



Navigable Waters Protection Rule

Overview of the Navigable Waters Protection Rule

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) fulfilled yet another promise of President Trump by finalizing the Navigable Waters Protection Rule to define “waters of the United States” (WOTUS). For the first time, the agencies are streamlining the definition so that it includes four simple categories of jurisdictional waters, provides clear exclusions for many water features that traditionally have not been regulated, and defines terms in the regulatory text that have never been defined before. Congress, in the Clean Water Act, explicitly directed the Agencies to protect “navigable waters.” The Navigable Waters Protection Rule regulates these waters and the core tributary systems that provide perennial or intermittent flow into them. The final rule fulfills [Executive Order 13788](#) and reflects legal precedent set by key Supreme Court cases as well as robust public outreach and engagement, including pre-proposal input and comments received on the proposed rule.

The Navigable Waters Protection Rule protects the environment while respecting states, localities, tribes, and private property owners. It clearly delineates where federal regulations apply and gives state and local authorities more flexibility to determine how best to manage waters within their borders. Assertions have been made that the new rule will reduce jurisdiction over thousands of stream miles and millions of acres of wetlands. These assertions are incorrect because they are based on data that is too inaccurate and speculative to be meaningful for regulatory purposes. The final rule along with state, local, and tribal regulations and programs provide a network of protective coverage for the nation’s water resources.

THE FINAL REVISED DEFINITION

The Navigable Waters Protection Rule outlines four clear categories of waters that are considered “waters of the United States.” These four categories protect the nation’s navigable waters and the core perennial and intermittent tributary systems that flow into those waters.

Territorial seas and traditional navigable waters (TNWs)

- Under the final rule, the territorial seas and traditional navigable waters include large rivers and lakes—such as the Mississippi River, the Great Lakes, Chesapeake Bay, and the Erie Canal—and tidally-influenced waterbodies used in interstate or foreign commerce.

Tributaries

- Under the final rule, tributaries include perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year—such as College Creek, which flows into the James River near Williamsburg, Virginia.
- These naturally occurring surface water channels must flow more often than just after a single precipitation event—that is, tributaries must be perennial or intermittent.

- Tributaries can connect to a traditional navigable water or territorial sea in a typical year either directly or through other “waters of the United States,” through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Ditches are to be considered tributaries only where they satisfy the flow conditions of the perennial and intermittent tributary definition and either were constructed in or relocate a tributary or were constructed in an adjacent wetland and contribute perennial or intermittent flow to a traditional navigable water in a typical year.

Lakes, ponds, and impoundments of jurisdictional waters

- Lakes, ponds, and impoundments of jurisdictional waters, such as Lake Pepin in Minnesota and Lake Travis in Texas, are jurisdictional where they contribute surface water flow to a traditional navigable water or territorial sea in a typical year either directly or through other “waters of the United States,” through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Lakes, ponds, and impoundments of jurisdictional waters are also jurisdictional where they are flooded by a “water of the United States” in a typical year, such as certain oxbow lakes that lie along the Mississippi River.

Adjacent wetlands

- Wetlands that physically touch other jurisdictional waters are “adjacent wetlands,” such as Horicon Marsh along the Rock River in Wisconsin.
- Wetlands separated from a “water of the United States” by only a natural berm, bank or dune are also “adjacent.”
- Wetlands inundated by flooding from a “water of the United States” in a typical year are “adjacent.”
- Wetlands that are physically separated from a jurisdictional water by an artificial dike, barrier, or similar artificial structure are “adjacent” so long as that structure allows for a direct hydrologic surface connection between the wetlands and the jurisdictional water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.
- An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.

The final rule also outlines what are not “waters of the United States.” The following waters/features are not jurisdictional under the rule:

- Waterbodies that are not included in the four categories of “waters of the United States” listed above—this distinction will provide clarity that where a water or feature is not identified as jurisdictional in the final rule, it is not a jurisdictional water under the Clean Water Act.
- Groundwater, including groundwater drained through subsurface drainage systems, such as drains in agricultural lands.
- Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools.

