0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public to discuss the proposed rule for appeals of MMS orders. The comment period for this proposed rule closes on March 15, 1999. The intent of the meeting is to provide information to, and receive comments from oil, gas, solid mineral and geothermal companies, trade associations, States, Indian mineral owners (tribes and individuals), and any other interested parties concerning the variety of issues contained in the proposed rule.

Space is limited. Attendees should reserve slots with Ms. Dixie Lee Pritchard at the telephone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than February 5, 1999. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meeting.

Dated: January 13, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–1266 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 009–FIP FRL–6221–3]

RIN 2060–A122

Revision to Promulgation of Federal Implementation Plan for Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or ''the Act''), EPA is proposing amendments to the moderate area federal implementation plan (FIP) for the Phoenix PM–10 nonattainment area (63 FR 41326, August 3, 1998). These amendments would modify the fugitive dust rule to add or replace certain test methods, include coverage of unpaved roads neither owned nor maintained by a public entity and allow alternative control measures (ACMs) to be implemented without prior EPA approval.

EPA recently established a new standard for PM–2.5 and also revised the PM–10 standards; however, today's action does not address those standards.

DATES: Written comments will be accepted until March 8, 1999. EPA does not currently plan on holding a public hearing. If EPA receives a significant number of requests for a public hearing on the contents of today's proposal, EPA will schedule and notify the public of the hearing in a separate notice.

ADDRESSES: Written comments on EPA's proposed FIP amendments must be received by EPA at the address below. Comments should be submitted (in duplicate if possible) to: EPA Region 9, 75 Hawthorne Street (AIR4), San Francisco, CA 94105, Attn. Karen Irwin.

A copy of docket No. A–98–42 containing material relevant to EPA's proposed action is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket No. A–98–42 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Air Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Karen Irwin (415) 744–1903.

SUPPLEMENTARY INFORMATION:

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I. Purpose of Today's Proposal

On August 3, 1998 (63 FR 41326), EPA finalized a FIP for the Phoenix PM–10 nonattainment area (the ''final FIP''). Readers should refer to 63 FR 41326 for details of the history and contents of the final FIP.

The final FIP includes a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads codified at 40 CFR § 52.128 (63 FR 41326, 41350), hereafter referred to as ''the final FIP rule''.[1] Today's proposal addresses only the specific provisions related to the test methods, the alternative control measures (ACMs) and the unpaved road requirements of the final FIP rule as discussed below. EPA will accept comments only on the proposed amendments to these FIP rule provisions and not on any other aspects of the final FIP.

As promulgated on August 3, 1998 (63 FR 41326), the final FIP rule contains test methods for ascertaining compliance with the FIP's emission requirements. EPA has conducted additional technical field work in Phoenix on these test methods. While the test methods in the final FIP were the best available methods known to EPA at the time of promulgation, additional analysis has indicated others may be more accurate and comprehensive. In today's proposal, EPA is proposing and accepting comment on additional, new test methods for the FIP rule.

EPA is also proposing to eliminate the requirement to submit ACMs to EPA for approval in order to remove an unnecessary administrative burden on the regulated community. Finally, EPA is proposing to require privately owned and privately maintained unpaved roads to meet the same RACM requirements as roads that are owned or maintained by a public entity.

II. Summary of Proposed Amendments

A. Test Methods

1. Adding a Silt Content Test Method for Unpaved Roads and Unpaved Parking Lots

The final FIP rule contains an opacity standard of twenty (20) percent, or Ringlemann 1, for unpaved roads and unpaved parking lots. Compliance with this standard is to be tested using visible emissions test methods included in the final Phoenix FIP rule.[2] Field testing has identified certain circumstances where

[1] EPA promulgated the fugitive dust rule as part of its court-ordered obligation to provide for the implementation of Reasonably Available Control Measures (RACM) (required by section 189(a)(1)(C) of the Clean Air Act) in the Phoenix PM–10 nonattainment area.

[2] Reference Method 9 (40 CFR part 60, appendix A) and Methods 203A and 203C. Appendix A.I. to § 52.128 (63 FR 41326, 41353–41355).

this test method may be difficult to use. Consequently, EPA is proposing an additional, new test method that the Agency believes may be more appropriate and accurate for testing compliance of fugitive dust sources covered under the final FIP rule.

