

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

In compliance with Executive Order 13175, EPA is in the process of consulting with tribal officials to gain an understanding of and, where necessary, to address the tribal implications of the draft CGP. In the course of this consultation, EPA plans to undertake the following activities:

1. Provide education and outreach on the draft CGP;
2. Hold national conference call(s) to discuss issues and concerns of the tribes and document discussions held in this call;
3. Solicit comment on the draft permit; and
4. Provide feedback through a written communication explaining how tribal issues and concerns were considered in the final action. This communication will be completed and made available to the tribes at the same time the permit is promulgated and the other responses to the comments are published.

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

Dated: April 12, 2011.

H. Curtis Spalding,
Regional Administrator, EPA Region 1.

Dated: April 12, 2011.

Carl-Axel P. Soderberg,
Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: April 12, 2011.

Kevin Bricke,
Acting Director, Division of Environmental Planning & Protection, EPA Region 2.

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Jon M. Capacasa,
Director, Water Protection Division, EPA Region 3.

Dated: April 12, 2011.

Douglas Mundrick,
Acting Director, Water Protection Division, EPA Region 4.

Dated: April 12, 2011.

Tinka G. Hyde,
Director, Water Division, EPA Region 5.

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Miguel I. Flores,
Director, Water Quality Protection Division, EPA Region 6.

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Jamie Green,
Acting Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: April 11, 2011.

Stephen S. Tuber,
Assistant Regional Administrator, EPA Region 8.

Dated: April 11, 2011.

Alexis Strauss,
Director, Water Division, EPA Region 9.

Dated: April 11, 2011.

Michael A. Bussell,
Director, Office of Water and Watersheds, EPA Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9297-8; EPA-HQ-OW-2008-0238]

Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 propose to modify the 2008 National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges associated with construction activity in order to extend until January 31, 2012 the expiration date of the permit. Hereinafter, these NPDES general permits will be referred to as “permit” or “2008 construction general permit” or “2008 CGP.” This proposed modification would, if finalized, extend the three-year permit so that it expires on January 31, 2012 instead of June 30, 2011. Prior to this proposed extension, EPA modified the 2008 CGP in January 2010 to extend the permit by one year, thus making it a three-year permit. By Federal law, no NPDES permit may be issued for a period that exceeds five years.

DATES: EPA is proposing a modification to its 2008 CGP that would extend the permit until January 31, 2012. If the proposed modification is finalized, the 2008 CGP would expire on midnight, January 31, 2012, instead of June 30, 2011. Comments on EPA’s proposal must be postmarked by May 25, 2011.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564-0721; fax number: (202) 564-6431; email address: schaner.greg@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

If a discharger chooses to apply for coverage under the 2008 CGP, the permit provides specific requirements for preventing contamination of waterbodies from stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) Code
Industry.	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

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

Eligibility for coverage under the 2008 CGP is limited to operators of “new projects” or “unpermitted ongoing projects.” A “new project” is one that commences after the effective date of the 2008 CGP. An “unpermitted ongoing project” is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. Construction sites that originally obtained permit coverage under the 2003 CGP will continue to be covered under that permit. The 2008 CGP is effective only in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the 2008 CGP.

B. How can I get copies of this document and other related information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2008-0238. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in

the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through www.regulations.gov and in hard copy at the EPA Docket Center Public Reading Room, 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 Water Docket is (202) 566-2426.

2. Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the “Federal Register” listings at <http://www.epa.gov/fedrgstr/>. Electronic versions of the final permit and fact sheet are available at EPA’s stormwater website <http://www.epa.gov/npdes/stormwater>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov/fdmspublic/component/main> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search”, then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the docket facility identified in Section I.B.1.

Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer disks mailed to EPA, mark the surface of the disk as CBI. Also identify electronically the specific information contained in the disk or that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA’s electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA’s electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA’s electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA’s electronic public docket along with a brief description written by the docket staff.

C. How and to whom do I submit comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically

captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* These electronic submissions will be accepted in Microsoft Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send the original and three copies of your comments.

3. *By Hand Delivery or Courier.* Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.

D. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed extension. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed extension. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed extension. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

E. Finalizing This Action

This action will not be finalized until after all significant public comments have been considered and addressed. EPA's response to public comments received will be included in the docket as part of the final action. Once the final permit becomes effective, operators of new and unpermitted ongoing construction projects may seek authorization under the 2008 CGP prior to the midnight January 31, 2012 expiration date.

F. Who are the EPA Regional contacts for this permit?

For EPA Region 1, contact Jessica Hing at tel.: (617) 918-1560 or e-mail at hing.jessica@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or e-mail

at venezia.stephen@epa.gov, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at bosques.sergio@epa.gov.

