



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA-HQ-OW-2021-0169; FRL-12219-02-OW]

Modification to 2022 National Pollutant Discharge Elimination System (NPDES)

Construction General Permit (CGP) for Stormwater Discharges from Construction

Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final modification.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing, largely as proposed, a narrow modification to its 2022 Construction General Permit (CGP) to expand the list of areas eligible for coverage to include construction projects in all Lands of Exclusive Federal Jurisdiction. This modification is necessary because the EPA is the permitting authority in Lands of Exclusive Federal Jurisdiction, and when the CGP was issued on February 17, 2022, the permit did not specifically provide eligibility for these areas as a class. The modification also clarifies the CGP requirements that apply to projects that discharge to receiving waters within Lands of Exclusive Federal Jurisdiction in response to the Supreme Court's recent decision in *City and County of San Francisco v. EPA*. The permit modification and accompanying permit fact sheet can be found at <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>.

DATES: For EPA Regions 2, 4, 5, 6, 7, 8, 9, and 10, this final modification became effective on April 8, 2025. For EPA Regions 1 and 3, this final modification may become effective at a later date in accordance with the actions outlined in section IV of this document. In accordance with 40 CFR 23.2, this permit modification shall be considered issued for purposes of judicial review for EPA Regions 2, 4, 5, 6, 7, 8, 9, and 10 on April 8, 2025. For EPA Regions 1 and 3, the modification, if finalized, would be considered issued for purposes of judicial review on the date

each Region, consistent with this notice of final modification, issues a final permit decision modifying the 2022 CGP, prior to its expiration. See section IV of this document for additional information on judicial review, permit appeal procedures, and challenges in the course of civil or criminal proceedings to enforce this permit.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2021-0169. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at (202) 564-0721 or by email at schaner.greg@epa.gov.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information

- A. Does this Action Apply to Me?
- B. Who are the EPA Regional Contacts for this Permit?

II. Background

- A. Permitting of Stormwater Discharges from Construction Activities
- B. Background on Lands of Exclusive Federal Jurisdiction
- C. Why is a Modification to the 2022 CGP Necessary?

III. Summary of Final Modification

IV. Effective Dates of Final Modification

V. Paperwork Reduction Act (PRA)

VI. 2022 CGP Incremental Cost Analysis

VII. Executive Order 12866: Regulatory Planning and Review

VIII. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

IX. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

I. General Information

A. Does this Action Apply to Me?

This permit modification covers the following entities, as categorized in the North American Industry Classification System (NAICS), where they are conducting construction activities in Lands of Exclusive Federal Jurisdiction:

Table 1--Entities Covered by this Proposed Permit

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

The EPA does not intend the preceding table to be exhaustive but provides it as a guide for readers regarding the types of activities of which the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your site is covered by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in the existing EPA regulations at 40 CFR 122.26(b)(14)(x) and (b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the contact listed for the

appropriate Region in the following section.

B. Who are the EPA Regional Contacts for this Permit?

For EPA Region 1, contact Meridith Finegan: E-mail at finegan.meridith@epa.gov.

For EPA Region 2, contact Sieglinde Pylypchuk: Email at pylypchuk.sieglinde@epa.gov, or for Puerto Rico, contact Sergio Bosques: E-mail at bosques.sergio@epa.gov.

For EPA Region 3, contact Shana Stephens: E-mail at stephens.shana@epa.gov.

For EPA Region 4, contact Michael Mitchell: E-mail at mitchell.michael@epa.gov.

For EPA Region 5, contact Krista McKim: E-mail at mckim.krista@epa.gov.

For EPA Region 6, contact Suzanna Perea: E-mail at: perea.suzanna@epa.gov.

For EPA Region 7, contact Mark Matthews: E-mail at: matthews.mark@epa.gov.

For EPA Region 8, contact Amy Maybach: E-mail at: maybach.amy@epa.gov.

For EPA Region 9, contact Eugene Bromley: E-mail at bromley.eugene@epa.gov.

For EPA Region 10, contact Jill Seale: E-mail at seale.jill@epa.gov.