The new test method involves measuring silt content on unpaved roads and unpaved parking lots according to a sieve field procedure. The emission rate of fine particles is proportional to silt content (amount of fine particles in any given soil sample), such that the higher the silt content the higher the propensity for a source to release fine particles. The proposed sieve field procedure to measure silt content on unpaved roads and unpaved parking lots involves collecting a sample from the source in an area the size of one square foot using a brush and dustpan. The sample is weighed, placed into a stack of sieves with various mesh openings and shaken vigorously for one minute. Material that collects in the bottom of the unit is weighed and its silt content estimated using simple calculations provided in the proposed test method. EPA successfully conducted the proposed silt content test method in the Phoenix nonattainment area. The proposed silt content standards associated with the sieve test method are six (6) percent or less for unpaved roads and eight (8) percent or less for unpaved parking lots. These standards are based on laboratory analysis of samples taken from unpaved sources in the Phoenix nonattainment area during EPA's field tests.[3]

EPA is also proposing an alternative to conducting the silt content test method. Samples collected from sources may be taken to an independent testing laboratory for silt content analysis according to an EPA AP–42 test method.[4] This option would provide additional flexibility to owners and operators of unpaved roads and unpaved parking lots.

EPA is taking comment on this proposed additional test method, which is expected to provide greater compliance certainty under all circumstances. A source in violation of either the rule's existing opacity standard or the proposed silt content standard would not be in compliance with the rule. Since this additional test method may alleviate the need for the existing opacity test method, EPA is also accepting comment on whether or not to retain the opacity test method in the final FIP rule.

2. Adding a New Visible Crust Test Method or Replacing the Visible Crust Test Method for Vacant Lots

The final FIP rule's test method for measuring visible crust thickness on vacant lots involves breaking off a piece of crust, checking whether the crust crumbles easily and measuring its thickness with a ruler.[5] EPA received public comments suggesting that this test method would not always confirm the existence of a stabilizing crust. During field testing in Arizona, EPA attempted both the current test method and an alternative test method that was suggested by EPA's contractor.[6] EPA believes the alternative test method would accomplish the same objective as the current test method, be similarly easy to use, more accurately repeatable by various parties, and more indicative of whether a sufficiently stabilizing crust exists. The alternative test method involves dropping a small steel ball from a height of one foot in select areas and checking to see whether the ball penetrates the surface or causes loose grains to appear. If so, this indicates that the crust is too thin to resist wind. A source in violation of either the existing or proposed visible crust standard would not be in compliance with the rule. EPA is accepting public comment on whether this alternative visible crust test method should be used in addition to or in place of the existing visible crust test method.

3. Adding a Procedure to the Standing Vegetation Test Method for Vacant Lots

The final FIP rule contains a test method for standing vegetation.[7] In this method, the vegetation is counted within a survey area and its average dimensions measured. During field tests conducted in Arizona,[8] EPA noted that some vegetation was less dense than others. Density affects vegetation's ability to protect against wind erosion. Without providing additional guidance on how to measure a plant or weed's dimensions taking density into account, EPA is concerned that the existing standing vegetation test methods would not necessarily be accurately conducted and repeated by different individuals to achieve the same results. Therefore, EPA is proposing to add a procedure involving the use of a grid with one inch or half-inch squares to help ensure that various vegetative structures can be assessed accurately and consistently.[9] This procedure would apply only when open air space exists within a plant or weed's perimeter. The proposed changes include minor clarifications to the standing vegetation test method.

B. Unpaved Roads

In the final FIP rule, EPA finalized requirements for unpaved roads that are publicly owned and/or operated (i.e. maintained). This includes privately owned roads that are publicly maintained. EPA is proposing to include in the FIP rule unpaved privately owned roads that are privately maintained or not maintained. However, roads on which public access is not allowed or that have fewer than 250 average daily trips (ADT) would remain exempt. The purpose of this proposed modification is to ensure that all *public access* roads with ADT levels of 250 or greater are controlled, regardless of whether a public entity owns or maintains them.[10] Roads which would be covered under this proposal that are not currently covered under the final rule include:

Privately owned roads that are privately maintained; and

Privately owned roads that are not maintained.

EPA is also proposing to clarify the definition of an unpaved road as that used by motor vehicles or off-road motor vehicles.

