

located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 19, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(381)(i)(A)(6), (389)(i)(B)(4), and (404)(i)(C) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(381) \* \* \*

(i) \* \* \*

(A) \* \* \*

(6) Rule 116, "Emissions Statement and Certification," adopted on February 23, 2010.

\* \* \* \* \*

(389) \* \* \*

(i) \* \* \*

(B) \* \* \*

(4) Rule 503, "Emission Statement," amended on August 12, 2010.

\* \* \* \* \*

(404) \* \* \*

(i) \* \* \*

(C) Ventura County Air Pollution Control District.

(1) Rule 2, "Definitions," adopted on October 22, 1968, as revised through April 12, 2011.

\* \* \* \* \*

[FR Doc. 2012-29117 Filed 12-6-12; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 122

[EPA-HQ-OW-2012-0195; FRL-9758-9]

RIN 2040-AF42

#### Revisions to Stormwater Regulations To Clarify That an NPDES Permit Is Not Required for Stormwater Discharges From Logging Roads

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is revising its Phase I stormwater regulations to clarify that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity and that a National Pollutant Discharge Elimination System (NPDES) permit is not required for these stormwater discharges.

**DATES:** This final rule is effective on January 7, 2013.

**ADDRESSES:** The record for this rulemaking is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC), EPA West 1301 Constitution Avenue NW., Washington, DC 20004. The record is also available via the EPA Dockets at <http://www.regulations.gov> under docket number EPA-HQ-OW-2012-0195.

**FOR FURTHER INFORMATION CONTACT:** For further information on this notice, you may contact Jeremy Bauer, EPA Headquarters, Office of Water, Office of Wastewater Management via email at [bauer.jeremy@epa.gov](mailto:bauer.jeremy@epa.gov) or telephone at 202-564-2775.

#### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Applicability

This action does not impose requirements on any entity. The action clarifies the status of stormwater discharges from logging roads. Those with an interest in such discharges may be interested in this action. If you have questions regarding the applicability of this rule, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

##### B. Copies of This Document and Other Information

This document is available for download at <http://www.epa.gov/npdes/stormwater/forestroads> or under docket EPA-HQ-OW-2012-0195.

#### II. Background

##### A. Purpose

The EPA is promulgating this final rule to address the stormwater discharges identified under *Northwest Environmental Defense Center v. Brown*, 640 F.3d 1063 (9th Cir. 2011) (*NEDC*).

The final rule clarifies that, for the purposes of assessing whether stormwater discharges are "associated with industrial activity," the only facilities under SIC code 2411 that are "industrial" are: rock crushing, gravel washing, log sorting, and log storage. This clarifies, contrary to the Ninth Circuit's decision in *NEDC*, that discharges of stormwater from silviculture facilities other than the four specifically named silviculture facilities identified above do not require an NPDES permit.<sup>1</sup>

<sup>1</sup> This rulemaking responds to the uncertainty created by the Ninth Circuit's holding in *NEDC* that certain channeled discharges of stormwater from logging roads constitute point source discharges, bringing them within the Section 402 NPDES

### B. Statutory Authority and Regulatory History

The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. 1251(a). To that end, the Act provides that the discharge of any pollutant by any person shall be unlawful, except in compliance with other provisions of the statute. Generally, the Act provides for a permit program for the addition to waters of the United States of a pollutant from a point source, defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. 1362(14). In 1987 Congress amended the Clean Water Act by adding section 402(p), that created a temporary moratorium on NPDES permits for stormwater discharges, except for certain listed categories, and gave the EPA discretion to designate other stormwater discharges for regulation. 33 U.S.C. 1342(p).

For the initial phase, section 402(p)(1) created a temporary moratorium on NPDES permits for stormwater discharges from point sources except for those listed in section 402(p)(2), which includes discharges for which a permit had already been issued; discharges from large municipal separate storm sewer systems; and "industrial discharges." Congress did not define industrial discharges, allowing the EPA to define the term. For subsequent phases, section 402(p)(5) directs the EPA to conduct studies, in consultation with the states, for "identifying those stormwater discharges or classes of stormwater discharges for which permits are not required"; "determining to the maximum extent practicable, the nature and extent of pollutants in such discharges"; and "establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality." Section 402(p)(6) directs the Agency to issue regulations, in consultation with state and local officials, based on such studies. The section allows the EPA flexibility in issuing regulations to address designated stormwater discharges where

permitting framework. This final rule, by clarifying what constitutes a discharge "associated with industrial activity," makes clear that such discharges do not require NPDES permits even if they are point source discharges. We note that the Supreme Court has granted review of the *NEDC* case for the October 2012 term.