For EPA Region 3, contact Chuck Schadel at tel.: (215) 814-5761 or e-mail at schadel.chuck@epa.gov.

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at bell.brianc@epa.gov.

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665-7217 or e-mail at: perea.suzannabrent@epa.gov.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or e-mail at: matthews.mark@epa.gov.

For EPA Region 8, contact Amy Clark at tel.: (303) 312-7014 or e-mail at: clark.amy@epa.gov.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or e-mail at bromley.eugene@epa.gov.

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553-6650 or e-mail at vakoc.misha@epa.gov.

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act ("CWA") establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The CWA also includes the objective of attaining "water quality which provides for the protection and propagation of fish, shellfish and wildlife and * * * recreation in and on the water." 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control point source discharges of pollutants to waters of the United States through the issuance of National Pollutant Discharge Elimination System ("NPDES") permits.

The Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the **Federal Register**, often called the "Phase I Rule" on November 16, 1990, establishing, among other things, permit application requirements for, among other things, "storm water discharges associated with industrial activity." See 55 FR 47990. EPA defines the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of "industrial

activity” pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the Phase II Rule, was published in the **Federal Register** on December 8, 1999, requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are less than one acre but are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits issued by the NPDES permitting authorities must incorporate requirements based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations guidelines and new source performance standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

B. Summary of 2008 CGP

EPA announced the issuance of the 2008 CGP on July 14, 2008. See 73 FR 40338. Construction operators choosing to be covered by the 2008 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements described in Part 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

The 2008 CGP permit provides coverage for discharges from construction sites that occur in areas not covered by an approved State NPDES program. EPA Regions 1, 2, 3, 5, 6, 7,

8, 9, and 10 issued the 2008 CGP to replace the expired 2003 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2008 CGP is listed in Appendix B of the permit.

C. What Is EPA’s rationale for the modification of the 2008 CGP for an extension of the expiration date?

As stated above, EPA proposes to modify the 2008 CGP by extending to January 31, 2012 the expiration date of the permit. EPA finds it necessary to propose this extension in order to provide sufficient time to finalize the new CGP, which will incorporate for the first time new effluent limitations guidelines and new source performance standards, which EPA promulgated in December 2009. The extension is necessary in order to make up for a delay in the issuance process of the new CGP due to an error discovered in the December 2009 final rule regarding the calculation of the numeric limitation on turbidity. This numeric limit has since been stayed by EPA. EPA’s proposed extension would provide the Agency with sufficient time to account for this delay and to meet its other permit issuance obligations.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, any NPDES permits issued after the effective date of these requirements must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). In the case of the CGP, EPA promulgated effluent limitations guidelines and new source performance standards for the construction and development point source category on December 1, 2009 (“C&D rule”), which for the first time imposed a set of minimum federal numeric and non-numeric effluent limitations on regulated construction sites. See 74 FR 62996 (December 1, 2009). The C&D rule (located at 40 CFR Part 450) became effective on February 1, 2010, thus requiring that any NPDES permit issued after this date, whether issued by EPA or an authorized state, must incorporate the substantive technology-based requirements of the rule into the permit. For the next CGP, this means that EPA must incorporate the effective requirements of the C&D rule into the permit.

Among other requirements, the C&D rule subjected discharges from certain larger construction sites to a numeric effluent limitation of 280 NTU for the pollutant turbidity starting in August of 2011 (for sites disturbing 20 or more acres at one time) and February of 2014 (for sites disturbing 10 or more acres at one time). Subsequent to the promulgation of the C&D rule, EPA received two petitions for reconsideration of the rule. These petitions pointed out a potential error in the calculation of the numeric limitation. Based on EPA’s examination of the dataset underlying the 280 NTU limit, EPA concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU numeric effluent limitation. In response to this finding, EPA finalized a stay of the 280 numeric NTU limit and associated monitoring requirements (see 40 CFR 450.22(a)) on January 4, 2011, in order to enable the Agency to correct its error in calculating the numeric limitation. See 75 FR 68215 (November 5, 2010). EPA is currently in the process of initiating a limited rulemaking to correct the numeric limitation.

