



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits; Establishment of a Public Docket; Request for Input

AGENCY: U.S. Army Corps of Engineers, Army, DoD.

ACTION: Notice; solicitation of input

SUMMARY: The U.S. Army Corps of Engineers (Corps) is seeking input from all interested parties on ways to increase the efficiency of the nationwide permit program. The Corps will consider this input in future rulemaking related to the nationwide permits. The nationwide permits authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

DATES: In order to be considered, comments must be received in *regulations.gov* or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by docket number COE-2026-0001, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO-R, 441 G Street NW, Washington, DC 20314-1000.

Due to security requirements, we cannot receive comments by hand delivery or courier or uploaded on external storage devices.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided, unless the

commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov*. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine McCafferty at 513-310-4196 or access the U.S. Army Corps of Engineers Regulatory Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 404 of the Clean Water Act (33 U.S.C. § 1344), Department of the Army (DA) authorization is required for discharges of dredged or fill material into waters of the United States. Under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), DA authorization is required for any construction of any structure in, under, or over any navigable water of the United States; the excavating from or depositing of material in navigable waters of the United States; or the accomplishment of any other work affecting the course, location, condition, or capacity of navigable waters of the United States. Under Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1413), DA authorization is required for the transportation and disposal of dredged material into ocean waters.

The U.S. Army Corps of Engineers (Corps) issues individual and general permits to authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The Corps also issues individual permits to authorize activities under Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. The Chief of Engineers and his or her designated representatives have been

delegated the authority to issue individual permits and general permits from the Secretary of the Army.

Reducing unnecessary paperwork and delays is a continuing Corps goal. General permits provide applicants a streamlined process to obtain DA authorization in exchange for avoiding and minimizing impacts to jurisdictional aquatic resources. Nationwide permits (NWP) are a type of general permit. The NWP program is designed to provide timely authorizations for the regulated public while protecting the jurisdictional aquatic resources.

Section 404(e) of the Clean Water Act provides the authority for the Corps, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. The categories of activities authorized by NWPs issued pursuant to section 404(e) of the Clean Water Act must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effect on the environment (33 U.S.C. § 1344(e)(1)). An NWP issued under Section 404(e) of the Clean Water Act is in effect for a period of no more than five years after the date of its issuance (33 U.S.C. § 1344(e)).

The Corps also issues NWPs to streamline the authorization process for activities that require authorization under Section 10 of the Rivers and Harbors Act of 1899. Section 10 of the Rivers and Harbors Act of 1899 prohibits any obstructions to the navigable capacity of any waters of the United States “unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.” Since 1975, the Corps has issued general permits under section 10 of the Rivers and Harbors Act of 1899 (see 40 FR 31335). The Corps has issued NWPs under the authority of section 10 of the Rivers and Harbors Act since 1977 (see 42 FR 37140).

The Corps has not issued NWP's for activities subject to Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended. Section 103 of the MPRSA authorizes the Secretary of the Army to "issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters." Corps regulations (33 CFR 330.1(g)) state that NWP's can be issued to satisfy the permit requirements of Section 103 of the MPRSA. NWP's were first issued by the Corps in 1977 (42 FR 37122). After 1977, NWP's have been issued or reissued in 1982 (47 FR 31794), 1984 (49 FR 39478), 1986 (51 FR 41206), 1991 (56 FR 59110), 1995 (60 FR 38650), 1996 (61 FR 65874), 2000 (65 FR 12818), 2002 (67 FR 2020), 2007 (72 FR 11092), 2012 (77 FR 10184), 2017 (82 FR 1860), 2021 (86 FR 2744 and 86 FR 73522), and 2026 (91 FR 768).

The 2021 NWP's (86 FR 2744 and 86 FR 73522) expired on March 14, 2026. On June 18, 2025, the Corps proposed to reissue the NWP's (90 FR 26100) with modest modifications to the 2021 NWP's. The final action to issue the 2026 NWP's was published in the Federal Register on January 8, 2026, and went into effect on March 15, 2026. The 2026 NWP's will expire on March 15, 2031, unless they are modified or reissued before that date.

