

paragraph (b)(2) of the proposed rule were moved to paragraph (b)(1).

2. The last two sentences of paragraph (a) of the proposed rule were moved to paragraph (b)(2).

3. To clearly indicate that limited access to the restricted area by commercial fishermen may be granted by the Marine Corps, the first sentence of paragraph (b)(3) of the proposed rule was moved to create a new paragraph (d).

4. The following sentence from paragraph (c) of the proposed rule was not included in the final rule to simplify the enforcement provision of this section: "USMC boats with law enforcement personnel will randomly patrol the restricted area and provide a response capability. All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representative."

#### Administrative Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Department of Defense, and the provisions of Executive Order 12866 do not apply.

b. *Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps determined that the establishment of the new restricted area zone would not have a significant economic impact on a substantial number of small entities. For more detailed analysis of potential economic impacts of this rule, please see the regulatory analysis in the environmental assessment.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared. After considering the comments received in response to the proposed rule, we have concluded that the establishment of a restricted area at MCB Quantico will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Baltimore District Office. Please contact Mr. Steve

Elinsky at the phone number specified above for further information.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

#### List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation, Waterways.

For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.235 to read as follows:

#### § 334.235 Potomac River, Marine Corps Base Quantico (MCB Quantico) in vicinity of Marine Corps Air Facility (MCAF), restricted area.

(a) *The area.* All of the navigable waters of the Potomac River extending approximately 500 meters from the high-water mark on the Eastern shoreline of the MCAF, bounded by these coordinates (including the Chopawamsic Creek channel, but excluding Chopawamsic Island): Beginning at latitude 38°29'34.04" N, longitude 077°18'22.4" W (Point A); thence to latitude 38°29'43.01" N, longitude 077°18'4.1" (Point B); thence to latitude 38°29'55.1" N, longitude 077°17'51.3" W (Point C); thence to latitude 38°30'10.1" N, longitude 077°17'40.3" W (Point D); thence to latitude 38°30'23.43" N, longitude 077°17'50.30" W (Point E); then along the western shoreline of Chopawamsic Island to latitude 38°30'35.13" N, longitude 077°17'47.45" W (Point F); thence to latitude 38°30'42.1" N, longitude 077°17'37.1" W (Point G); thence to latitude 38°30'50.71" N, longitude 077°17'54.12" W (Point H); then along the shoreline to latitude 38°30'0.058" N, longitude 077°18'39.26" W (Point I); then across the Chopawamsic Channel to latitude 38°29'58.45" N, longitude 077°18'39.97" W (Point J); thence to latitude 38°29'38.2" N, longitude 077°18'38.14"

W (Point K); and thence to the beginning point of origin.

(b) *The regulations.* (1) All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representatives. The restriction will be in place 24 hours a day, seven days a week.

(2) The boundary of the restricted area will be demarcated with marker buoys and warning signs set at 500 foot intervals. In addition, lighted, floating, small craft intrusion barriers will be placed across the Chopawamsic Creek channel at the entrance to the channel from the Potomac River and immediately west of the CSX railroad bridge.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, MCB Quantico or any such agencies he/she designates. The areas identified in paragraph (a) of this section will be monitored 24 hours a day, 7 days a week. Any person or vessel encroaching within the areas identified in paragraph (a) of this section will be directed to immediately leave the restricted area. Failure to do so could result in forceful removal and/or criminal charges.

(d) *Exceptions.* Commercial fisherman will be authorized controlled access to the restricted area (with the exception of Chopawamsic Creek channel) after registering with MCB Quantico officials and following specific access notification procedures.

Dated: January 31, 2011.

**Michael G. Ensich,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 51 and 93

[FRL-9261-6]

#### Official Release of the January 2011 AP-42 Method for Estimating Re-Entrained Road Dust From Paved Roads

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of Availability.