appropriate and does not require the use of NPDES permits or any specific regulatory approach. Specifically, the section states that the regulations "shall establish priorities, establish requirements for state stormwater management programs, and establish expeditious deadlines" and may include "performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate." 33 U.S.C. 1342(p)(6). This flexibility is unique to stormwater discharges and is different than the treatment of stormwater discharges listed in section 402(p)(2)(B) of the Act, which requires a permit for a stormwater discharge "associated with industrial activity."

Prior to the 1987 Amendments, there were numerous questions regarding the appropriate means of regulating stormwater discharges within the NPDES program due to the water quality impacts of stormwater, the variable nature of stormwater, the large number of stormwater discharges, and the limited resources of permitting agencies. The EPA undertook numerous regulatory actions, which resulted in extensive litigation, in an attempt to address these unique discharges.

The EPA's Silvicultural Rule (40 CFR 122.27) predates the 1987 amendments to the Clean Water Act that created section 402(p) for stormwater controls. The Agency defined silvicultural point source as part of the Silvicultural Rule to specify which silvicultural discharges were to be included in the NPDES program. The rule defines silvicultural point source to mean any "discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States" and further explains that "the term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff."

In 1990, following the 1987 amendments that directed the Agency to develop regulations requiring permits for large municipal separate storm sewer systems and stormwater "discharges associated with industrial activity," the EPA promulgated the Phase I stormwater regulations. (55 FR 47990, November 16, 1990). The EPA defined in the Phase I regulations "storm water discharge associated with industrial

activity" which is not defined by the Act. In describing the scope of the term "associated with industrial activity," several members of Congress explained in the legislative history that the term applied if a discharge was "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." (Vol. 132 Cong. Rec. H10932, H10936 (daily ed. October 15, 1986); Vol. 133 Cong. Rec. H176 (daily ed. January 8, 1987)). The Phase I rule clarified the regulatory definition of "associated with industrial activity" by adopting the language used in the legislative history and supplementing it with a description of various types of areas (e.g., material handling sites, sites used for the storage and maintenance of material handling equipment, etc.) that are directly related to an industrial process and to industrial facilities identified by the EPA. The supplemental language in the Phase I rule also includes the term "immediate access road." The EPA considers "immediate access roads" to refer to roads which are exclusively or primarily dedicated for use by the industrial facility. See 55 FR 47990, 48009 (Nov. 16, 1990). These "immediate access roads" do not include public access roads that are state, county, or federal roads such as highways or Bureau of Land Management roads which happen to be used by the facility. See *id.* The Phase I regulation defines the term "storm water discharge associated with industrial activity" to include stormwater discharges from facilities identified in the rule by standard industrial classification or "SIC" code at 40 CFR 122.26(b)(14). The Phase I regulation included in the definition of that term SIC code 24 (Lumber and Wood Products) which includes 2411 (logging), but the Agency also had specified in the Phase I rule that the term does not include discharges from facilities or activities excluded from the NPDES program under other parts of the EPA's regulations, including the Silvicultural Rule. As discussed above, the EPA had previously specified under the Silvicultural Rule which silvicultural discharges were to be included in the NPDES program (40 CFR 122.27). The EPA intended to regulate those same "silvicultural point source[s]" under the Phase I rule (i.e., rock crushing, gravel washing, log sorting, and log storage facilities) and to exclude from the Phase I regulation stormwater runoff from other silvicultural activities. For the "silvicultural point source[s]" (i.e., rock crushing, gravel washing, log sorting, and log storage facilities) regulated

under the Phase I rule, the term “storm water discharge associated with industrial activity” includes “immediate access roads” (40 CFR 122.26(b)(14)(ii)). Unlike “immediate access roads” associated with industrial facilities, many logging roads have multiple uses, including recreation and general transportation, and commonly extend over long distances (i.e.; may not provide “immediate access” to an industrial site). The intent of the EPA in this rulemaking is that the NPDES program requirements be implemented with regard to “immediate access roads” in the same way they were implemented prior to the decision by the Ninth Circuit.