The issuance or reissuance of the NWP's by the Chief of Engineers imposes limitations on jurisdictional activities authorized by those NWP's. These limitations are expressed in the NWP terms and general conditions that apply to all NWP's. Division engineers may also impose limitations on jurisdictional activities authorized by NWP's on a regional basis (e.g., within a Corps district or state). These regional limitations are expressed in regional conditions. For some NWP's, if the project proponent's proposed activities comply with all applicable terms and conditions of those NWP's, then the project proponent can commence the authorized activities without reporting those activities to Corps district offices. Other NWP's require project proponents to submit pre-

construction notifications (PCNs) to Corps districts prior to proceeding with the authorized activities. For these NWP which require PCNs, district engineers determine whether the project proponents' proposed activities are authorized by an NWP. The terms and conditions, including regional conditions, apply to all NWPs regardless of whether preconstruction notification is required.

When a PCN is submitted, Corps districts evaluate proposed NWP activities on a case-by-case basis to ensure that they comply with the applicable statutory authority will cause no more than minimal adverse environmental effects, individually and cumulatively. The district engineer may add conditions to the NWP authorization to ensure that the verified NWP activity results in no more than minimal individual and cumulative adverse environmental effects consistent with processes and requirements set out in 33 CFR 330.5(d). When a district engineer reviews a PCN and determines that the proposed activity qualifies for NWP authorization, he or she will issue a written NWP verification to the permittee (see 33 CFR 330.6(a)(3)).

In most cases, an applicant can begin the regulated activity in jurisdictional waters if the district does not respond within 45 days of receiving a complete PCN. However, there are certain circumstances when the 45-day timeframe does not apply. The project proponent must wait for written verification if a PCN is required by general conditions 16 (Wild and Scenic Rivers), 18 (Endangered Species), 20 (Historic Properties), and/or 31 (Activities Affecting Structures of Works Built by the United States); if the activity is proposed for authorization under NWP 49 (Coal Remining Activities); and/or when the proposed activity requires a waiver to exceed specified limits of an NWP. When any of these circumstances apply, the applicant may not begin jurisdictional activities until they receive verification in writing that the activity may proceed under the NWP. District engineers also have authority under 33 CFR 330.5(d) to modify, suspend, or revoke the NWP authorization on a case-specific basis.

II. Review of the Nationwide Permits

Pursuant to Corps regulations at 33 C.F.R. 330.5(b)(1), anyone may, at any time, suggest to the Chief of Engineers that he or she consider any new NWP or conditions for issuance, or changes to existing NWPs. In addition, the Chief of Engineers must review NWPs within five years of issuance and propose modification, revocation, or reissuance. Independent of receiving suggestions to issue new NWPs or modify existing NWPs, or the normal 5-year review cycle, the Chief of Engineers has discretion to periodically review the NWPs and their conditions and initiate the process for proposing to modify, reissue, or revoke the NWPs (see 33 CFR 330.5(b) and 330.6(b)). Comments received in response to this notice will inform potential modifications to the NWPs that may occur before the 2026 NWPs expire on March 15, 2031.

The purpose of this notice is to announce that the Corps is seeking input on the NWPs, including but not limited to: measures to eliminate unnecessary review over activities that require DA authorization; measures to increase permitting efficiency; measures to increase efficiency in the review of pre-construction notifications or issuance of NWP verifications; categories of activities that are similar in nature; measures to improve conditions or processes that would ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental effects; and measures to ensure work or structures do not obstruct the navigable capacity of a navigable water of the United States. Additionally, we invite your views on whether any other revisions are needed to the existing regulations regarding the nationwide permit program at 33 CFR Part 330, or the implementation of the nationwide permit program. The Corps seeks input from a wide range of stakeholders and interested parties, representing all perspectives, in order to make informed decisions regarding the NWPs. Stakeholders and interested parties include, but are not limited to, applicants, other regulatory agencies, States, tribal nations, entities representing nonprofit

organizations or industry interests, and individuals. A series of questions are posed below in the Stakeholder Engagement Section to assist in framing such input.