**SUMMARY:** On January 13, 2011, EPA posted the latest version of the method for estimating re-entrained road dust emissions from cars, trucks, buses, and

motorcycles on paved roads. This document approves this method for use in PM<sub>10</sub> and PM<sub>2.5</sub> state air quality implementation plans (SIPs) and regional emissions analyses for transportation conformity determinations (“regional conformity analyses”). This new method is incorporated in Chapter 13 of Compilation of Air Pollutant Emission Factors, AP-42, Fifth Edition, Volume I, that was published in January 2011.

Today’s action also starts a two-year grace period after which the January 2011 AP-42 method is required to be used in regional conformity analyses in PM<sub>10</sub> nonattainment and maintenance areas and any PM<sub>2.5</sub> nonattainment and maintenance areas where the EPA regional administrator or the state air quality agency determined that re-entrained road dust is a significant contributor to the area’s PM<sub>2.5</sub> problem, or if the area has a PM<sub>2.5</sub> motor vehicle emissions budget that includes re-entrained road dust. This document is not relevant to SIP development or regional conformity analyses for ozone, carbon monoxide, and nitrogen dioxide nonattainment and maintenance areas, or for areas that use EPA-approved locally developed road dust methods.

**DATES:** EPA’s approval of the January 2011 AP-42 method for estimating re-entrained road dust from paved roads for SIPs and regional conformity analyses is effective February 4, 2011. As discussed further below, today’s approval also starts a two-year conformity grace period which ends on February 4, 2013, after which the January 2011 AP-42 method is required to be used for SIPs and regional conformity analyses.

**FOR FURTHER INFORMATION CONTACT:** For questions about using AP-42 in SIPs and transportation conformity, contact David Bizot at [David.Bizot@epa.gov](mailto:David.Bizot@epa.gov) or (734) 214-4432, or Laura Berry at [Laura.Berry@epa.gov](mailto:Laura.Berry@epa.gov) or (734) 214-4858. For technical questions regarding the use of AP-42, contact Ron Myers at [Myers.Ron@epa.gov](mailto:Myers.Ron@epa.gov) or (919) 541-5407.

**SUPPLEMENTARY INFORMATION:** The official version of the January 2011 edition of Section 13.2.1 of AP-42, Paved Roads, and supporting documentation can be found at: <http://www.epa.gov/ttn/chief/ap42/ch13/index.html>.

The contents of this document are as follows:

- I. Background on AP-42 and the January 2011 AP-42 Method
- II. SIP Policy for Using AP-42
- III. Transportation Conformity Policy for Using AP-42

## I. Background on AP-42 and the January 2011 AP-42 Method

Motor vehicle emissions inventories for PM<sub>10</sub> and PM<sub>2.5</sub> are comprised of four components: Exhaust emissions, emissions from brake wear, emissions from tire wear, and re-entrained road dust. EPA’s methodologies for estimating PM emissions from re-entrained road dust are found in AP-42, the Agency’s compilation of data and methods for estimating average emission rates from a variety of activities and sources from various sectors. The sections of AP-42 that address re-entrained road dust emissions are: Section 13.2.1 (Paved Roads) and Section 13.2.2 (Unpaved Roads). State and local agencies currently use the latest versions of these sections of AP-42 for calculating re-entrained road dust in PM SIP development and regional conformity analyses, as applicable, unless EPA has approved an alternate method.

In today’s document, EPA is approving, for SIPs and regional emissions analyses, the January 2011 edition of Section 13.2.1 of AP-42 that reflects a new methodology for calculating re-entrained road dust from paved roads.<sup>1</sup> The January 2011 AP-42 method did not change the methods for calculating road dust from unpaved roads (Section 13.2.2), last updated in November 2006,<sup>2</sup> nor affect EPA’s previous approvals of other emissions models.<sup>3</sup>

The January 2011 AP-42 method includes revisions of the equation used to predict PM emissions, an extension of the applicable range of speeds down to 1 mph from the previous 10 mph, and the incorporation of an improved methodology for characterizing silt loading. These revisions were based on additional data from tests that were conducted on roads with slow moving and stop-and-go traffic, as well as public

<sup>1</sup> When completing project-level PM hot-spot analyses for transportation conformity purposes, either AP-42 or alternative local methods can be used. For more details, see EPA’s “Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas” (EPA-420-B-10-040, December 2010).