While EPA does not generally expect the newly added types of roads to meet or exceed 250 ADT, EPA is proposing that the FIP rule cover any such potential sources. It is EPA's intention

[3] Field tests were conducted on May 27–28, 1998. Results from the field tests can be found in the document titled ''Analysis of Results from Field Tests in the Phoenix Nonattainment Area'' by Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri, June 12, 1998.

[4] ''Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples'', (Fifth Edition, Volume I, Appendix C.2, 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

[5] 63 FR 41326, 41355.

[6] Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri.

[7] 63 FR 41326, 41356. Testing for standing vegetation is not necessary where a visible crust exists. However, if a disturbed surface area fails the visible crust test and standing vegetation is present, the lot may actually be stabilized depending on the extent to which the vegetation protects against wind erosion. The inclusion of more than one test method for vacant lots in the FIP rule adds compliance flexibility to sources by acknowledging that a disturbed surface does not necessarily need to be crusted in order to be stabilized if it contains sufficient vegetation or its soil has a high wind-resistance threshold. In fact, the FIP rule allows a disturbed vacant lot surface to be deemed stabilized if it meets just one out of a total of five criteria for stability.

[8] May 27–28, 1998.

[9] The procedure was provided to EPA by Larry Hagen, Agricultural Engineer, United States Department of Agriculture, Wind Erosion Research Unit, 2004 Throckmortion Hall, Kansas State University, Manhatten, Kansas 66506.

[10] Note: haul roads are permitted sources under Maricopa County Environmental Services Division's rule 310. A haul road would only be subject to the FIP rule requirements if it is not a permitted source under Rule 310, has an ADT level of 250 or greater and is publicly accessible.

to eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed above, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible nor publicly maintained are not likely to have a high level of ADT. It should also be noted that the classification of the owner/operator as public or private is not a factor in the other two source categories covered under the FIP rule—namely unpaved parking lots and vacant lots. The RACM implementation deadline for all existing unpaved roads would remain consistent with the current deadline for publicly owned or operated roads (June 10, 2000).

EPA requests comment on the potential effects of extending control requirements to privately owned public access roads that are also privately maintained. EPA anticipates receiving additional information on the extended coverage of roads due to this proposal by the end of this year.[11] When available, EPA will disseminate this information to the public and take it into consideration along with any comments received on this proposal before finalizing requirements on privately owned/maintained public access roads.

C. Alternative Control Measures

In the final FIP rule, ACMs are allowed provided that they are submitted to EPA and receive EPA approval.[12] ACMs are any RACM not specifically listed in the rule that can meet the rule's stabilization standards for each source category.[13] EPA is proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. EPA believes that since the FIP rule contains test methods which indicate whether a surface is stabilized, owners/operators can be allowed flexibility as to the type of RACM applied as long as the control measure results in a stabilized surface.[14] Elimination of prior EPA approval for ACMs will decrease the FIP rule's implementation cost insofar as regulated parties will not need to commit time and resources in preparing ACMs and submitting them to EPA.

The elimination of the requirement to submit ACMs for prior EPA approval will not affect the owners'/operators' responsibility to implement RACM. In fact, by emphasizing the intended result, as opposed to the type of control, EPA hopes to increase owners'/operators' understanding that their responsibility under the FIP rule will remain until a source is controlled even if the owner/operator attempts a control measure that fails to stabilize the surface.

III. Administrative Requirements

A. Executive Order (E.O. 12866)

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition,

[11] EPA has entered into a contract with Pacific Environmental Services to collect information on the number, location and owners/operators of unpaved roads, unpaved parking lots and disturbed vacant lots potentially covered under the FIP rule requirements.

[12] 63 FR 41326, 41352.

[13] The ACM provisions of the rule do not otherwise authorize any modification of the FIP rule's requirements.

[14] Owners/operators may not, however, use dust suppressants that are prohibited by local, state or federal laws or regulations.

Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Administrator certifies that a proposed rule will not have a ''significant economic impact on a substantial number of small entities.'' Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the proposed amendments to the federal fugitive dust rule (40 CFR § 52.128), EPA is assuming that the affected or potentially affected sources constitute ''small entities'' as defined by the RFA.