II. Background

A. Permitting of Stormwater Discharges from Construction Activities

Under Clean Water Act section 402(p)(2) and (p)(6) and 40 CFR 122.26(a)(1)(ii) and (a)(9)(i)(B), stormwater discharges from certain construction activities into waters of the United States must be authorized by a State or EPA-issued National Pollutant Discharge Elimination System (NPDES) permit. 33 U.S.C. 1342(p)(2), (p)(6). More specifically, NPDES permits are required for discharges from projects that cause one or more acres of land disturbance and for discharges from smaller land disturbances that are part of a common plan of development or sale if the discharges will ultimately disturb one or more acres of land. *Id.*; 40 CFR 122.26(a)(9), (b)(14)(x), (b)(15).

Under these authorities, since 1992 the EPA has issued an NPDES Construction General Permit for stormwater discharges from construction activities (referred to as the “CGP”). The CGP provides permit coverage in areas where the EPA is the NPDES permitting authority. The

EPA issued its most recent CGP on February 17, 2022, for stormwater discharges from eligible construction projects in three States (Massachusetts, New Hampshire, New Mexico); the District of Columbia; Federal facilities in four States (Washington, Colorado, Delaware, and Vermont); all U.S. territories, except the U.S. Virgin Islands; all Indian Country, except in Maine; and Denali National Park and Preserve.¹ The EPA is also the permitting authority for stormwater discharges from regulated construction activities that take place on all “Lands of Exclusive Federal Jurisdiction.”²

B. Background on Lands of Exclusive Federal Jurisdiction

1. Definition of Lands of Exclusive Federal Jurisdiction

Lands of Exclusive Federal Jurisdiction are lands in the U.S. where the Federal Government retains exclusive jurisdiction in relevant respects. Not all Federal lands are Lands of Exclusive Federal Jurisdiction. Rather, exclusive Federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution.³ These circumstances include (1) where the Federal Government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the Federal Government; and (3) where the Federal Government reserved jurisdiction upon granting statehood.⁴

2. Where Are Lands of Exclusive Federal Jurisdiction Located?

Lands of Exclusive Federal Jurisdiction are all lands where the Federal Government has exclusive Federal jurisdiction in relevant respects, including for purposes of implementing the CWA section 402 NPDES program. The EPA does not maintain a map or list of all Lands of

¹ 87 FR 3522 (January 24, 2022); 2022 CGP, Appendix B, available at

<https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-b-areas-of-permit-cover.pdf>.

² 33 U.S.C. 1342(a), (b) (providing that the EPA shall issue permits for the discharges of pollutants unless a State receives approval to administer its own permit program “for discharges into navigable waters within its jurisdiction”).

³ U.S. Const. Art. I, § 8, cl. 17 (“The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever ... over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings.”).

⁴ See *Paul v. United States*, 371 U.S. 245, 263–65 (1963); *Collins v. Yosemite Park Co.*, 304 U.S. 518, 529–30 (1938); *James v. Dravo Contracting Co.*, 302 U.S. 134, 141–42 (1937); *Surplus Trading Co. v. Cook*, 281 U.S. 647, 650–52 (1930); *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 527 (1895).

Exclusive Federal Jurisdiction because the jurisdictional status of Federal lands is tracked by multiple Federal land management agencies and the jurisdictional status of Lands of Exclusive Federal Jurisdiction may change over time. The EPA is aware that individual Federal land management agencies may maintain partial maps or lists but is unaware of a comprehensive listing of all current Lands of Exclusive Federal Jurisdiction across all agencies. Notably, 16 U.S.C. chapter 1 identifies the following U.S. National Park Service properties as containing Lands of Exclusive Federal Jurisdiction: Denali National Park, Mount Rainier National Park, Olympic National Park, Hot Springs National Park, Hawai'i Volcanoes National Park, Yellowstone National Park, Yosemite National Park, Sequoia National Park, Crater Lake National Park, Glacier National Park, Rocky Mountain National Park, Mesa Verde National Park, Lassen Volcanic National Park, Mammoth Cave National Park, and Isle Royale National Park.

