



May 15, 2026

VIA ELECTRONIC SUBMISSION

Mr. Adam Telle
Assistant Secretary of the Army for Civil Works
Office of the Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Re: Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits; Establishment of a Public Docket; Request for Input; Docket No. COE-2026-0001.

Dear Assistant Secretary Telle:

On March 16, 2026, the U.S. Army Corps of Engineers (Corps) published a notice seeking input on ways to improve the nationwide permit (NWP) program.¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the Corps' request.

Advocacy appreciates the chance to offer input on the NWP program, which is supported by small businesses. NWPs allow small businesses to reduce their regulatory burdens by offering an alternative to time-consuming and expensive individual permits for projects with little to no environmental impacts. Continued and expanded use of the NWP program will help to deliver projects faster and reduce regulatory costs while maintaining the Clean Water Act's (CWA) environmental objectives.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy in 1976 under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the Small Business Administration (SBA) or the Administration.

¹ 91 Fed. Reg. 12591 (March 16, 2026).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.³ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁴

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

B. The Corps’ Nationwide Permit Program Reduces Regulatory Burdens for Small Businesses.

Under Section 404 of the CWA, permission from the Corps is required to discharge dredged or fill material into waters of the United States.⁸ To grant this permission, the Corps can issue either individual or general permits. Individual permits are project-specific while general permits may be used for classes of activities (such as linear transportation projects, mining or stormwater management). NWP are a class of general permit issued for classes of activities that are “similar in nature, cause only minimal adverse environmental impacts when performed separately, and have only minimal cumulative adverse effect on the environment.”⁹

NWPs are valid for five years.¹⁰ The current NWPs were issued on January 8, 2026, and will expire on March 15, 2031.¹¹ According to the Corps, NWPs are used to authorize 55,000 activities per year.¹² NWPs also take much less time to process than individual permits. According to the Corps, in FY 2024 the average time needed to process a NWP request was 55

² Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

³ 5 U.S.C. § 603.

⁴ *Id.* § 605(b).

⁵ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ 33 U.S.C. § 1344.

⁹ 33 U.S.C. § 1344 (e)(1).

¹⁰ 33 U.S.C. § 1344 (e)(2).

¹¹ 91 Fed. Reg. 768 (Jan. 8, 2026).

¹² *Id.* at 855.

days as opposed to 253 days to issue an individual permit.¹³ Additionally, the Corps estimates that the permit cost for a typical project using NWP (\$5,283 to \$17,611) is four times lower than projects requiring individual permits (\$21,133 to \$42,265).¹⁴

The time and cost savings allowed by NWP has earned the program support from small businesses in multiple sectors, including agriculture, energy production, transportation construction and home building.¹⁵ Advocacy also spoke with representatives from each of these industry sectors about the Corps' current request for input and they all reiterated their support for the NWP program.

C. The Corps Request for Input on Potential Future Changes to the NWP Program.

The Corps is seeking input from the regulated community on “ways to increase the efficiency” of the NWP Program.¹⁶ Specifically, the Corps has asked the following questions:

- What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny?
- What measures should the Corps consider that would improve or maintain efficiency in the review of pre-construction notifications or issuance of NWP verifications?
- What categories of activities that are similar in nature should the Corps consider for establishing new NWPs?
- What measures should the Corps consider to ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental affects both individually and cumulatively?
- What measures should the Corps consider to develop NWPs, terms, general conditions, or processes for the transportation and disposal of dredged material into ocean waters?
- What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the nationwide permit program?¹⁷

The general opinion of the small business representatives that Advocacy spoke with about the Corps' request was that the NWP program is extremely beneficial and should be supported and maintained. Also, there was a particular emphasis on ensuring the NWP program remains legally defensible and that the permits continue to be renewed in a timely fashion.

¹³ *Id.*

¹⁴ U.S. Env't Prot. Agency, Regulatory Impact Analysis for the Proposed 2026 Nationwide Permits (Feb. 21, 2025) p. 24, table 4.1, <https://www.regulations.gov/document/COE-2025-0002-0056>.

¹⁵ Industry Coalition Comment Letter on the Proposal to Reissue and Modify Nationwide Permits (July 18, 2025) p.1, <https://www.regulations.gov/comment/COE-2025-0002-0318>.

¹⁶ 91 Fed. Reg. 12591 (March 16, 2026).

¹⁷ *Id.* at 12593.