A detailed discussion of the RFA analysis for the final FIP is found in section V.B. at 63 FR 41326. In general, the proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods as they currently exist in the rule. Thus, EPA believes that the amendments will not change the final FIP RFA analysis, except possibly to have a lesser impact on small entities.

2. RFA Analysis

a. *Proposed Amendments to Federal Rule for Unpaved Roads, Unpaved Parking Lots and Vacant Lots.* EPA believes that the proposed test method amendments will provide either more flexibility or an improved procedure for determining compliance with the FIP fugitive dust rule. The proposed silt content test method would allow persons who are not certified in visible emissions training to test the stability of an unpaved road or unpaved parking lot by using an alternative method to the opacity test method. EPA plans to ensure that the necessary sieve units are available for loan by local entities to regulated sources. Also, the proposed visible crust test method accomplishes the same objective as the current visible crust test method yet is more practical and can be accurately repeated by various parties. Finally, the proposed additional procedure to assist parties in measuring frontal silhouette area of various vegetative structures are merely intended to address circumstances that may arise in the field which are not addressed in the final FIP rule.

For unpaved roads, EPA is proposing to include unpaved roads that are not owned or operated by public entities. However, roads on which public access is not allowed or that have fewer than 250 ADT would remain exempt. EPA intends to simply eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed earlier, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible or publicly maintained are not likely to have a high level of ADT.

Finally, EPA is today proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. This proposed change would add to the rule's flexibility for source owners/operators and reduce the paperwork burden of the rule.

b. *Certification.* For reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule amendments. After consideration of the economic impacts of today's proposed rule amendments on small entities, I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

A detailed discussion of the UMRA requirements and how they are addressed can be found in section V.C. of the final FIP rulemaking (63 FR 41326). As explained above, today's proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods currently in the rule. Thus, EPA believes that the amendments will not change the final FIP UMRA analysis, except possibly to have a lesser impact on the regulated entities.

G. Paperwork Reduction Act

The proposed test method and ACM amendments do not impact the information collection request analysis for the final FIP (EPA ICR 1855.02). For the proposed unpaved roads amendment, EPA does not generally expect the newly added types of roads for inclusion in the FIP rule to exceed the ADT de minimis level. Thus, in general, EPA believes that the proposed amendments to the final FIP rule do not affect the information collection requirements (EPA ICR 1855.02). The final FIP (63 FR 41326) provides more information on the information collection request requirements.

H. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 104–113, Sec. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In this action, EPA has incorporated voluntary consensus standards where feasible (See proposed language for Appendix A to § 52.128, I.B(iv)). However, in most cases there are no applicable technical standards or field procedures specifically designed for the source categories at hand. OMB has reviewed and concurred on the applicable technical standards proposed in this revision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

2. Section 52.128 is proposed to be amended as follows:

a. Revise paragraph (b)(16)(i).

b. Revise paragraph (b)(16)(ii)(A).

c. Revise paragraph (b)(18).

d. Add paragraph (d)(1)(i)(D) and remove the period at the end of paragraph (d)(1)(i)(C) and replace it with ''; or''.

e. Add paragraph (d)(2)(iv) and remove the period at the end of paragraph (d)(2)(iii) and replace it with ''; or''.

f. Add paragraph (d)(3)(ii)(E) and remove the period at the end of paragraph (d)(3)(ii)(D) and replace it with ''; or''.

g. Remove paragraph (d)(4) and redesignate paragraph (d)(5) as paragraph (d)(4).

h. Remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

* * * * *

(b) * * *

(16) *Stabilized Surface*—

(i) Any unpaved road or unpaved parking lot surface where:

(A) Any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I.A of appendix A of this section; AND

(B) Silt content does not exceed six (6) percent for unpaved road surfaces or eight (8) percent for unpaved parking lot surfaces as determined by the test method in section I.B of appendix A of this section.

(ii) * * *

(A) A visible crust which is greater than 0.6 centimeters (cm) thick and is not easily crumbled between the fingers as determined in section II.1(i) of appendix A of this section AND is sufficient as determined in section II.1(ii) of appendix A of this section;

* * * * *

(18) *Unpaved Road*—Any road, equipment path or driveway used by motor vehicles or off-road motor vehicles that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies or any private entity or individual(s).