Preceding the decision to stay the numeric turbidity limit, the uncertainty surrounding the error in calculating the 280 NTU limit and the appropriate way for EPA to address it, caused a delay of several months to the permit issuance process for the new CGP. The result of this delay makes it a near certainty that, given even the most optimistic timeframe for finalizing the new CGP, EPA will not be able to finalize the new CGP by the June 30, 2011 expiration date of the 2008 CGP. With less than three months remaining before the 2008 CGP expires, EPA believes it is impracticable to finalize the new CGP when considering the minimum tasks required of the Agency to finalize the permit. For instance, EPA has provided 60 days for the public to comment on the draft CGP (Refer to other FR Notice), which is typical of the amount of time provided for review of similar permits. Depending on the type and amount of comments the Agency receives, it is not unusual for EPA to take between two to three additional months to adequately review and respond to those comments, and to make corresponding changes to the permit and fact sheet. In addition to this time, EPA is required to complete inter-agency review on the modified permit prior to final issuance, which may take up to 90 days, all requiring an amount of time that is several months

beyond the June 30, 2011 expiration of the 2008 CGP.

EPA was unaware of the present need to extend the expiration date of the 2008 CGP when it first modified the 2008 CGP's expiration date in January 2010 by one year to June 30, 2011. At that time, EPA was under the impression that June 30, 2011 provided sufficient time to finalize a new permit incorporating all of the new C&D rule requirements. However, with the setback of time related to the stay of the 280 NTU limit, EPA needs additional time to complete the permit issuance process as explained above. EPA believes that the proposed extension to January 31, 2012 will provide the Agency with sufficient time to finalize the new CGP.

EPA believes it is imperative that EPA has sufficient time to incorporate the C&D ELG into the new CGP and issue the new CGP prior to the existing permit's expiration date. If EPA does not issue the new CGP before expiration of the existing permit, no new construction projects may be permitted under the CGP, leaving individual NPDES permits as the only available option for permitting new projects. The sole reliance on individual permits would mean that discharge authorizations would almost certainly be delayed due to the greater amount of time and Agency resources that are required for developing and issuing individual permits. In turn, construction projects that need to begin construction activity on or after midnight June 30, 2011 would be delayed for an uncertain amount of time until EPA can review their individual permit application and issue the necessary permits. Rather than risk detrimental delays to new construction projects, with no clear benefit to our nation's surface waters, EPA has decided that it is advisable to instead propose a modification to the 2008 CGP to extend the expiration date until January 31, 2012.

D. EPA's Authority To Modify NPDES Permits

EPA regulations establish when the permitting authority may make modifications to existing NPDES permits. In relevant part, EPA regulations state that "[w]hen the Director receives any information * * * he or she may determine whether or not one or more of the causes listed in paragraph (a) * * * of this section for modification * * * exist. If cause exists, the Director may modify * * * the permit accordingly, subject to the limitations of 40 CFR 124.5(c)." 40 CFR 122.62. For purposes of this **Federal Register** notice, the relevant cause for

modification is at 40 CFR 122.62(a)(2), which states that a permit may be modified when "[t]he Director has received new information" and that information was not available at the time of permit issuance * * * and would have justified the application of different permit conditions at the time of issuance." Pursuant to EPA regulations, "[w]hen a permit is modified, only the conditions subject to the modification are reopened." 40 CFR 122.62.

In the case of the 2008 CGP, a permit modification is justified based on the new information EPA received since it issued the 2008 CGP, and more specifically, since it modified the 2008 CGP in January 2010, in terms of the delay to the permit process associated with the discovery of the numeric limit calculation error and resulting stay to the numeric turbidity limit. If this information was available at the time of issuance of the 2008 CGP, and more specifically, in January 2010 when EPA extended the expiration date to June 30, 2011, it would have justified EPA establishing an expiration date for the 2008 CGP that was later than June 30, 2011. As a result, cause exists under EPA regulations to justify modification of the 2008 CGP to extend the expiration date of the permit from midnight June 30, 2011 to midnight January 31, 2012.

EPA notes that, by law, NPDES permits cannot be extended beyond 5 years. 40 CFR 122.46. The proposed extension of the 2008 CGP complies with this restriction. The 2008 CGP was first issued on June 30, 2008. Assuming the extension of the 2008 CGP is finalized as proposed, the permit would still have been in effect for less than the 5-year limit.

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

Dated: April 12, 2011.

H. Curtis Spalding,
Regional Administrator, EPA Region 1.

Dated: April 12, 2011.

Carl-Axel P. Soderberg,
Division Director, Caribbean Environmental Protection Division, EPA Region 2.

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Kevin Bricke,
Acting Director, Division of Environmental Planning & Protection, EPA Region 2.

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Alexis Strauss,
Director, Water Division, EPA Region 9.

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Michael A. Bussell,
Director, Office of Water and Watersheds, EPA Region 10.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Notice of Submission for OMB Review—Request for an Extension Without Change: State and Local Government Information Report (EEO-4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension through 2014 of the existing collection requirements under 29 CFR part 1602, Recordkeeping and Reporting Requirements, under Title VII. The Commission has