In developing the second phase of stormwater regulations, the EPA submitted to Congress in March 1995 a report that presented the nature of stormwater discharges from municipal and industrial facilities that were not already regulated under the Phase I regulations (U.S. Environmental Protection Agency, Office of Water. 1995. Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program: Report to Congress. Washington, DC. EPA 833-K-94-002). On December 8, 1999, the EPA published the Phase II stormwater regulations to address stormwater discharges from small municipal separate storm sewer systems and construction sites that disturb one to five acres. (64 FR 68722, December 8, 1999). The EPA retains the authority to designate additional stormwater discharges for regulation at a later date under either CWA section 402(p)(2)(E) or 402(p)(6).

The Phase II regulations for stormwater controls were challenged in *Environmental Defense Center v. US EPA*, 344 F.3d 832 (9th Cir. 2003) (*EDC v. EPA*). In that case, petitioners contended that the EPA arbitrarily failed to regulate discharges from forest roads under the Phase II rule. The court held that the EPA failed to consider the petitioners’ comments and remanded the issue to the EPA “so that it may consider in an appropriate proceeding Petitioner’s contention that § 402(p)(6) requires the EPA to regulate forest roads. The EPA may then either accept Petitioners’ arguments in whole or in part, or reject them on the basis of valid reasons that are adequately set forth to permit judicial review.” *Id.* at 863.

More recently, in *Northwest Environmental Defense Center v. Brown*, 640 F.3d 1063 (9th Cir. 2011) (*NEDC*), a citizen suit was filed alleging violations of the Clean Water Act for

discharging stormwater from ditches alongside two logging roads in state forests without a permit. The court held that because the stormwater runoff from the two roads in question is collected by and then discharged from a system of ditches, culverts and channels, there was a point source discharge of industrial stormwater for which an NPDES permit is required. As discussed above, the Agency specified in the Phase I rule that the term “storm water discharge associated with industrial activity” does not include discharges from facilities or activities excluded from the NPDES program under other parts of the EPA’s regulations, including the aforementioned Silvicultural Rule. The EPA intends through this regulation to more clearly limit Phase I applicability to only those silvicultural facilities that are “rock crushing, gravel washing, log sorting, and log storage facilities.”

In response to the partial remand under *Environmental Defense Center, Inc. (EDC) v. US EPA*, 344 F.3d 832 (9th Cir. 2003), the Agency continues to review available information on the water-quality impacts of stormwater discharges from forest roads, which include logging roads as discussed above, as well as existing practices to control those discharges and is considering a range of options to address such discharges, which could include designating a subset of stormwater discharges from forest roads for regulation under the Agency’s section 402(p) rulemaking authority. The EPA believes that the broad range of flexible approaches under section 402(p)(6) may be well suited to address the complexity of forest road ownership, management, and use.

In the interim, the EPA notes that Congress has directed that permits are not required for stormwater discharges for logging roads. Under the continuing resolution passed in September, 2012, until March 27, 2013, the Administrator may not require an NPDES permit or directly or indirectly require any state to require a permit, for discharges of stormwater runoff from roads, the construction, use, or maintenance of which are associated with silvicultural activities.

### III. EPA’s Proposed Revisions and Public Comments Received on Proposed Rule

#### A. Proposed Revisions

The EPA proposed to revise 40 CFR 122.26(b)(14)(ii) to clarify that for the purposes of defining stormwater discharges associated with industrial activity, the only activities under SIC

code 2411 that are “industrial” are rock crushing, gravel washing, log sorting, and log storage. This revision does not remove any existing exemptions. Though the existing language in 40 CFR 122.26(b)(14)(ii) excepts SIC code 2434, wood kitchen cabinets, the wood kitchen cabinets category remains covered in a separate subsection. *See id.* at 122.26(b)(14)(xi) (listing “Facilities covered under Standard Industrial Classifications 20, 21, 22, 23, 2434 \* \* \*” as engaging in industrial activity for purposes of the industrial stormwater regulations).