* * * * *

(d) * * *

(1) * * *

(i) * * *

(D) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

(2) * * *

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(3) * * *

(ii) * * *

(E) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

3. Appendix A to § 52.128 is proposed to be amended as follows:

a. In section I. by designating the text under Section I as A. and adding a heading.

b. Add section I.B.

c. Revise the heading of section II.1.

d. Designate the existing text of II.1 as II.1(i) and add II.1(ii).

e. Revise section II.4(ii).

f. Redesignate section II.4(iii) as section II.4(iv).

g. Redesignate section II.4(iv) as section II.4(v).

h. Add section II.4(iii).

Appendix A to § 52.128—Test Methods To Determine Whether a Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

A. Opacity Observations

* * * * *

B. Silt Content

Conduct the following test method to achieve the silt content of unpaved road and unpaved parking lot surfaces.

(i) Collect a sample of loose surface material from an area 30 cm by 30 cm (1 foot by 1 foot) in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Collect the sample from a routinely-traveled portion of the surface which receives a preponderance of vehicle traffic, i.e. as commonly evidenced by tire tracks. Conduct sweeping slowly so that fine surface material is not released into the air. Only collect samples from surfaces that are not wet or damp due to precipitation or dew.

(ii) Obtain a shallow, lightweight container and a scale with readings in half ounce increments or less. Place the scale on a level surface and zero it with the weight of the empty container. Transfer the entire sample collected to the container, minimizing escape of particles into the air. Weigh the sample and record its weight.

(iii) Obtain and stack a set of sieves with the following openings: 4 mm, 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Pour the entire sample into the top sieve, minimizing escape of particles into the air by positioning the sieve/collector pan unit in an enclosed or wind barricaded area. Cover the sieve/collector pan unit with a lid. Shake the covered sieve/collector pan unit vigorously for a period of at least one (1) minute in both the horizontal and vertical planes. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for a complete separation of material in order to ensure that all material has been sifted to the finest sieve through which it can pass. If not, reassemble and cover the sieve/collector pan unit and shake it for period of at least one (1) minute. After disassembling the sieve/collector pan unit, transfer the material which is captured in the collector pan (silt fraction) into the lightweight container originally used to collect and weigh the sample. Minimize escape of particles into the air when transferring the material into the container. Weigh the container with the material from the collector pan and record its weight. Multiply the resulting weight by 0.38 if the source is an unpaved road or by 0.55 if the source is an unpaved parking lot, divide by the total sample weight and multiply by 100 to arrive at the percent silt content.

(iv) As an alternative to conducting the procedure described above in section I.B.(ii) and section I.B.(iii) of this appendix, the sample (collected according to section I.B.(i) of this appendix) may be taken to an independent testing laboratory or engineering facility for silt content analysis according to the following test method from ''Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples'', (Fifth Edition, Volume I, Appendix C.2.3 ''Silt Analysis'', 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

1. Objective—Several open dust emission factors have been found to be correlated with the silt content (<200 mesh) of the material being disturbed. The basic procedure for silt content determination is mechanical, dry sieving. For sources other than paved roads, the same sample which was oven-dried to determine moisture content is then mechanically sieved.

2.1 Procedure—Select the appropriate 20-cm (8-in.) diameter, 5-cm (2-in.) deep sieve sizes.

Recommended U. S. Standard Series sizes are ⅜ in., No. 4, No. 40, No. 100, No. 140, No. 200, and a pan. Comparable Tyler Series sizes can also be used. The No. 20 and the No. 200 are mandatory.

The others can be varied if the recommended sieves are not available, or if buildup on 1 particulate sieve during sieving indicates that an intermediate sieve should be inserted.

2.2 Obtain a mechanical sieving device, such as a vibratory shaker or a Roto-Tap ® [1] without the tapping function.

2.3 Clean the sieves with compressed air and/or a soft brush. Any material lodged in the sieve openings or adhering to the sides of the sieve should be removed, without handling the screen roughly, if possible.

