
40 C.F.R. § 52.128

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

- (a) *General—(1) Purpose.* The purpose of this section is to limit the emissions of particulate matter into the ambient air from human activity on unpaved parking lots, unpaved roads and vacant lots.
- (2) *Applicability.* The provisions of this section shall apply to owners/operators of unpaved roads, unpaved parking lots and vacant lots and responsible parties for weed abatement on vacant lots in the Phoenix PM-10 nonattainment area. This section does not apply to unpaved roads, unpaved parking lots or vacant lots located on an industrial facility, construction, or earth-moving site that has an approved permit issued by Maricopa County Environmental Services Division under Rule 200, Section 305, Rule 210 or Rule 220 containing a Dust Control Plan approved under Rule 310 covering all unpaved parking lots, unpaved roads and vacant lots. This section does not apply to the two Indian Reservations (the Salt River Pima-Maricopa Indian Community and the Fort McDowell Mojave-Apache Indian Community) and a portion of a third reservation (the Gila River Indian Community) in the Phoenix PM-10 nonattainment area. Nothing in this definition shall preclude applicability of this section to vacant lots with disturbed surface areas due to construction, earth-moving, weed abatement or other dust generating operations which have been terminated for over eight months.
- (3) The test methods described in Appendix A of this section shall be used when testing is necessary to determine whether a surface has been stabilized as defined in paragraph (b)(16) of this section.
- (b) *Definitions—(1) Average daily trips (ADT).* The average number of vehicles that cross a given surface during a specified 24-hour time period as determined by the Institute of Transportation Engineers Trip Generation Report (6th edition, 1997) or tube counts.
- (2) *Chemical/organic stabilizer—*Any non-toxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by any applicable law, rule or regulation.
- (3) *Disturbed surface area—*Any portion of the earth's surface, or materials placed thereon, which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust.
- (4) *Dust suppressants—*Water, hygroscopic materials, solution of water and chemical surfactant, foam, or non-toxic chemical/organic stabilizers not prohibited for use by any applicable law, rule or regulation, as a treatment material to reduce fugitive dust emissions.
- (5) *EPA—*United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105.
- (6) *Fugitive dust—*The particulate matter entrained in the ambient air which is caused from man-made and natural activities such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. This excludes particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion
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engines, from portable brazing, soldering, or welding equipment, and from piledrivers.

(7) *Lot*—A parcel of land identified on a final or parcel map recorded in the office of the Maricopa County recorder with a separate and distinct number or letter.

(8) *Low use unpaved parking lot*—A lot on which vehicles are parked no more than thirty-five (35) days a year, excluding days where the exemption in paragraph (c)(2) of this section applies.

(9) *Motor vehicle*—A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as, but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

(10) *Off-road motor vehicle*—any wheeled vehicle which is used off paved roadways and includes but is not limited to the following:

(i) Any motor cycle or motor-driven cycle;

(ii) Any motor vehicle commonly referred to as a sand buggy, dune buggy, or all terrain vehicle.

(11) *Owner/operator*—any person who owns, leases, operates, controls, maintains or supervises a fugitive dust source subject to the requirements of this section.

(12) *Paving*—Applying asphalt, recycled asphalt, concrete, or asphaltic concrete to a roadway surface.

(13) *Phoenix PM-10 nonattainment area*—such area as defined in 40 CFR 81.303, excluding Apache Junction.

(14) *PM-10*—Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by reference or equivalent methods that meet the requirements specified for PM-10 in 40 CFR part 50, Appendix J.

(15) *Reasonably available control measures (RACM)*—Techniques used to prevent the emission and/or airborne transport of fugitive dust and dirt.