3. The EPA's NPDES Authority in Lands of Exclusive Federal Jurisdiction

Clean Water Act section 402(a) authorizes the EPA to establish and implement the NPDES permitting program (33 U.S.C. 1342(a)), and Clean Water Act section 402(b) establishes procedures for States and authorized Tribes to request authorization from the EPA to administer the program in lieu of the EPA within their respective jurisdictions (33 U.S.C. 1342(b); see *id.* at section 1377(e)). Lands of Exclusive Federal Jurisdiction in relevant respects present a case where States lack authority for administering the NPDES program, as States do not have legislative jurisdiction in these areas absent specific congressional action.⁵ Congress did not take specific action in the Clean Water Act to authorize States to administer the NPDES program in Lands of Exclusive Federal Jurisdiction. Due to the Federal Government's unique jurisdictional authority within Lands of Exclusive Federal Jurisdiction, and the absence of specific congressional action within the Clean Water Act providing otherwise, the EPA has the sole

⁵ See *Paul*, 371 U.S. at 263 (finding precedent establishes "that the grant of 'exclusive' legislative power to Congress over enclaves that meet the requirements of Art. I, s 8, cl. 17, by its own weight, bars state regulation without specific congressional action").

authority to administer the NPDES permitting program on these lands. Therefore, where NPDES-regulated discharges, including stormwater discharges from regulated construction activities, will occur within Lands of Exclusive Federal Jurisdiction, the discharger must obtain permit coverage under an EPA-issued NPDES permit.

C. Why is a Modification to the 2022 CGP Necessary?

The 2022 CGP and prior EPA-issued CGPs did not include coverage for all Lands of Exclusive Federal Jurisdiction. As a result, construction projects scheduled to commence during the remaining effective period of the 2022 CGP (i.e., until the general permit expires on February 17, 2027) would be unable to obtain coverage for regulated stormwater discharges under this permit. For example, the U.S. National Park Service and Federal Highway Administration are scheduled in 2025 to commence construction projects requiring NPDES permit coverage in, among other locations, Olympic and Yosemite National Parks, both of which contain Lands of Exclusive Federal Jurisdiction. The EPA finds the most effective way to provide such permit coverage is through a modification to the 2022 CGP. Therefore, the EPA proposed a permit modification to the 2022 CGP to extend eligibility under the permit for construction activities in all Lands of Exclusive Federal Jurisdiction. See 89 FR 100929 (December 13, 2024).

The EPA is finalizing this permit modification to ensure that construction projects within any Lands of Exclusive Federal Jurisdiction are eligible for coverage under the 2022 CGP. This change will not disrupt any permit coverage for construction activities in Lands of Exclusive Federal Jurisdiction that was already provided under the 2022 CGP (e.g., for activities within Denali National Park and Preserve; Federal facilities in the states of Colorado, Delaware, and Vermont; and construction carried out by Federal operators in the state of Washington).

The EPA is modifying the 2022 CGP pursuant to the modification authorities in the applicable NPDES regulations at 40 CFR 122.62(a)(2); 40 CFR 124.5. The Federal Government's authority within Lands of Exclusive Federal Jurisdiction, including the EPA's role as the NPDES permitting authority, pre-dates the 2022 CGP. However, the EPA only became

aware of the gap in coverage in 2024, following the issuance of the 2022 CGP when the Agency received requests for permit coverage for construction projects in U.S. National Park Service properties identified as containing Lands of Exclusive Federal Jurisdiction pursuant to 16 U.S.C. chapter 1. The EPA views modification of the 2022 CGP to expand the area of coverage to accommodate projects within all Lands of Exclusive Federal Jurisdiction as the most effective and appropriate means to address this gap in coverage.

Prior to moving forward with this modification, the EPA considered the alternative option of issuing individual permits for projects within Lands of Exclusive Federal Jurisdiction, at least in the interim period prior to expected final action on the next CGP in 2027. While this alternative remains available for any specific project, relying solely on individual permits is not the most efficient way to authorize regulated stormwater discharges from these projects given the longer timelines typically associated with the application and permit development process for individual permits as compared to the more streamlined authorization approach of the CGP. Moreover, the EPA is not currently certain how many projects may be planned within Lands of Exclusive Federal Jurisdiction before February 2027, making it hard to estimate how long the individual permitting process could take for all of these projects. Only providing the opportunity for individual permits until the next CGP could potentially result in unnecessary construction delays in Lands of Exclusive Federal Jurisdiction, including for critical infrastructure projects in certain U.S. National Park Service properties that may have limited construction seasons. In light of these considerations, the EPA concluded that modifying the current CGP is the most effective way to provide permit coverage for these projects.