2.4 Obtain a scale (capacity of at least 1600 grams [g] or 3.5 lb) and record make, capacity, smallest division, date of last calibration, and accuracy. (See Figure A of this appendix)

2.5 Weigh the sieves and pan to determine tare weights. Check the zero before every weighing. Record the weights.

2.6 After nesting the sieves in decreasing order of size, and with pan at the bottom, dump dried laboratory sample (preferably immediately after moisture analysis) into the top sieve. The sample should weigh between ~400 and 1600 g (~0.9 and 3.5 lb). This amount will vary for finely textured materials, and 100 to 300 g may be sufficient when 90% of the sample passes a No. 8 (2.36 mm) sieve. Brush any fine material adhering to the sides of the container into the top sieve and cover the top sieve with a special lid normally purchased with the pan.

2.7 Place nested sieves into the mechanical sieving device and sieve for 10 minutes (min). Remove pan containing minus No. 200 and weigh. Repeat the sieving at 10-min intervals until the difference between 2 successive pan sample weighings (with the pan tare weight subtracted) is less than 3.0%. Do not sieve longer than 40 min.

2.8 Weigh each sieve and its contents and record the weight. Check the zero before every weighing.

2.9 Collect the laboratory sample. Place the sample in a separate container if further analysis is expected.

2.10 Calculate the percent of mass less than the 200 mesh screen (75 micrometers [μm]). This is the silt content.

Figure A. Example Silt Analysis Form

Silt Analysis

Date: _____
By: _____
Sample No: _____
Sample Weight (after drying) _____
Material: _____
Pan + Sample: _____
Pan: _____
Split Sample Balance: _____
Dry Sample: _____
Make _____
Capacity: _____
Smallest Division _____
Final Weight _____

Net Weight <200 Mesh

% Silt = Total Net Weight × 100 =____%

SIEVING

Time: Start:	Weight (pan only)
Initial (Tare): 10 min: 20 min: 30 min: 40 min:	

Screen	Tare weight (screen)	Final weight (screen + sample)	Net weight (sample)	%
⅜ in. ..... 4 mesh ..... 10 mesh ..... 20 mesh ..... 40 mesh ..... 100 mesh ..... 140 mesh ..... 200 mesh ..... Pan				

(v) The percent silt content for any given unpaved road surface or unpaved parking lot surface shall be based on the average of at least three (3) samples that are representative of routinely-traveled portions of the road or parking lot surface. In order to simplify the sieve test procedures in section I.B.(ii) and section I.B.(iii) of this appendix, the three samples may be combined as long as all material is sifted to the finest sieve through which it can pass and the combined weight of the samples is calculated and recorded accurately.

II. * * *

1. Visible Crust Determination

(i) Thickness

* * * * *

(ii) Sufficiency

(A) Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass of 16.33 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the soil surface. If blowsand is present, clear the blowsand from the surfaces on which the visible crust test method is conducted. Blowsand is defined as thin deposits of loose uncombined grains covering less than 50 percent of a vacant lot which have not originated from the representative vacant lot surface being tested. If material covers a visible crust which is not blowsand, apply the test method in section II.2 of this appendix to the loose material to determine whether the surface is stabilized.

(B) A sufficient crust is defined under the following conditions: once a ball has been dropped according to section II.1.(ii)(A) of this appendix, the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface upon which it fell has not been pulverized so that loose grains are visible.

(C) Conduct three tests, dropping the ball once per test, within a survey area the size of one foot by one foot. The survey area shall be considered sufficiently crusted if at least two out of three tests meet the definition in section II.1.(ii)(B) of this appendix. Select at least two other survey areas that represent the disturbed surface area and repeat this procedure. Whether a sufficient crust covers the disturbed surface area shall be based on a determination that all of the survey areas tested are sufficiently crusted.

(D) At any given site, the existence of a sufficient crust covering one portion of a disturbed surface may not represent the existence or protectiveness of a crust on another disturbed surface(s). Repeat the visible crust test as often as necessary on

[1] CFR 60, App. A, Meth. 5, 2.1.2, footnote 2.

each representative disturbed surface area for an accurate assessment of all disturbed surfaces at a given site.

* * * * *

4. * * *

(ii) Count the number of standing vegetative structures within the survey area. Count vegetation which grows in clumps as a single unit. Where different types of vegetation exists and/or vegetation of different height and width exists, separate the vegetative structures with similar dimensions into groups. Count the number of vegetative structures in each group within the survey area. Select an individual structure within each group that represents the average height and width of the vegetation in the group. If the structure is dense (i.e. when looking at it vertically from base to top there is little or zero open air space within its perimeter), calculate and record its frontal silhouette area according to Equation 6 of this appendix. Also use Equation 6 if the survey area is larger than three square feet, estimating the average height and width of the vegetation. Otherwise, use the procedure in section II.4.(iii) of this appendix to calculate the Frontal Silhouette Area. Then calculate the percent cover of standing vegetation according to Equations 7, 8 and 9 of this appendix. (Ensure consistent units of measurement, e.g. square feet or square inches when calculating percent cover.)

