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EPA Docket Center
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1200 Pennsylvania Avenue, NW
Washington, DC 20460

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposal, entitled *Treatment of Data Influenced by Exceptional Events*, as published in the *Federal Register* on November 20, 2015 (80 Fed. Reg. 72,839). NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 40 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

This proposal seeks to make revisions to EPA's existing Exceptional Events Rule (EER). The general purpose of the EER is to ensure that monitored air quality data over which a state or local air pollution control agency has little or no control (i.e., data related to "exceptional events") do not bias regulatory decisions under the Clean Air Act and to allow states and localities to exclude data affected by exceptional events when regulatory decisions are made. The EER is of significant importance to states and localities across the country and NACAA has a history of providing comments and recommendations to EPA on this issue. Our association appreciates and supports EPA's overall effort in this proposal seeking to improve the effectiveness and implementation of the current rule. Below we provide comments and recommendations regarding several key aspects of this proposal.

Elimination of the "but-for" criterion

To define what constitutes an Exceptional Event (EE), EPA proposes to remove from the EER the "but-for" criterion – that in order for data to be excluded, a state or locality must demonstrate that "there would have been no exceedance or violation but for the event." Instead, EPA proposes to revert to the core statutory elements and concepts of Section 319(b) the Clean Air Act (CAA) and to focus on whether the event 1) affected air quality in such a way that there exists a clear causal relationship between the specific

event and the monitored exceedance or violation, 2) was not reasonably controllable or preventable and 3) was caused by human activity that is unlikely to recur at a particular location or was a natural event.

NACAA supports eliminating the “but-for” test from the EER. When EPA instituted this requirement, it committed in the rule’s preamble to publish a proposed rule establishing the parameters for making a “but-for” demonstration once EPA “determine[s] that techniques for adjustments of air quality data are sufficiently well demonstrated for use in exceptional events determinations.” No such proposal ever materialized nor did the agency ever provide a clear explanation of how to make such a demonstration. Accordingly, we are pleased EPA is proposing to eliminate this requirement.

Submittal by Federal Land Managers of EE demonstrations

Although authority to submit EE demonstrations has always been reserved for state and local air pollution control agencies, and appropriately so, EPA now proposes to authorize Federal Land Managers (FLMs) and other federal agencies to prepare and submit exceptional events demonstrations directly to EPA.

NACAA opposes this proposed provision. FLMs can play a valuable role in the EE process – including, among other things, assembling data – and state and local air agencies welcome such participation and support. However, state and local air agencies have primary responsibility under the Clean Air Act for protecting air quality and, thus, it is essential that they retain sole authority for determining when to submit an EE demonstration to EPA – and what the nature of the submittal will be – and for making the submittal.

Best Smoke Management Practices

Under the EER, an EE request can either refer to a Smoke Management Program (SMP) or the fire manager may instead state that Best Smoke Management Practices (BSMP) have been employed. In the case of BSMPs, the fire manager may determine what is included given the circumstances.

NACAA is concerned about the potential for determination of BSMPs without any role for the air agency. For areas without an SMP that wish to take advantage of the EER, NACAA recommends that EPA include in the rule a requirement for a concurrence role for the air agency to ensure that any BSMPs employed appropriately consider and address air quality and public health issues.

Not reasonably controllable or preventable

EPA proposes to allow the enforceable control measures in a nonattainment area's attainment or maintenance State Implementation Plan (SIP) approved by EPA within five years of the date of a demonstration submittal, and which address the event-related pollutant and all sources necessary to fulfill CAA requirements, to be considered reasonable controls and, therefore, eligible for use in an EE demonstration.