The EPA also considered whether to issue a standalone general permit for Lands of Exclusive Federal Jurisdiction or to reissue the full CGP prior to its expiration in February 2027. A standalone general permit would have provided a narrower means to target the permitting of projects in these areas. The EPA determined, however, that issuing a new general permit would take significantly longer than modifying the 2022 CGP, making a final permit unavailable until

later in 2025 and unnecessarily impeding construction projects scheduled earlier in the year. The EPA also determined that issuing an entirely new CGP in 2025 would disrupt the Agency's anticipated reissuance of the CGP prior to its expiration in February 2027 and raise additional implementation questions about the need to provide coverage for already permitted projects. Similar to the standalone general permit option, the EPA also was concerned that it would take longer to reissue the full CGP than to finalize a limited modification. After consideration of public comments received (as discussed in section III in this document), the EPA is therefore finalizing this narrow modification to the 2022 CGP.

III. Summary of Final Modification

The EPA is finalizing the modifications to the 2022 CGP as proposed with the exception of additional changes necessary to address permit conditions specifically implicated by the Supreme Court's recent decision in *City and County of San Francisco v. EPA*, No. 23-752 (March 4, 2025). The EPA did not receive any comments requesting changes to the 2022 CGP modification or providing new information for the Agency's consideration directly relevant to the terms of the final modification. The EPA only received one comment on the proposal seeking clarification about the implementation of the 2022 CGP modification with respect to particular State laws and particular Lands of Exclusive Federal Jurisdiction in one State. The EPA considered the comment, but it did not provide a basis for changing the modification of the 2022 CGP or the final permit terms. The EPA's response to this comment is included in the docket for this final modification.

The following section describes the final modifications to the 2022 CGP. These changes are also discussed in the fact sheet accompanying the modified permit.

- *Expanded CGP eligibility for all Lands of Exclusive Federal Jurisdiction (CGP Appendix B)*—As proposed, the EPA is expanding the permit eligibility in Appendix B of the 2022 CGP to include coverage for construction projects taking place within any Lands of Exclusive Federal Jurisdiction in the U.S. This expansion covers projects within Lands of

Exclusive Federal Jurisdiction in any of the EPA's 10 Regions. The EPA notes that any permitted activities in Lands of Exclusive Federal Jurisdiction that the 2022 CGP already covers (e.g., activities within Denali National Park and Preserve; Federal facilities in the states of Colorado, Delaware, and Vermont; and construction carried out by Federal operators in the state of Washington) are not affected by or subject to the modification.

- *New definition of Lands of Exclusive Federal Jurisdiction (CGP Appendix A)*—The EPA is finalizing the proposed definition of Lands of Exclusive Federal Jurisdiction in Appendix A of the 2022 CGP.
- *Clarification of requirements for projects discharging to receiving waters within Lands of Exclusive Federal Jurisdiction (CGP Part 10)*—As proposed, the EPA is requiring in this final modification that operators of projects discharging to receiving waters within Lands of Exclusive Federal Jurisdiction will be held largely to the same discharge requirements in the 2022 CGP that are applicable to discharges to sensitive waters, including outstanding national resource waters, referred to as “Tier 3” waters in the 2022 CGP (see Appendix A at A-1). The reasons for this approach are severalfold. As explained above, the EPA does not have a comprehensive map or list of Lands of Exclusive Federal Jurisdiction and must base this permitting decision on the information available to the Agency about the location of such lands. As explained in the proposal, the EPA's best available information indicates that Lands of Exclusive Federal Jurisdiction include areas within certain national parks identified as such by 16 U.S.C. chapter 1, such as Olympic and Yosemite National Parks, where construction projects are scheduled to commence in 2025.

