

# The Navigable Waters Protection Rule (Step Two) - Revise

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## The Navigable Waters Protection Rule (Step Two)

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) finalized the [Navigable Waters Protection Rule](#) to define “Waters of the United States” and thereby establish federal regulatory authority under the Clean Water Act. 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. [Read the pre-publication version of the final Navigable Waters Protection Rule.](#)

Under the final “Step 2” rule, four clear categories of waters are federally regulated:

- The territorial seas and traditional navigable waters,
- Perennial and intermittent tributaries to those waters,
- Certain lakes, ponds, and impoundments, and
- Wetlands adjacent to jurisdictional waters

The final rule also details 12 categories of exclusions, features that are not “waters of the United States,” such as features that only contain water in direct response to rainfall (e.g., ephemeral features); groundwater; many ditches; prior converted cropland; and waste treatment systems.

The final rule clarifies key elements related to the scope of federal Clean Water Act jurisdiction,

including:

- Providing clarity and consistency by removing the proposed separate categories for jurisdictional ditches and impoundments.
- Refining the proposed definition of “typical year,” which provides important regional and temporal flexibility and ensures jurisdiction is being accurately determined in times that are not too wet and not too dry.
- Defining “adjacent wetlands” as wetlands that are meaningfully connected to other jurisdictional waters, for example, by directly abutting or having regular surface water communication with jurisdictional waters.

The Navigable Waters Protection Rule is the second step in a two-step process to review and revise the definition of “waters of the United States” consistent with the February 2017 Presidential Executive Order entitled “[Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Waters of the United States.](#)” This final rule will become effective 60 days after publication in the *Federal Register* and will replace the [Step One Rule](#) published in October, 2019.

This final action is informed by robust public outreach and engagement on the Navigable Waters Protection Rule, including pre-proposal engagement that generate more than 6,000 recommendations and approximately 620,000 comments received on the proposal. The final definition balances the input the final agencies received from a wide range of stakeholders.

## The Navigable Waters Protection Rule Materials

- **Final Rule:** [The Navigable Waters Protection Rule: Definition of “Waters of the United States” pre-publication version](#)
- **Press Release:** [EPA and Army Deliver on President Trump’s Promise to Revise Definition of “Waters of the United States”](#)
- **Fact Sheets:**
  - [Navigable Waters Protection Rule Overview](#)
  - [“Typical Year” and the Definition of “Waters of the United States”](#)
  - [Implementing the Final 2020 “Waters of the United States” Definition](#)
  - [Mapping Fact Sheet](#)
  - [Rural America Fact Sheet](#)
- **Supporting Documents:**
  - [Economic Analysis](#)
  - [Resource and Programmatic Assessment](#)
  - [Access All Supporting Documents](#)

## Public Outreach Opportunities:

**Public Webcast - A public webcast discussing the final Navigable Waters Protection Rule will be held on February 13, 2020** - EPA and the Army will hold a public webcast to help explain the key elements of the final Navigable Waters Protection Rule on Thursday, February 13, 2020. [Registration is available here.](#) The webcast will be recorded and available online following presentation.

**Public Meetings** - The agencies held public meetings in Fall 2017 to hear from stakeholders their recommendations to revise the definition of “waters of the United States” under the Clean Water Act (CWA). More information about these meetings, including a complete schedule and the *Federal Register* notice, can be found at [EPA's Outreach Meetings webpage](#).

**Written Recommendations** - The agencies established an administrative docket to solicit pre-proposal recommendations for the Step 2 rulemaking to define “waters of the United States.” **The docket closed on November 28, 2017.** Written recommendations can be found [here](#) in the docket.

**Federalism and Tribal Consultation** - In Spring 2017, EPA, in coordination with the Department of the Army, initiated formal consultations to solicit comments from state, local, and tribal governments regarding such a new definition. The agencies held a series of meetings with various groups as part of the consultation processes and have posted for public review each of the letters received as part of the consultation processes. Summaries of issues raised during tribal and federalism [consultation](#) are available in the docket.

- **Federalism Consultation** - Consistent with E.O. 13132, Federalism, the EPA, Department of Army, and the Army Corps of Engineers consulted with state and local government officials, or their representative national organization, while developing a revised definition of “waters of the United States.”
  - [Federalism consultation letters and presentation materials](#)
  - [Final summary of Federalism consultation](#)
  - [Letter to the Governors Soliciting Input on Defining “Waters of the United States”](#)
- **Tribal Consultation** - Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, the EPA consulted with Federally recognized Indian tribes while developing a revised definition of “waters of the United States.” Department of Army and the Army Corps of Engineers participated in the consultation and coordination.
  - [Tribal consultation letters and presentation materials](#)
  - [Final summary of tribal consultation and engagement](#)