This notice does not propose specific modifications to the NWP's. It is intended to develop a record to inform future reissuance or modifications to the NWP's. After considering the comments received, any decision to reissue, modify, or revoke the NWP's will occur after notice and opportunity for a public hearing, in accordance with Executive Order 12866 Regulatory Planning and Review and the Administrative Procedure Act.

The Corps encourages comments on all aspects of the NWP's that are within the scope of the Corps' authority or within the Corps' scope of analysis for the issuance of the NWP's. The scope of the Corps' authority is limited to discharges of dredged or fill material into waters of the United States; work and structures in, under, or over any navigable water of the United States; the excavation from or depositing of material in navigable waters of the United States; the accomplishment of any work affecting the course, location, condition, or capacity of navigable waters of the United States; and the transport of dredged material to ocean waters for the purpose of disposal. The scope of the Corps' analysis is the extent of the impact of regulated activities in jurisdictional waters as defined by the Corps implementing regulations (33 CFR Part 330), the public interest review regulations (33 CFR 320.4), and applicable federal procedural laws and associated implementing regulations.

The Corps must comply with other federal procedural laws before taking action under the Clean Water Act, Rivers and Harbors Act, or MPRSA, including but not limited to the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA). The Corps completes the public interest review, and the 404(b)(1) guidelines analysis (40 CFR 230) when applicable, at the national level each time the NWP's are reissued. Corps Headquarters also completes an environmental document under NEPA, and documents compliance with Section 7 of

the ESA, Section 106 of the NHPA, Wild and Scenic Rivers Act (16 U.S.C 1271-1287), and the Magnuson-Stevens Fisheries Management Act (16 U.S.C 1801). During the district engineer's case-specific review of a PCN, Corps districts also comply with Section 7 of the ESA, Section 106 of NHPA, and where appropriate, the Wild and Scenic Rivers Act, and the Magnuson-Stevens Fisheries Management Act to address the specific impacts of a proposed NWP-specific activity.

The Corps does not have statutory authority over all aspects of construction activities, and there is seldom a single Federal agency charged by Congress with the authority to regulate siting, construction, or operation of projects that impact jurisdictional waters. The Corps is neither a proponent nor opponent of any project proposal, and generally, activities outside jurisdictional waters are not regulated by the Corps.

III. Stakeholder Engagement

The Corps poses a series of questions detailed below for stakeholder input. These questions are only guideposts for comments. Written input on all aspects of the NWP program is welcome.

To be most useful and most effective at informing decisions on any future action, comments should be specific and substantive. Commenters may find the following suggestions helpful in preparing comments: clearly state the issue or concern; make recommendations for how to resolve the issue of concern; explain the reasoning behind the comments; and provide or reference any supporting information (law, regulation, data, reports, studies, expert opinions, or examples) to support the comments that may be useful for the Corps to consider.

1. What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny? For instance,

are there any PCN requirements, NWP impact limits, or general conditions that should be modified or should remain unchanged?

2. What measures should the Corps consider that would improve or maintain efficiency in the review of pre-construction notifications or issuance of NWP verifications? For instance, are there any requirements for agency coordination of a PCN, contents of a complete PCN, or verification compliance with applicable federal procedural laws and implementing regulations that should be modified or remain unchanged?
3. What categories of activities that are similar in nature should the Corps consider for establishing new NWPs?
4. 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? For instance, are there NWP terms, general conditions, or processes that should be modified or remain unchanged?
5. 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?
6. What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the nationwide permit program? For instance, what changes should the Corps consider that would increase the efficiency of the Chief of Engineer's decision-making process to reissue the NWPs?

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Emergency Operations.

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