<sup>2</sup> For estimating road dust from unpaved roads, the November 2006 update to Section 13.2.2 of AP-42 remains in effect. See “Policy Guidance on the Use of the November 1, 2006, Update to AP-42 for Re-entrained Road Dust for SIP Development and Transportation Conformity” at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b07055.pdf>. This document supersedes the portions of this guidance that cover estimating dust from paved roads.

<sup>3</sup> Such as EPA’s approvals of the MOVES2010 emissions model for SIPs and regional conformity purposes (75 FR 9411) and of the MOVES2010a and EMFAC models for transportation conformity hot-spot analyses (75 FR 79370).

comments received on the draft revision. Please see EPA’s AP-42 Web site for technical supporting documentation that provides additional detail regarding the revisions and the revision process.<sup>4</sup>

It is estimated that PM<sub>10</sub> emissions predicted by the January 2011 AP-42 method will be, on average, 40% less than the emissions for paved roads predicted by the November 2006 update. However, some silt loading and average vehicle weight conditions could result in different reduction levels and in some cases greater estimated emissions. PM<sub>2.5</sub> emissions from paved roads predicted by the January 2011 AP-42 method will be generally greater than the emissions predicted by the November 2006 update. However, some silt loading and average vehicle weight conditions could result in lower estimated emissions.

EPA notes that the January 2011 AP-42 method is approved only for situations for which silt loading, mean vehicle weight, and mean vehicle speed fall within ranges given in AP-42 section 13.2.1.3 and with reasonably free-flowing traffic. For other conditions, areas should use, or continue to use, an alternate method approved by EPA on a case-by-case basis for use in SIPs or regional conformity analyses. In some areas, alternate methods may be more appropriate than AP-42 given specific local conditions even within the parameters given in AP-42 Section 13.2.1.3. State and local agencies should consult with EPA for approval of alternate road dust methods.

## II. SIP Policy for Using AP-42

In general, states should use the January 2011 AP-42 method for PM<sub>10</sub> and PM<sub>2.5</sub> SIPs that are currently under development and future PM SIP revisions, unless EPA has approved an alternate method. The Clean Air Act (CAA) requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.<sup>5</sup> States should use the January 2011 AP-42 method where PM SIP development is in its initial stages or hasn’t progressed far enough along that switching to this method would create a significant adverse impact on state and local resources.

Although the January 2011 AP-42 method should be used in PM<sub>10</sub> and PM<sub>2.5</sub> SIP development as expeditiously

<sup>4</sup> See <http://www.epa.gov/ttn/chief/ap42/ch13/index.html>.

<sup>5</sup> See CAA section 172(c)(3) and 40 CFR 51.112(a)(1).

as possible, EPA also recognizes the time and effort that states have already undertaken in SIP development using previous AP-42 methods. PM SIPs that EPA has already approved are not required to be revised solely based on the existence of the January 2011 AP-42 method. States that have already submitted PM SIPs or will submit PM SIPs shortly after today's approval are not required to revise these SIPs based on the recent availability of the January 2011 AP-42 method. States can choose to use the January 2011 AP-42 method in these PM SIPs, for example, if it is determined that it is appropriate to update motor vehicle emissions budgets ("budgets") with the new method for future transportation conformity determinations. However, EPA does not believe that a state's use of a previous AP-42 method should be an obstacle to EPA approval for PM SIPs that have been or will soon be submitted, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (e.g., attainment modeling for an attainment SIP has already been completed with a previous method). It would be unreasonable in such cases to require states to revise these PM SIPs with the January 2011 AP-42 method since significant work has already occurred and EPA intends to act on these SIPs in a timely manner.