Waters of the United States in national parks have the potential to be considered outstanding national resource waters pursuant to the EPA's regulations at 40 CFR

131.12(a)(3).⁶ Under the 2022 CGP requirements prior to this modification, projects that discharge to outstanding national resource waters are required to comply with heightened requirements to protect water quality because those waters are generally classified as “Tier 3” waters. See 2022 CGP at Appendix A, A-1. Projects discharging to Tier 3-designated waters must conduct more frequent inspections, comply with more rapid stabilization timeframes than discharges that fall into other categories, and conduct turbidity monitoring of any dewatering discharges.

The EPA is therefore finalizing its proposal to apply the heightened protections for Tier 3 waters in the 2022 CGP to all newly eligible projects that discharge into waters of the United States within Lands of Exclusive Federal Jurisdiction. Finalizing this approach, as proposed, will protect all receiving waters within Lands of Exclusive Federal Jurisdiction subject to this permit, including those that flow through a national park or other Tier 3 water. The EPA recognizes that some waters subject to this permit in Lands of Exclusive Federal Jurisdiction may not have the potential to be designated as outstanding national resource waters or otherwise be subject to 40 CFR 131.12(a). Given that the EPA knows that some waters in Lands of Exclusive Federal Jurisdiction have the potential for designation as outstanding national resource waters, however, and that the Agency does not have a complete list of all Lands of Exclusive Federal Jurisdiction, requiring heightened protection for all waters within these areas subject to this permit is the most effective and efficient way to ensure that all such waters are appropriately protected. This protective approach is reasonable based on the best information currently available to the Agency.

In a key change from the proposal, the EPA is finalizing water quality-based limitations that apply to the newly eligible construction activities in Lands of Exclusive

⁶ “Where high quality waters constitute an outstanding National resource, such as waters of National . . . parks . . . that water quality shall be maintained and protected.” 40 CFR 131.12(a)(3); *see also* 33 U.S.C. 1251(a), 1313(a), (c)(2)(A), (d)(4)(B).

Federal Jurisdiction in light of the Supreme Court’s decision in *San Francisco*. In that decision, the Supreme Court held that the Clean Water Act does not authorize “NPDES permit requirements that condition permit holders’ compliance on whether receiving waters meet applicable water quality standards.” The Court found that these types of requirements, such as permit terms prohibiting discharges that contribute to a violation of a water quality standard in a receiving water, are unlawful under the Clean Water Act. Consistent with this holding, this CGP modification removes the proposed generic narrative prohibition analogous to the permit text rejected by the Court in *San Francisco*, replacing it with final water quality-based limitations that tie compliance to the condition of the discharge (not the receiving water). Section 10 also makes a conforming change to indicate that triggering conditions for corrective actions in Part 5.1.3 and limits on the use of treatment chemicals in Part 7.2.6 focus on conditions within the construction site’s discharge. As proposed, the permit addresses all modifications to the water quality-based limitations for Lands of Exclusive Jurisdiction in one place, Part 10.

Even with the changes to Part 10, including the removal of the applicability of the generic water quality-based effluent limitation, the EPA has concluded that the permit contains provisions for newly eligible entities in Lands of Exclusive Federal Jurisdiction as necessary to meet water quality standards as required by CWA section 301(b)(1)(C).⁷ As discussed, the EPA knows that some waters in Lands of Exclusive Federal Jurisdiction have the potential to be designated as Tier 3 outstanding national resource waters and is therefore applying the approach to water quality-based limitations used for Tier 3 waters in the 2022 CGP to all discharges to waters in Lands of Exclusive Federal Jurisdiction subject to this modification. Given the limits of the EPA’s current knowledge about Lands of Exclusive Federal Jurisdiction, however, the EPA welcomes information from prospective permittees to inform the water quality-based limitations for their

⁷ 33 U.S.C. 1311(b)(1)(C).

discharges. If any permittee believes the water quality-based limitations approach adopted in this modification is not warranted for its activity, that permittee may request an individual permit containing permit-specific limitations. The EPA is available to provide technical assistance for such individual permit requests and will endeavor to process them expeditiously. The EPA also plans to continue to evaluate the water quality-based limitations applicable to projects discharging to receiving waters in Lands of Exclusive Federal Jurisdiction for future permit actions as the Agency gains more experience and information with permitting discharges in these locations.