- Diffuse stormwater run-off and directional sheet flow over upland.
- Many farm and roadside ditches.
- Prior converted cropland retains its longstanding exclusion, but is defined for the first time in the final rule. The agencies are clarifying that this exclusion will cease to apply when cropland is abandoned (*i.e.*, not used for, or in support of, agricultural purposes in the immediately preceding five years) and has reverted to wetlands.
- Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.
- Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters.
- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel.
- Stormwater control features excavated or constructed in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.
- Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention and infiltration basins and ponds, that are constructed in upland or in non-jurisdictional waters.
- Waste treatment systems have been excluded from the definition of “waters of the United States” since 1979 and will continue to be excluded under the final rule. Waste treatment systems are defined for the first time in this rule.
 - A waste treatment system includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater or stormwater prior to discharge (or eliminating any such discharge).

FEDERAL-STATE RELATIONSHIP

- With this final rule, there is a clear distinction between federal waters and waters subject to the sole control of the states, their governmental subdivisions, and tribes.
- The Clean Water Act envisions an approach whereby states, localities, tribes, and the federal government work in partnership to protect the nation’s waters from pollution.
- The final rule is in line with that intent and appropriately identifies waters that should be subject to federal regulation under the Clean Water Act.
- Many states, localities, and tribes have existing regulations and programs that apply to waters within their borders, whether or not they are considered “waters of the United States.” The federal government remains committed to helping all states and tribes enhance their capacity to regulate, protect, and restore their waters.
- Together, the final revised definition and existing state, local, and tribal regulations and programs will provide a network of protective coverage for the nation’s water resources.

EFFECTS OF THE FINAL RULE

- The Navigable Waters Protection Rule provides clarity, predictability, and consistency so that regulators and the public can understand where the Clean Water Act applies and where it does not. Such straightforward regulations will continue to protect the nation’s navigable waters, help sustain economic growth, and provide greater regulatory certainty.
- The role of federal government under the Clean Water Act ultimately derives from Congress’ commerce power over navigation. The Clean Water Act explicitly directs the agencies to protect “navigable waters.” The Navigable Waters Protection Rule regulates these waters and the core tributary systems that provide perennial or intermittent flow into them.
- The agencies developed an illustrative economic analysis for the final rule that looks at the potential costs, benefits, and economic impacts of the revised definition of “waters of the United States” relative to the October 2019 “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules” final rule baseline practice.
- The agencies have identified, where possible, how the final rule may affect categories of water resources across the country and potential effects on Clean Water Act programs. The agencies have also highlighted longstanding and continuing data limitations that prevents them from developing quantitative national estimates of impacts for most Clean Water Act programs.
- The final rule becomes effective 60 days from publication in the Federal Register.

KEY CHANGES FROM PROPOSAL IN RESPONSE TO COMMENTS

- Ditches and impoundments are no longer separate categories of jurisdictional waters.
- The preamble to the final rule provides additional useful clarification on traditional navigable waters.
- In the final rule, the agencies have clarified and simplified the types of connections to the perennial and intermittent tributary network that can make lakes, ponds, and impoundments jurisdictional.
- Perennial and intermittent tributaries upstream of ephemeral reaches are jurisdictional when they have a surface water connection to a downstream jurisdictional water in a typical year. Under the proposal, ephemeral reaches would have severed jurisdiction for upstream waters.
- The final rule expands and clarifies the factors that determine whether wetlands are considered adjacent, and thus covered by the Clean Water Act. Under the proposal, wetlands physically separated by a natural or artificial barrier from another jurisdictional water would not have been subject to Clean Water Act jurisdiction. Many of these wetlands will be covered by the final rule.

FOR MORE INFORMATION

- See the photo appendix to this Overview Factsheet for illustrative examples of applying the Navigable Waters Protection Rule: <https://www.epa.gov/nwpr/navigable-waters-protection-rule-factsheets>
- Additional fact sheets along with copies of the final rule and supporting analyses are available on EPA's website at <https://www.epa.gov/nwpr>.