II. Expanded Use of the NWP Program will Help to Achieve the Goals of Multiple Executive Orders Issued by President Trump.

As the Corps considers input on improving the NWP program, it should be noted that expanding the use of NWPs can help achieve the goals of many of the Executive Orders (EO) issued by President Trump aimed at reducing project delays. These EOs include:

- EO 14154, *Unleashing American Energy* asks all agency heads to “review all existing regulations, orders, guidance documents, policies, settlements, consent orders, and any other agency actions (collectively, agency actions) to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources—with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources.”¹⁸ Expanded use of NWPs would reduce regulatory burdens for energy projects by helping them avoid unnecessarily lengthy individual permitting requirements where there are only minor impacts to the aquatic environment.
- EO 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative* asks agencies to identify “regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.”¹⁹ Requiring a project to acquire an individual permit when there are minimal environmental impacts is an undue burden to both the small businesses and entrepreneurs working on the project. Greater use of NWPs can alleviate this burden.
- Multiple EOs have targeted specific industry sectors, such as timber,²⁰ mineral production,²¹ energy production,²² seafood,²³ artificial intelligence,²⁴ and home building.²⁵ In each of these EOs, the goal is to remove regulatory barriers. Increasing the use of NWPs and reducing the need for individual permits in these sectors will help to increase productivity and decrease delays and costs.

The Corps states that “reducing unnecessary paperwork and delays” is a “continuing” agency goal.²⁶ The agency further states that they are seeking to “eliminate unnecessary review” and “increase efficiency” in reviews.²⁷ The Office of Advocacy supports these goals. Expanding the

¹⁸ 90 Fed. Reg. 8353 (Jan. 20, 2025).

¹⁹ 90 Fed. Reg. 10583 (Feb. 19, 2025).

²⁰ EO 14225, *Immediate Expansion of American Timber Production*, 90 Fed. Reg. 11365 (March 6, 2025).

²¹ EO 14241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13653 (March 20, 2025), EO 14261, *Reinvigorating America’s Beautiful Clean Coal Industry and Amending Executive Order 14241*, 90 Fed. Reg. 15517 (April 14, 2025), EO 14285, *Unleashing America’s Offshore Critical Minerals and Resources*, 90 Fed. Reg. 17735 (April 29, 2025).

²² EO 14270, *Zero-Based Regulatory Budgeting to Unleash American Energy*, 90 Fed. Reg. 15643 (April 15, 2025).

²³ EO 14276, *Restoring American Seafood Competitiveness*, 90 Fed. Reg. 16993 (April 22, 2025).

²⁴ EO 14318, *Accelerating Federal Permitting of Data Center Infrastructure*, 90 Fed. Reg. 35385 (July 20, 2025).

²⁵ EO 14394, *Removing Regulatory Barriers to Affordable Home Construction*, 91 Fed. Reg. 13207 (March 18, 2026).

²⁶ 91 Fed. Reg. 12591 (March 16, 2026).

²⁷ *Id.* at 12592.

use of the NWP will reduce paperwork, eliminate unnecessary review requirements and increase efficiency by decreasing the need for time-consuming, costly individual permits.

III. An “NWP-First” Approach to Permitting Would Further Reduce Regulatory Burdens on Small Businesses.

From a regulatory burden perspective, NWPs are similar to categorical exclusions (CEs) under the National Environmental Policy Act (NEPA).²⁸ NEPA defines a CE as a “category of actions that a [f]ederal agency has determined normally does not significantly affect the quality of the human environment.”²⁹ If a project qualifies as a CE, it does not have to undergo a more costly and time consuming environmental assessment (EA) or environmental impact statement (EIS).

The difference between a CE and an EA or EIS can be years. Small Businesses have informed Advocacy that an EIS can take anywhere from 7 to 10 years. One industry representative explained that they were working on a project where the process for a supplemental EIS took longer than the original EIS. Additionally, Advocacy was told that EAs of 2 to 4 years were not uncommon.

In guidance issued on April 9, 2026, the White House Council on Environmental Quality directed agencies to “in all instances consider whether a categorical exclusion applies to a particular proposed action before beginning to develop an EA or EIS for that proposed action.”³⁰ This is justified, according to CEQ, because CEs are “a core feature of NEPA practice to facilitate efficient and effective reviews.”³¹

NWPs are like CEs in that they also provide a streamlined review process for projects or activities with minimal environmental impacts. For this reason, the Corps should approach NWPs in the same manner CEQ treats CEs. NWPs should be considered as a matter of “first resort” before a project is forced to get an individual permit. By prioritizing the use of NWPs over individual permits, the Corps will reduce project costs and delays.