At this time, the EPA is only modifying the conditions of the 2022 CGP to add coverage for all Lands of Exclusive Federal Jurisdiction not already included in the 2022 CGP. The EPA has not reopened and is not reopening any other conditions of this permit as part of this modification in accordance with 40 CFR 122.62 and 40 CFR 124.5(c)(2). As the 2022 CGP (including provisions that are part of this modification) expires on February 16, 2027, the EPA plans to propose the next CGP in the near term and any concerns with other aspects of the permit can be raised at that time. In particular, the EPA intends to propose and take comment on changes to the water quality-based limitations in the underlying CGP to ensure compliance with the Supreme Court's decision in *San Francisco*. In the meantime, the EPA notes that it is working expeditiously to assess the scope of water quality-based limitations implicated by *San Francisco*, and the extent to which existing limitations (including those that continue to appear in Part 3.1 of the 2022 CGP) are enforceable. The EPA hopes to provide clarity to the public, including regulated entities, on this issue in the near future.

- *Clarification of eligibility requirements related to endangered species (CGP Appendix D)*—During the development of the proposed modification, the EPA met with the U.S. National Park Service and other Federal agencies to better understand, among other things, these agencies' typical practices related to compliance with the Endangered

Species Act for construction projects.⁸ Based on these conversations, it is the EPA's understanding that these agencies complete their Section 7 Endangered Species Act consultations for these projects prior to commencing construction. 16 U.S.C. 1536. Consistent with this understanding, Federal entities and associated contractors engaged in construction activity within Lands of Exclusive Federal Jurisdiction will be eligible only after completion of Section 7 consultation, consistent with Notice of Intent Criterion E.

IV. Effective Dates of Final Modification

The effective dates for the final modification are described in this section. The EPA is establishing separate effective dates to account for the different timing needs of various EPA Regions. The EPA finds it necessary to move forward with the final modification expeditiously in most EPA Regions so that CGP eligibility is extended to construction projects scheduled to commence on Lands of Exclusive Federal Jurisdiction in early 2025. However, additional time is needed for two EPA Regions to complete required Clean Water Act section 401 procedures, thus making different, subsequent effective dates for these Regions appropriate. As described in this section, the different effective dates are consistent with the NPDES regulations for such dates at 40 CFR 124.15(b).

For most EPA Regions, the effective date is the date of issuance of the final permit modification. Therefore, for EPA Regions 2, 4, 5, 6, 7, 8, 9, and 10, the final modification became effective on April 8, 2025. This effective date is established under authority of 40 CFR 124.15(b)(3), which provides an exception to the effective date of 30 days after service of notice of the permit decision in cases where “[n]o comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.” Making the permit effective for these Regions upon issuance is appropriate because the EPA received no comments that requested a change to the proposed modification. The one comment the EPA received on the

⁸ 16 U.S.C. 1531 *et seq.*

draft permit modification raised questions about how the Agency would implement the modified CGP but did not request changes to the draft modification. The EPA views it as appropriate, therefore, to make the modification effective upon issuance based on the lack of comments recommending a change to the draft modification.

By contrast, a different effective date is necessary for EPA Regions 1 and 3. Consistent with 40 CFR 124.15(b)(1), the EPA is providing notice of an effective date for the final modification in EPA Regions 1 and 3 that is later than 30 days after service of notice of this decision. These Regions require a different effective date than the one for the other eight EPA Regions due to the additional time needed to complete the Clean Water Act section 401(a)(2) process. If, upon completion of that process, these Regions proceed with issuing the final permit modification, each Region would make this modification effective upon issuance of the modified permit. The EPA notes that, given the specific process each Region is undergoing, it is possible that either or both Regions may not finalize this modification prior to expiration of the 2022 CGP and that, even if they did, there could be a different effective date for each Region. Notice of when the final modification in EPA Regions 1 and 3 is issued will be provided through the EPA's website at <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>.

Under Clean Water Act section 509(b), judicial review of this general permit can be requested by filing a petition for review in a United States Court of Appeals within 120 days after the permit is considered issued.⁹ As provided in 40 CFR 124.19(o), this final modification of a general permit is not subject to the permit appeal procedures at 40 CFR 124.19. Under Clean Water Act section 509(b)(2), this permit is not subject to challenge in the course of civil or criminal proceedings to enforce this permit or in any other agency proceedings.

V. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB

⁹ The EPA notes the 120-day period for judicial review under Clean Water Act section 509(b) is based on the date the final permit decision is issued in each Region. Therefore, if either Region 1 or 3 signs a final permit modification in the future, that issuance date would be different than the issuance date for the permit modifications finalized in other EPA Regions for purposes of judicial review.

has previously approved the information collection activities contained in the existing permit and has assigned OMB control number 2040-0305. This final modification is limited to providing eligibility under the 2022 CGP to construction projects carried out by Federal entities and associated contractors on Lands of Exclusive Federal Jurisdiction and, as such, does not result in an increase in information collection burden.

VI. 2022 CGP Incremental Cost Analysis

The EPA conducted a cost analysis for the final 2022 CGP, which monetized and quantified certain incremental cost impacts of the final permit changes as compared to the 2017 CGP. The objective of this incremental cost analysis was to show where or to what extent the final 2022 CGP requirements imposed an incremental increase in administrative and compliance costs (such as the cost to conduct site inspections or to prepare compliance reports) on operators in relation to costs that were already accounted for in the 2017 CGP. A copy of the EPA's incremental cost analysis, titled, "Incremental Cost Impact Analysis for the 2022 Construction General Permit (CGP)," is available in the docket for the final permit (Docket ID No. EPA-HQ-OW-2021-0169).

Projects that are eligible under the modified 2022 CGP's inclusion of Lands of Exclusive Federal Jurisdiction are subject to the same set of permit requirements that already apply to projects located in other areas. The modification specifies that newly eligible construction sites within Lands of Exclusive Federal Jurisdiction will be subject to the same heightened inspection, stabilization, and corrective action requirements that already apply to permittees discharging to sensitive waters under the CGP, but these do not alter the incremental costs for operators who will be covered under the 2022 CGP. As a result, the EPA does not expect there to be calculable changes to the CGP Incremental Cost Analysis resulting from the expansion of eligibility in the 2022 CGP to include construction activities within Lands of Exclusive Federal Jurisdiction. For this reason, the EPA expects the costs associated with the modification to be already captured by the analysis that was completed for the full permit.

Overall, finalizing the modification will further the cost savings realized by use of the general permit to provide coverage for regulated discharges from construction activities. The final modification will result in allowing eligible projects to obtain efficient permit coverage within 14 days; otherwise, each project would need to apply for coverage under an individual permit, which could take up to a year to obtain absent this permit modification to the 2022 CGP.

VII. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

VIII. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In compliance with Executive Order 13175, the EPA completed consultation with Tribal officials on the 2022 CGP and included a summary report on the EPA's outreach activities and comments received during the consultation in the docket for the final permit. The Tribal consultation summary can be accessed at <https://www.epa.gov/dockets> in the docket for this permit (refer to Docket No. EPA-HQ-OW-2021-0169). A formal consultation with Tribal officials was not required for this action since it is limited to the described narrow modifications to the 2022 CGP. The EPA has, however, notified Tribes of this modification and invited those interested to provide the Agency with comments or to request further coordination or consultation. The EPA did not receive comments or requests for further coordination or consultation.

IX. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant action under Executive Order 12866.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Mark Sanborn,
Regional Administrator, EPA Region 1.

Javier Laureano Perez,
Director, Water Division, EPA Region 2.

Carmen Guerrero Perez,
Director, Caribbean Environmental Protection Division, EPA Region 2.

Michelle Price-Fay,
Director, Water Division, EPA Region 3.

Kathlene Butler,
Director, Water Division, EPA Region 4.

Tera Fong,
Director, Water Division, EPA Region 5.

Troy Hill,
Director, Water Division, EPA Region 6.

Jeffery Robichaud,
Director, Water Division, EPA Region 7.

Stephanie DeJong,
Manager, Clean Water Branch, EPA Region 8.

Tomas Torres,
Director, Water Division, EPA Region 9.

Mathew Martinson,
Director, Water Division, EPA Region 10.
[FR Doc. 2025-06320 Filed: 4/14/2025 8:45 am; Publication Date: 4/15/2025]