If you have questions about which road dust method should be used in your SIP, please consult with your EPA Regional Office.

### III. Transportation Conformity Policy for Using AP-42

Transportation conformity is a CAA requirement to ensure that federally supported highway and transit activities are consistent with the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) or any interim milestone. EPA's transportation conformity regulations (40 CFR 51.390 and 40 CFR part 93, subpart A) describe how federally funded and approved highway and transit projects meet these statutory requirements.

CAA section 176(c)(1) states that " \* \* \* [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates \* \* \* ." The transportation conformity rule (40 CFR 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by

EPA. The conformity rule states that EPA will consult with the DOT to establish a grace period following specification of any new emissions model. The conformity rule further provides for a grace period for new emissions models of between 3–24 months, to be established by notification in the **Federal Register** (40 CFR 93.111(b)(1)).

In consultation with DOT, EPA must consider various factors when establishing a grace period for conformity determinations, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111(b)(2)).

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (58 FR 62211):

EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs (metropolitan planning organizations) must use the model's new emissions factors.

As stated in Section I of today's document, the January 2011 AP-42 method may result in PM<sub>10</sub> emissions from paved roads being reduced as compared to the previous method, but results can vary from area to area. In general, PM<sub>2.5</sub> emissions from paved roads could increase as compared to the previous method, which could affect those PM<sub>2.5</sub> areas where road dust emissions are included in the PM<sub>2.5</sub> SIP budget and are based on a previous AP-42 method. In these limited number of PM<sub>2.5</sub> areas and possibly some PM<sub>10</sub> areas, state and local agencies may need additional time to consider whether additional revisions during the grace period are necessary to ensure future conformity determinations.

Upon consideration of all of these factors, EPA is establishing a two-year conformity grace period that begins today and ends on February 4, 2013. At the end of the grace period, the January 2011 AP-42 method will be required for regional conformity analyses in PM<sub>10</sub> nonattainment and maintenance areas and any PM<sub>2.5</sub> nonattainment and maintenance areas where re-entrained road dust is a significant contributor to the area's PM<sub>2.5</sub> problem, or if the area has a PM<sub>2.5</sub> motor vehicle emissions budget that includes re-entrained road

dust.<sup>6</sup> The following discussion about the conformity grace period is not relevant for those PM<sub>10</sub> and PM<sub>2.5</sub> areas that are completing conformity determinations based on approved alternate road dust methods.

During the conformity grace period, affected areas should use the interagency consultation process to examine how the January 2011 AP-42 method will impact their future transportation plan and TIP conformity determinations and any regional emissions analyses. Areas should consider whether their PM<sub>10</sub> and/or PM<sub>2.5</sub> SIP(s) and budget(s) should be revised with the January 2011 AP-42 method, or if transportation plans and TIPs should be revised before the end of the conformity grace period in order to assist areas in continuing to meet transportation conformity requirements after the grace period ends.

Regional conformity analyses that are started during the grace period can use either the January 2011 AP-42 method or the previous method. When the grace period ends on February 4, 2013, the January 2011 AP-42 method will become the only approved method for estimating re-entrained road dust. The grace period for new regional emissions analyses would be shorter if a PM area revised its SIP and budgets with the January 2011 AP-42 method and such budgets became applicable prior to the end of the two-year conformity grace period.

The conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period. Analyses that begin before or during the grace period may continue to rely on the previous AP-42 method. 40 CFR 93.111(c). The interagency consultation process should be used if it is unclear if an analysis based on a previous method was begun before the end of the grace period. If you have questions about which AP-42 method should be used in your conformity determination, consult with your EPA Regional Office.

Dated: January 28, 2011.

**Margo Tsirigotis Oge,**

*Director, Office of Transportation and Air Quality.*

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<sup>6</sup> See 40 CFR 93.102(b)(3) for when re-entrained road dust is included in regional emissions analyses.