(iii) Vegetative Density Factor. Cut a single, representative piece of vegetation (or consolidated vegetative structure) to within 1 cm of surface soil. Using a white paper grid or transparent grid over white paper, lay the vegetation flat on top of the grid (but do not apply pressure to flatten the structure). Grid boxes of one inch or one-half inch squares are sufficient for most vegetation when conducting this procedure. Using a marker or pencil, outline the shape of the vegetation along its outer perimeter according to Figure B, C or D of this appendix, as appropriate.

Note: Figure C differs from Figure D primarily in that the width of vegetation in Figure C is narrow at its base and gradually broadens to its tallest height. In Figure D, the width of the vegetation generally becomes narrower from its midpoint to its tallest height.) Remove the vegetation and count and record the total number of gridline intersections within the outlined area, but do not count gridline intersections that connect with the outlined shape. There must be at least 10 gridline intersections within the outlined area and preferably more than 20, otherwise, use smaller grid boxes. Draw small circles (no greater than a 3⁄32 inch diameter) at each gridline intersection counted within the outlined area. Replace the vegetation on the grid within its outlined shape. From a distance of approximately two feet directly above the grid, observe each circled gridline intersection. Count and record the number of circled gridline intersections that are not covered by any piece of the vegetation. To calculate percent vegetative density, use Equations 10 and 11 of this appendix. If percent vegetative density is equal to or greater than 30, use the equation below that matches the outline used to trace the vegetation (Figure B, C or D) to calculate its Frontal Silhouette Area. If percent vegetative density is less than 30, use Equations 12 and 13 of this appendix to calculate the Frontal Silhouette Area.

Height × Width = Frontal Silhouette Area *Eq. 6*

(Frontal Silhouette Area of Individual Vegetative Structure) × Number of Vegetation Per Group = Frontal Silhouette Area of Group *Eq. 7*

Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc..) = Total Frontal Silhouette Area *Eq. 8*

(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

[(Number of circled gridlines within the outlined area counted that are not covered by vegetation/Total number of gridline intersections within the outlined area) × 100] = Percent Open Space *Eq. 10*

100 − Percent Open Space = Percent Vegetative Density *Eq. 11*

Percent Vegetative Density/100 = Vegetative Density *Eq. 12*

$$[\text{Max. Height} * \text{Max. Width}] * \left[\frac{\text{Vegetative Density}}{0.4}\right]^{0.5} = \text{Frontal Silhouette} \quad \textit{Eq. 13}$$