#### B. Public Comments

The EPA received 85 comment letters on its “Notice of Proposed Revisions to Stormwater Regulations to Clarify That an NPDES Permit is not Required for Stormwater Discharges From Logging Roads” (77 FR 53834, September 4, 2012). The Agency had previously announced its plan to propose these revisions in an earlier notice, “Notice of Intent to Revise Stormwater Regulations To Specify That an NPDES Permit is Not Required for Stormwater Discharges From Logging Roads and To Seek Comment on Approaches for Addressing Water Quality Impacts From Forest Road Discharges” (77 FR 30473, May 23, 2012). While the EPA has reviewed and is considering the comments received in response to the May 23 Notice of Intent, the Agency explained in its September 4 proposal that the EPA is not developing responses to those comments as part of this rulemaking.

The EPA has reviewed and considered all of the comments received on the proposed revisions. Many commenters expressed support for the EPA’s proposal. Most agreed with the objective to clarify the applicability of Phase I stormwater regulations but some suggested alternate language or approaches to reach that objective. For example, some suggested that the EPA simply state in its regulations that stormwater discharges from logging roads do not require a NPDES permit. Others recommended that the EPA assert that logging roads are nonpoint sources and therefore would not require a NPDES permit.

The EPA believes that the final language clarifies the applicability of Phase I stormwater regulations to stormwater discharges from logging roads. The final language indicates explicitly which facilities are included in the definition of stormwater discharges “associated with industrial activity” (i.e., “Facilities classified within Standard Industrial Classification 24, Industry Group 241

that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities”). Moreover, the final language further explains that “not included are all other types of silvicultural facilities.”

Many commenters suggested that the EPA delay finalizing the rule until after the Supreme Court rules on *Decker v. Northwest Environmental Defense Center*, No. 11–388, and *Georgia-Pacific West v. Northwest Environmental Defense Center*, No. 11–347. Some suggested that the Agency should have sought relief from the Supreme Court or Congress. The EPA disagrees with these commenters because today’s action ends any uncertainty created by the Ninth Circuit’s holding in *NEDC* administratively by clarifying what constitutes a discharge “associated with industrial activity” in connection with silvicultural activities. By moving to finalize this rule expeditiously, the EPA is providing the regulatory certainty needed in the wake of the Ninth Circuit’s decision and is reaffirming the EPA’s long-standing regulatory position regarding the applicability of stormwater regulations to logging roads. In doing so, this final rule cancels out any on-the-ground impact of the Ninth Circuit’s decision. Further, the EPA actions are consistent with *amicus curiae* briefs filed by the United States Department of Justice (DOJ) on May 24 and again on September 4, which described to the public and to the Supreme Court the administrative steps that the EPA would take to clarify “expeditiously” that an NPDES permit is not required for stormwater discharges from logging roads.

Some commenters disagreed with the EPA’s proposal, asserting that at least a subset of stormwater discharges from logging roads is truly industrial in nature and that those discharges should require NPDES permits. The EPA clarifies the applicability of Phase I stormwater regulations to stormwater discharges from logging roads and the Agency’s rationale in section II.B of this preamble. As the EPA notes, the Agency did not intend logging roads themselves to be regulated as industrial facilities and its view has not changed since EPA first issued the Phase I stormwater rule. The EPA is revising that rule to clarify the Agency’s original intent.

Some commenters asserted that the water quality impacts of stormwater discharges from logging roads and other forest roads are well-documented and suggested that the Agency should regulate them. Other commenters pointed to existing programs and suggested that a national regulation is

unnecessary. Some asserted that existing state, federal, and tribal programs are insufficient to protect water quality. Others commented that the Agency already has all of the information it needs in order to regulate stormwater discharges from forest roads and suggested that if information gaps remain, the Agency should specify what information is needed and indicate on what schedule that information will be collected.

The EPA is not proposing new regulations for stormwater discharges from forest roads, including logging roads, at this time. While the EPA has not developed a specific schedule for addressing stormwater discharges from forest roads, the Agency notes that, in response to the partial remand under *EDC v. US EPA*, the Agency continues to review available information on the water quality impacts of stormwater discharges from forest roads, which include logging roads, as well as existing practices to control those discharges and is considering a range of options to address such discharges, which could include designating a subset of stormwater discharges from forest roads for regulation under the Agency’s section 402(p) rulemaking authority. The EPA believes that the broad range of flexible approaches under section 402(p)(6) may be well-suited to address the complexity of forest road ownership, management, and use.

