal, with a letter of intent, or with their demonstration package submittal. The EPA review and approval of controls and an appropriate high wind threshold would ~~also~~ typically be effective for a minimum of three years.

- If the EPA has approved a SIP containing wind-blown dust controls within the past three years, then the submitting air agency has the option of using their current, implemented SIP-approved controls and specifying a high wind threshold to which the controls are expected to be effective to constitute the set of controls that would have been reasonable to implement.

- ~~The EPA would further encourage air~~Air agencies are encouraged to work with the EPA regional offices to develop High Wind Action Plans, which need not be incorporated into the SIP, as a way to develop a mutual understanding of what additional controls are reasonable to implement in light of foreseeable high wind conditions. Similar to a Natural Events Action Plan[21], the optional High Wind Action Plan is a mechanism to implement necessary controls on newly-identified sources needing reasonable controls such that the EPA could consider future high wind events not reasonably controllable or preventable.

~~Requests for Comments (Attachment 3)~~

~~As part of the public comment process, the EPA is soliciting feedback on a series of questions that address the following topics:~~

- ~~specific, broadly applicable, streamlining mechanisms~~
- ~~available web-based information, links, tools, or methodologies~~
- ~~available sources of wind data and their applicability in informing local high wind thresholds~~
- ~~additional feedback and tools to convert 1-5 minute wind speed data to hourly averages~~

[21]On May 30, 1996, Mary D. Nichols, Assistant Administrator for Air and Radiation issued a memorandum to the EPA regional offices ~~entitled~~titled, "Areas Affected by PM_{10} Natural Events." The policy, known as the PM_{10} Natural Events Policy, or simply the Natural Events Policy, set forth procedures for protecting public health through the development of a Natural Events Action Plan ~~(NEAP),~~ which implements Best Available Control Measures ~~(BACM)~~ for human-generated particulate emissions in areas that could violate the PM_{10} NAAQS due to natural events. Promulgation of the ~~Exceptional Events Rule~~EER superseded the Natural Events Policy.

- ~~the anticipated use and functionality of the prospective controls analysis and the high wind action plan~~
- ~~technical analyses that can be used to demonstrate that the wind exceeded an identified high wind threshold and that the exceedance was caused by emissions that were not reasonably controllable~~
- ~~the utility and functionality of "Informational Only" ("I") flags in AQS~~
- ~~characterizing "extreme" events~~

On-line Availability of Exceptional Event Packages and Best Practice Components

To assist air agencies in deciding what type and how much evidence/technical analysis to include in their demonstration packages, the EPA has developed a public website at ~~http://www.epa.gov/ttn/analysis/exevents.htm~~*http://www.epa.gov/ttn/analysis/exevents.htm* that contains EPA-approved demonstration packages and links to best~~-~~ practice components. The EPA developed this website to provide examples to illustrate specific points; the example analyses and level of rigor are not necessarily ~~required~~needed for all demonstrations. The website will continue to evolve as air agencies submit~~,~~ and the EPA reviews~~,~~ additional demonstration packages.

Draft Guidance ~~Documents Still under~~Under Development

The EPA ~~intends to develop~~ is currently developing a separate draft guidance document addressing the preparation of demonstrations to support data exclusion requests for wildfire-related ~~event claims, including~~ events that may have affected ozone concentrations. We ~~also intend to develop a~~anticipate preparing this guidance within the same timeframe as the EER revisions with draft ~~document that when finalized would replace the Interim Fire Policy~~guidance available in late 2013/early 2014 and ~~would contain additional guidance on basic smoke management practices for prescribed fires. The EPA has not established a schedule for developing these documents~~final guidance available in late 2014/early 2015. We ~~expect to~~will provide ~~opportunities~~an opportunity for stakeholder input on ~~these draft documents.~~ this guidance.

Conclusion

~~The EPA intends to follow~~Regional offices should use the ~~draft~~interim guidance provided in this overview document and its attachments ~~during the public comment period and document finalization process~~as we undertake rule revisions, because ~~we believe~~ it is consistent with the ~~Exceptional Events Rule~~EER and the guidance already provided in the preamble to the rule. ~~Although the EPA hopes to formalize the concepts~~

Staff in ~~these guidance documents by issuing final guidance, the EPA has not excluded the possibility of issuing rule revisions. The EPA is deferring a decision on whether to revise the Exceptional Events Rule.~~

~~The~~the EPA's Office of Air Quality Planning and Standards ~~and the EPA regional offices~~ are available for assistance and consultation. ~~Interested parties may direct comments on this guidance to Docket ID~~

~~No. EPA-HQ-OAR-2011-0887. For~~For interim guidance-related questions, please contact Beth W. Palma at ~~(~~919~~-~~) 541-5432 or *palma.elizabeth@epa.gov*.

Attachments:

1. ~~Draft~~Interim Exceptional Events Rule Frequently Asked Questions

2. ~~Draft~~Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds ~~under~~Under the Exceptional Events Rule

~~3. Request for Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule~~