NACAA supports the concept of this proposed provision but recommends that the provision be revised so that the timeframe is within five years of the date of the event at issue (rather than five years from the date of a demonstration submittal). We further recommend that this approach also apply to attainment and unclassifiable areas, and that EPA provide, prospectively, a clear indication of what set of

controls EPA would, without question, deem acceptable for an EE demonstration – that is, what would receive *de facto* EPA approval. While not ruling out other possible controls that could also be deemed acceptable, this prospective information from EPA would establish the basis for ongoing communication between the EPA Regional Office and the state or local air agency about necessary controls in advance of any event, thus avoiding a situation where EPA retrospectively, after an event, expresses concerns about the types of controls a state should have had in place.

Dispute resolution

Although EPA acknowledges in the proposal the expressed concerns of some “interested parties” about the resolution of disputes and their desire for a formally identified dispute resolution process, the agency contends that several mechanisms currently exist that air agencies can use at various points in the EE process should disputes arise.

NACAA is one such “interested party” that has expressed concern in the past over the lack of an effective avenue for states and localities that wish to challenge an EPA denial of an EE request or a failure by EPA to respond to a request. We did not believe then, and we do not believe now, that adequate or appropriate opportunities do, in fact, exist and we continue to urge EPA to establish a dispute resolution process. NACAA would welcome the opportunity to work with EPA to develop such a process.

Types of data and data uses that may be affected by the EER

EPA states in the proposal that it believes Section 319(b) of the CAA clearly applies to exclusions of ambient data from determinations of whether a National Ambient Air Quality Standard (NAAQS) exceedance or violation occurred at an ambient monitoring site at a particular time in the past. The agency believes, however, that it is not clear whether the CAA means that data should be excluded from determinations of whether a NAAQS exceedance or violation will, or is likely to, occur in the future. Therefore, EPA proposes to “provide greater regulatory certainty” by interpreting the statutory phrase, “determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards” in Section 319(b), as encompassing determinations of current or historical NAAQS exceedances/violations and determinations of air quality design values at particular receptor sites when made as part of the basis for any one of five specified types of regulatory actions (i.e., actions of “regulatory significance”), generally related to 1) area designation or redesignation, 2) classification, 3) determination of attainment, 4) eligibility for a 1-year attainment date extension and 5) a finding of SIP inadequacy that would lead to a SIP call.

NACAA supports EPA’s identification of the five types of actions deemed to be of regulatory significance. We believe, however, there may be other actions that could qualify as actions of regulatory significance and, therefore, recommend that EPA include in the final rule a mechanism whereby the state or local air agency and EPA Regional Office can identify, on a case-by-case basis, other actions that should be considered for exclusion as an exceptional event under the EER. NACAA also recommends that EPA include in the EER timeframes for action under which 1) EPA would respond to state/local submittals within 120 days with a completeness letter and an indication of any additional information that is needed and 2) EPA would have 12 months from the date it received the EE submittal to take action to concur with the submittal or explain why it does not concur. NACAA further recommends that EPA allow, and take action on, demonstrations in unclassifiable and attainment areas if there are compelling reasons to do so.

Mitigation plans

NACAA supports the regulatory requirements under 40 CFR 51.930 that air agencies requesting data exclusion “take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS” including by providing for “the implementation of appropriate measures to protect public health from exceedances or violations of ambient air quality standards caused by exceptional events.” With respect to these requirements, EPA proposes two options for its review of mitigation plans in EE demonstrations: 1) EPA reviews a plan for completeness (i.e., all required elements are included and there was a public comment process) but not for substance or 2) EPA reviews a plan for completeness and also for substance, making EPA approval of the substance of the plan a precondition of the agency’s concurrence with an EE demonstration.

NACAA supports Option 1, under which EPA reviews for completeness only, which is consistent with EPA’s current review practice and which, appropriately, provides flexibility and defers to states and localities to determine how best to approach mitigation and public notification in their respective jurisdictions.

Once again, we thank you for this opportunity to provide NACAA’s views on the proposed revisions to the EER. We look forward to working with EPA and other stakeholders on this important issue. If you have any questions, feel free to contact either of us or Nancy Kruger, NACAA’s Deputy Director.

Sincerely,



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