



Final Rule: Revised Definition of “Waters of the United States” Fact Sheet December 2022

Overview

On December 30, 2022, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) announced a final rule founded upon the pre-2015 definition of “waters of the United States,” updated to reflect consideration of Supreme Court decisions, the science, and the agencies’ technical expertise.

The agencies chose the familiar, pre-2015 definition as a foundation because it has supported decades of clean water progress and has been implemented by every administration in the last 45 years. Changing regulatory definitions due to court decisions and final rules issued by the agencies in 2015, 2019, and 2020 have caused uncertainty that harmed communities and our nation’s waters. The rule restores fundamental protections so that the nation will be closer to achieving Congress’ direction in the Clean Water Act that our waters be fishable and swimmable. It will also ensure that our waters support recreation and wildlife.

This action provides clear rules of the road that will help advance infrastructure projects, economic investments, and agricultural activities—all while protecting water quality. EPA and Army are prioritizing and enhancing practical, on the ground implementation by providing tools and resources to support timely and consistent jurisdictional determinations under this definition of “waters of the United States.”

Categories of “Waters of the United States”¹

The agencies’ definition of “waters of the United States” provides jurisdiction over waterbodies that Congress intended to protect under the Clean Water Act, including traditional navigable waters (e.g., certain large rivers and lakes), territorial seas, and interstate waters. For upstream waters that may significantly affect the integrity of downstream waters that Congress intended to protect, the rule provides a reasonable approach that recognizes regional and geographic differences. The rule accounts

¹ This table is provided for informational purposes; the rule establishes the requirements defining “waters of the United States.”

for regional differences in waters because regionally tailored implementation tools as well as local and regional conditions help determine whether waters are covered under this rule.

Types of Waters	Features	Examples of Waters Likely to Be Jurisdictional Under the Final Rule	Regulatory Text Paragraph
Traditional Navigable Waters	Large rivers and lakes that could be used in interstate or foreign commerce, as well as waterbodies affected by tides.	Mississippi River, Erie Canal, Great Lakes	(a)(1)
Territorial Seas	Territorial seas that extend three miles out to sea from the coast.	Atlantic Ocean, Pacific Ocean	(a)(1)
Interstate Waters	Includes waters like streams, lakes, or wetlands that cross or form part of state boundaries.	Lake Tahoe, portions of the Columbia River, portions of Savannah River	(a)(1)
Impoundments	Impounded bodies of water created in or from “waters of the United States,” like reservoirs and beaver ponds.	Bear Gulch Reservoir in California	(a)(2)
Tributaries	Branches of creeks, streams, rivers, lakes, ponds, ditches, and impoundments that ultimately flow into traditional navigable waters, the territorial seas, interstate waters, or impoundments of jurisdictional waters. Tributaries are jurisdictional if they meet either the relatively permanent standard or significant nexus standard.	Wolftrap Run in Virginia, Puppy Creek in Arkansas	(a)(3)
Adjacent Wetlands	<p>These wetlands can be next to, abutting, or near other jurisdictional waters or behind certain natural or constructed features. They are most often within a few hundred feet of jurisdictional waters.</p> <p>Adjacent wetlands are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard, or where the wetland is adjacent to a traditional navigable water, the territorial seas, or an interstate water.</p>	Parts of the Florida Everglades, Horicon Marsh in Wisconsin	(a)(4)
Additional Waters	These lakes, ponds, streams, or wetlands do not fit into the above categories. They are jurisdictional if they meet either the relatively permanent standard or the significant nexus standard.	Certain local lakes, streams, wetlands, etc.	(a)(5)

Standards for Determining Jurisdiction

To determine jurisdiction for tributaries, adjacent wetlands, and additional waters, the final rule relies on the longstanding approach of applying two standards. Certain types of waters are jurisdictional under the final rule if they meet either the relatively permanent standard or significant nexus standard.

- **Relatively Permanent is a test that** provides important efficiencies and clarity for regulators and the public by readily identifying a subset of waters that will virtually always significantly affect paragraph (a)(1) waters. To meet the relatively permanent standard, the waterbodies must be relatively permanent, standing, or continuously flowing waters connected to paragraph (a)(1) waters or waters with a continuous surface connection to such relatively permanent waters or to paragraph (a)(1) waters.
- **Significant Nexus is a test that** clarifies if certain waterbodies, such as tributaries and wetlands, are subject to the Clean Water Act based on their connection to and effect on larger downstream waters that Congress fundamentally sought to protect. A significant nexus exists if the waterbody (alone or in combination) significantly affects the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters.

Exclusions from “Waters of the United States”

The agencies’ definition of “waters of the United States” does not affect the longstanding activity-based permitting exemptions provided to the agricultural community by the Clean Water Act. Additionally, the final rule codifies eight exclusions from the definition of “waters of the United States” in the regulatory text to provide clarity, consistency, and certainty to a broad range of stakeholders. **The exclusions are:**

- **Prior converted cropland**, adopting USDA’s definition and generally excluding wetlands that were converted to cropland prior to December 23, 1985.
- **Waste treatment systems**, including treatment ponds or lagoons that are designed to meet the requirements of the Clean Water Act.
- **Ditches** (including roadside ditches), excavated wholly in and draining only dry land, and that do not carry a relatively permanent flow of water.
- **Artificially irrigated areas**, that would revert to dry land if the irrigation ceased.
- **Artificial lakes or ponds**, created by excavating or diking dry land that are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- **Artificial reflecting pools or swimming pools**, and other small ornamental bodies of water created by excavating or diking dry land.
- **Waterfilled depressions**, created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction operation is abandoned and the resulting body of water meets the definition of “waters of the United States.”
- **Swales and erosional features** (*e.g.*, gullies, small washes), that are characterized by low volume, infrequent, or short duration flow.

Public Input on this Action

The final rule is based on extensive outreach and engagement that began before the rule was proposed and continued through the public comment period of the proposed rule. The agencies received and considered over 114,000 written public comments in developing the final rule.

For More Information

Additional information, along with the final rule and supporting analyses, are available on EPA's website at <https://www.epa.gov/wotus>.

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