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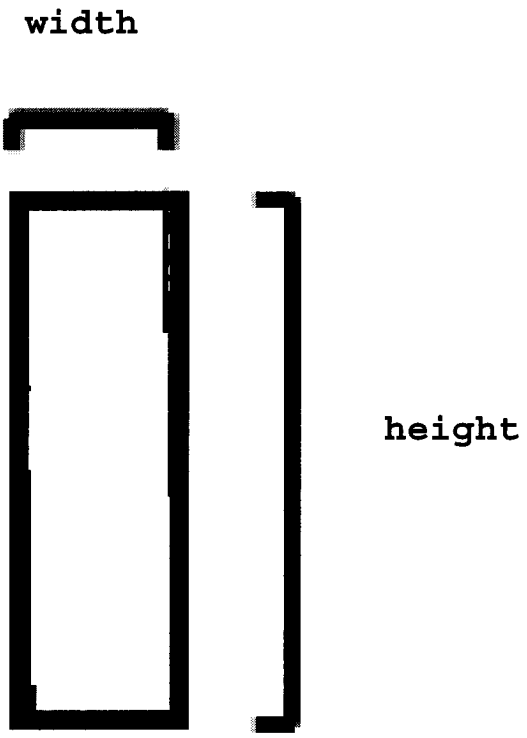
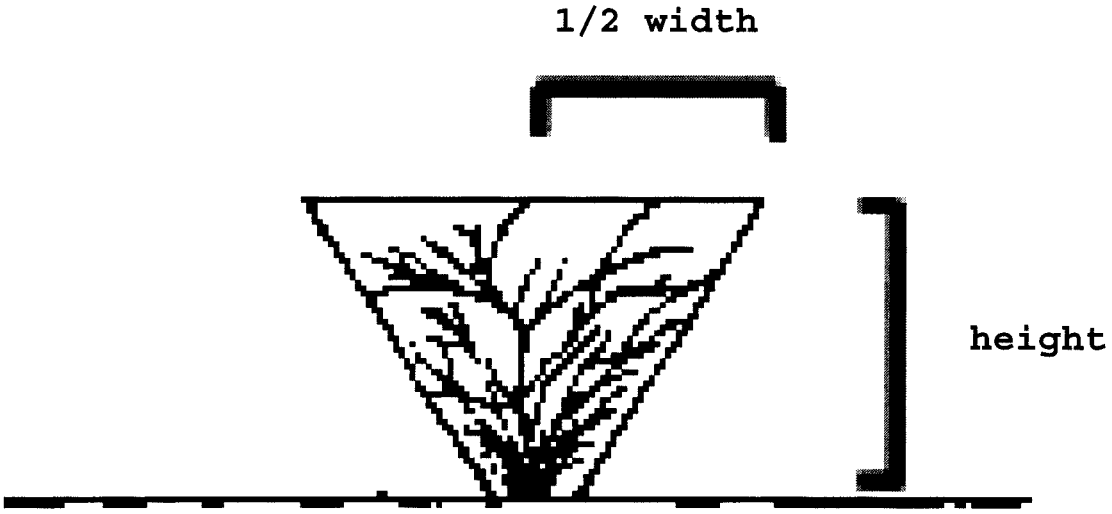
FIGURE B



Cylinder:

Frontal Silhouette Area = maximum (max.) height × max. width *Eq. 16*

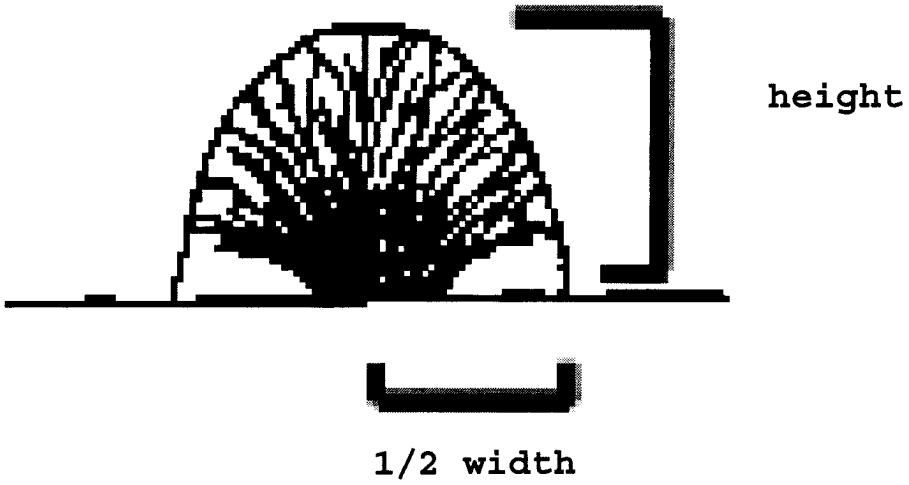
FIGURE C



Inverted Cone:

Frontal Silhouette Area = max. height × ½ max. width *Eq. 17*

FIGURE D



Upper Sphere:

Frontal Silhouette Area = (3.14 × max. height × ½ max. width)/2 *Eq. 18*

[FR Doc. 99–1124 Filed 1–20–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117b; FRL–6213–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the rescission of rules for the Antelope Valley Air Pollution Control District (AVAPCD). These rules concern the rescission of rules for a market incentive program for the AVAPCD. The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by February 22, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule rescissions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule rescissions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns the rescission of Antelope Valley Air Pollution Control District, Regulation XX, Regional Clean Air Incentives Market (RECLAIM), submitted to EPA on June 23, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: December 10, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–1262 Filed 1–20–99; 8:45 am]

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