#### IV. Final Rule

The EPA has made no revisions to the proposed rule. The EPA is revising 40 CFR 122.26(b)(14)(ii) to clarify that for the purposes of defining stormwater discharges associated with industrial activity, the only activities under SIC code 2411 that are “industrial” are rock crushing, gravel washing, log sorting, and log storage. This revision does not remove any existing exemptions. Though the existing language in 40 CFR 122.26(b)(14)(ii) excepts SIC code 2434, wood kitchen cabinets, the wood kitchen cabinets category remains covered in a separate subsection. *See id.* at 122.26(b)(14)(xi) (listing “Facilities covered under Standard Industrial Classifications 20, 21, 22, 23, 2434 \* \* \*” as engaging in industrial activity for purposes of the industrial stormwater regulations.)

As discussed in this preamble, the EPA did not intend logging roads themselves to be regulated as industrial facilities, but, in light of *NEDC*, the EPA is modifying 40 CFR 122.26(b)(14) to clarify the Agency’s intent. The EPA believes that stormwater discharges from forest roads, including logging

roads, should be evaluated under section 402(p)(6) of the Clean Water Act because the section allows for a broad range of flexible approaches, including non-permitting approaches, that may be better suited to address the complexity of forest road ownership, management, and use.

#### V. Economic Impact

The final rule clarifies existing regulations and does not impose new regulatory requirements. As a result this action has no economic, public health, or environmental impacts.

#### VI. Statutory and Executive Order Review

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

#### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden as it serves only to clarify existing regulations. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR 122.26) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040–0004. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business “as defined by the Small Business Administration’s (SBA)

regulations at 13 CFR 121.201;" (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Rather, the rule clarifies that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity and that an NPDES permit is not required for these stormwater discharges.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. This action clarifies existing regulations and has no economic impact. Thus, it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 (64 FR 43255, November 2, 1999).

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. Moreover, this action clarifies existing regulations and has no economic, public health, or environmental impacts.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the change does not involve the installation of treatment or other components that use a measurable amount of energy.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the 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. NTTAA directs the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

The action clarifies existing regulations and makes no change to existing standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission. Agencies must do this by identifying and addressing as appropriate any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The action clarifies existing regulations and has no economic, public health, or environmental impacts.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 7, 2013.

#### **List of Subjects in 40 CFR Part 122**

Environmental protection, Water pollution control.

Dated: November 30, 2012.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons set out in the preamble, 40 CFR part 122 is amended as follows:

#### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** 33 U.S.C. 1251 et seq.

#### **Subpart B—Permit Application and Special NPDES Program Requirements**

■ 2. Section 122.26 is amended by revising paragraph (b)(14)(ii) to read as follows:

**§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).**

\* \* \* \* \*

(b) \* \* \*

(14) \* \* \*

(ii) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)–(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(not included are all other types of silviculture facilities);

\* \* \* \* \*

[FR Doc. 2012-29688 Filed 12-6-12; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2010-0472; FRL-9371-7]

#### Zeta Cypermethrin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of zeta-cypermethrin in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 7, 2012. Objections and requests for hearings must be received on or before February 5, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2010-0472, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; email address: [ertman.andrew@epa.gov](mailto:ertman.andrew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

## I. General Information

### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

### B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

### C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2010-0472 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 5, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0472, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** issue of August 4, 2010 (75 FR 46924) (FRL-8834-9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7717) by the IR-4 Project, Rutgers, The State University of New Jersey, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.418 be amended by establishing tolerances for residues of the insecticide zeta-cypermethrin, in or on pistachio at 0.05 parts per million (ppm), artichoke, globe at 0.80 ppm; barley, grain at 1.7 ppm; barley, hay at 5.0 ppm; barley, straw at 19.0 ppm; buckwheat, grain at 1.7 ppm; buckwheat, hay at 5.0 ppm; buckwheat, straw at 19.0 ppm; oat, grain at 1.7 ppm; oat, hay at 5.0 ppm; oat, straw at 19.0 ppm; rye, grain at 1.7 ppm; rye, hay at 5.0 ppm; and rye, straw at 19.0 ppm. That document referenced a summary of the petition prepared by FMC, the registrant, which is available in the docket, <http://www.regulations.gov>. A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

In the **Federal Register** issue of February 25, 2011 (76 FR 10584) (FRL-8863-3), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7804) by the IR-4 Project, Rutgers, The State University of New Jersey, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.418 be amended by establishing tolerances for residues of the insecticide zeta-cypermethrin, (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and