(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 loading (weight of silt per unit area) is less than 0.33 ounces per square foot as determined by the test method in section I.B of Appendix A of this section OR where silt loading is greater than or equal to 0.33 ounces per square foot and 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) Any vacant lot surface with:

(A) A visible crust which is sufficient as determined in section II.1 of Appendix A of this section;

(B) A threshold friction velocity (TFV), corrected for non-erodible elements, of 100 cm/second or higher as determined in section II.2 of Appendix A of this section;

(C) Flat vegetation cover equal to at least 50 percent as determined in section II.3 of Appendix A of this section;

(D) Standing vegetation cover equal to or greater than 30 percent as determined in section II.4 of Appendix A of this section; or

(E) Standing vegetation cover equal to or greater than 10 percent as determined in section II.4 of Appendix A of this section where threshold friction velocity, corrected for non-erodible elements, as determined in section II.2 of Appendix A of this section is equal to or greater than 43 cm/second.

(17) *Unpaved parking lot*—A privately or publicly owned or operated area utilized for parking vehicles that is not paved and is not a Low use unpaved parking lot.

(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.

(19) *Urban or suburban open area*—An unsubdivided or undeveloped tract of land adjoining a residential, industrial or commercial area, located on public or private property.

(20) *Vacant lot*—A subdivided residential, industrial, institutional, governmental or commercial lot which contains no approved or permitted buildings or structures of a temporary or permanent nature.

(c) *Exemptions.* The following requirements in paragraph (d) of this section do not apply:

(1) In paragraphs (d)(1), (d)(2) and (d)(4)(iii) of this section: Any unpaved parking lot or vacant lot 5,000 square feet or less.

(2) In paragraphs (d)(1) and (d)(2) of this section: Any unpaved parking lot on any day in which ten (10) or fewer vehicles enter.

(3) In paragraphs (d)(4)(i) and (d)(4)(ii) of this section: Any vacant lot with less than 0.50 acre (21,780 square feet) of disturbed surface area(s).

(4) In paragraph (d) of this section: Non-routine or emergency maintenance of flood control channels and water retention basins.

(5) In paragraph (d) of this section: Vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality and/or commercial acceptance. Such facilities and operations shall be exempted from the provisions of this section only if such testing is not feasible within enclosed facilities.

(6) In paragraph (d)(4)(i) of this section: Weed abatement operations performed on any vacant lot or property under the order of a governing agency for the control of a potential fire hazard or otherwise unhealthy condition provided that mowing, cutting, or another similar process is used to maintain weed stubble at least three (3) inches above the soil surface. This includes the application of herbicides provided that the clean-up of any debris does not disturb the soil surface.

(7) In paragraph (d)(4)(i) of this section: Weed abatement operations that receive an approved Earth Moving permit under Maricopa County Rule 200, Section 305 (adopted 11/15/93).

(d) *Requirements*—(1) *Unpaved parking lots.* Any owners/operators of an unpaved parking lot shall implement one of the following RACM on any surface area(s) of the lot on which vehicles enter and park.

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(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.

(2) Any owners/operators of a low use unpaved parking lot as defined in paragraph (b)(8) of this section shall implement one of the RACM under paragraph (d)(1) of this section on any day(s) in which over 100 vehicles enter the lot, such that the surface area(s) on which vehicles enter and park is/are stabilized throughout the duration of time that vehicles are parked.

(3) *Unpaved roads.* Any owners/operators of existing unpaved roads with ADT volumes of 250 vehicles or greater shall implement one of the following RACM along the entire surface of the road or road segment that is located within the Phoenix non-attainment area by June 10, 2000:

(i) Pave; or

(ii) Apply chemical/organic stabilizers in sufficient concentration and frequency to maintain a stabilized surface; or

(iii) Apply and maintain surface gravel uniformly such that the surface is stabilized; or

(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.

(4) *Vacant lots.* The following provisions shall be implemented as applicable.

(i) *Weed abatement.* No person shall remove vegetation from any vacant lot by blading, disking, plowing under or any other means without implementing all of the following RACM to prevent or minimize fugitive dust.

(A) Apply a dust suppressant(s) to the total surface area subject to disturbance immediately prior to or during the weed abatement.

(B) Prevent or eliminate material track-out onto paved surfaces and access points adjoining paved surfaces.

(C) Apply a dust suppressant(s), gravel, compaction or alternative control measure immediately following weed abatement to the entire disturbed surface area such that the surface is stabilized.

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