Advocacy supports a “NWP-first” approach to permitting because it will help the small businesses involved with those projects by avoiding unnecessary regulatory burdens.

IV. Potential Improvements to the NWP Program.

The Office of Advocacy discussed the Corps request for input on the NWP program with representatives from multiple sectors, including home building, construction and energy production.

²⁸ 42 U.S.C. § 4321 et seq., Pub. L. No. 91-190, 83 Stat. 852 (1970).

²⁹ 42 U.S.C. § 4336e(1).

³⁰ Memorandum from Katherine Scarlett, Chairman, Council of Env’t Quality, to Heads of Federal Departments & Agencies, *Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act* (April. 9, 2026) p. 2, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Categorical-Exclusion-Guidance-2026.pdf>.

³¹ *Id.*

A. The Corps Should Reevaluate Acreage Limits and Mitigation Thresholds for NWP With an Eye Towards Increasing the NWP Program’s Use.

Many of the small business representatives Advocacy spoke with stated they would like to see eligibility for the NWP program expanded. According to the CWA, NWPs may be issued for categories of project that “will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.”³² Currently, however, many NWPs are allowed to be used on only those projects with impacts of half an acre or less. Additionally, the NWPs also require compensatory mitigation for projects impacting one tenth of an acre or more.

The CWA does not specify acreage limits for the use of NWPs, only that the project’s environmental impacts are minimal. Advocacy has heard from small businesses in the homebuilding and construction industries that the current acreage limits preclude projects which have minimal environmental impacts from the benefits of the NWP program. If they do not qualify for NWPs, these projects must obtain time consuming and expensive individual permits.

In the case of *Loper Bright Enterprises v. Raimondo* the Supreme Court states “[i]n the business of statutory interpretation, if it is not the best, it is not permissible.”³³ On April 9, 2025, President Trump issued a Presidential Memorandum titled *Directing the Repeal of Unlawful Regulations*.³⁴ The memorandum directs agencies to “immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency’s statutory authority or is otherwise unlawful” and gives priority to rules in conflict with 10 listed Supreme Court decisions, including *Loper Bright*.³⁵

Advocacy recommends the Corps consult with small businesses currently using NWPs with acreage limits and reevaluate the limits used for both impacts and compensatory mitigation. If the Corps finds that these acreage limits are precluding projects with minimal environmental impacts from obtaining NWPs, then those acreage limits may not be the best possible reading of the CWA as per *Loper Bright*.

B. The Corps Should Ensure that all NWPs are Valid for Five Years After the Start of Construction.

Under the CWA, the term for a NWP is five years.³⁶ In conversations with Advocacy, small business representatives in the home building sector have explained that there are instances

³² 33 U.S.C. § 1344(e)(1).

³³ 603 U.S. 369 (2024).

³⁴ The White House, *Memorandum for the Heads of Executive Departments and Agencies, Directing the Repeal of Unlawful Regulations*, (April 9, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

³⁵ *Id.*

³⁶ 33 U.S.C. § 1344(e)(2).

where a project obtains a NWP, but cannot begin construction until the final years of that NWP or until the NWP is reissued. This can lead to instances where permit terms could change during or before project construction. While a NWP can be “grandfathered” for a certain amount of time, such a scenario could undermine regulatory stability.

Advocacy recommends that the Corps reexamine the NWP program to ensure that small businesses who use the program are afforded the statutorily intended five years of coverage under the permit which they are authorized. Changes in permit conditions or the need to resubmit a project for approval under the NWP program should be minimized where possible.

V. Conclusion

Advocacy thanks the Corps for the opportunity to suggest improvements to the NWP program. Small businesses support the NWP program. Using NWPs as an alternative to expensive, time-consuming individual permits for projects with minimal environmental impacts relieves small businesses of unnecessary regulatory costs.

To improve the NWP program, the Corps should reevaluate current acreage limits and mitigation thresholds. The Corps should also seek to minimize disruption for projects that obtain NWP’s but have not been completed before the permit is renewed. We look forward to continuing this conversation with the Corps and providing small business perspectives on ways to continue and improve the NWP program.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or nick.goldstein@sba.gov.

Sincerely,

/s/

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Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Mark Paoletta, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget