



Proposed Revised Definition of “Waters of the United States” Responding to Public Input

Since the beginning of the Trump Administration, the Environmental Protection Agency (EPA) and the Department of the Army (Army) have been committed to an open and thorough process for reviewing and revising the definition of “waters of the United States” and the scope of federal regulatory authority under the Clean Water Act. Throughout the past two years, the agencies have engaged with key state, tribal, and local officials through Federalism and Tribal consultations. The agencies also received input on the definition of “waters of the United States” from a broad audience of stakeholders, including hosting multiple webinars and in-person meetings.

Stakeholder input and letters submitted to the agencies represent a diverse range of interests, positions, suggestions, and recommendations. Several themes emerged throughout this process, including support for ongoing engagement, clarity and predictability of the regulation, specific suggestions for rule language, suggested exclusions and exemptions, and procedural concerns. The agencies invited written input and received more than 6,000 recommendations that the agencies have considered in developing this proposed rule.

The EPA and the Army listened to those directly affected by the regulations and are proposing a definition of “waters of the United States” that balances the input the agencies received from a wide range of stakeholders together with constitutional and statutory constraints on federal jurisdiction and Supreme Court precedent.

- 1. The agencies heard that clarity, predictability and consistency are critical.** EPA and the Army heard from almost all stakeholders that the definition of “waters of the United States” needed to be clear and easy to understand.
 - **The agencies responded by** issuing a proposal that lays out six clear categories of “waters of the United States” to be covered under the Clean Water Act and states that if a feature is not identified as jurisdictional in the proposed rule, it would not be a “water of the United States” among other more specific exclusions.
- 2. The agencies heard that respecting the role of the states and tribes in protecting the nation’s water resources is critical.** EPA and the Army heard from co-regulators and stakeholders that there are instances where waters are regulated by multiple federal laws and state laws, leading to duplicative and burdensome regulations, and that Congress sought to recognize, preserve, and protect the primary role of states and tribes to manage their land and water resources when it passed the Clean Water Act.
 - **The agencies responded by** developing a proposed rule that would recognize a clear distinction between waters subject to federal authority and waters subject to the sole control of the states and tribes. Together, the agencies’ proposed definition and existing state and tribal regulations and programs would provide a network of coverage for the nation’s water resources in accordance with the objective and policies of the Clean Water Act.

3. **The agencies heard that the previous definition was too broad** and included ephemeral streams, isolated waters, too many ditches, and other constructed features that should not be considered “waters of the United States.”
 - **The agencies responded by** identifying clear exclusions in the proposed rule including:
 - Any feature that flows only during or immediately after it rains—including what are sometimes called ephemeral streams.
 - Groundwater.
 - Many ditches, including most farm ditches and transportation ditches.
 - Prior converted cropland.
 - Stormwater control systems constructed in upland.
 - Wastewater recycling structures such as detention, retention and infiltration basins and ponds, and ground water recharge basins constructed in upland.
 - Waste treatment systems.
4. **The agencies heard that clean water is important for the environment, for outdoor recreation, and for protecting public health.**
 - **The agencies responded by** outlining a proposed rule that protects the nation’s critical navigable waters, works in partnership with the states and tribes, and provides a clear pathway for restoring and maintaining the integrity of the nation’s waters.
5. **The agencies heard that there were procedural and legal deficiencies with the 2015 Rule.**
 - **The agencies responded by** developing a proposal in an open manner, consistent with the statutory authority given to the agencies by Congress, the legal precedent established by the Supreme Court, and the February 2017 Executive Order entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

HOW TO COMMENT

- The agencies will take comment on the proposal for 60 days after publication in the Federal Register and will hold a public listening session.
- Comments on the proposal should be identified by Docket ID No. EPA-HQ-OW-2018-0149, and may be submitted online. Go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. EPA-HQ-OW-2018-0149.
- For additional information, including the full EPA public comment policy, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR MORE INFORMATION

- Additional fact sheets along with copies of the proposed rule and supporting analyses are available on EPA’s website at <https://www.epa.gov/wotus-rule>.