

SPECIAL PUBLIC NOTICE

CLEAN WATER ACT FINAL RULE REPEALING THE 2015 CLEAN WATER RULE AND RE-CODIFYING THE PREVIOUS DEFINITION OF THE “WATERS OF THE U.S.”

On September 12, 2019, the Environmental Protection Agency and Department of the Army (the agencies) signed a final rule to repeal the 2015 Clean Water Rule (2015 Rule) and re-codify the regulatory text defining "waters of the United States" (WOTUS) that existed prior to the 2015 Rule. This action will, when effective, provide regulatory certainty as to the definition of “waters of the United States” in light of ongoing litigation over the 2015 Rule. This final rule will be implemented in accordance with Supreme Court decisions, agency guidance, and longstanding practice.

This final rule follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The February Order states that it is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution. To meet these objectives, the agencies have followed a two-step rulemaking process. Today's final rule is the first step of that process (Step 1 Final Rule). It was first proposed on July 27, 2017, with a supplemental proposal on June 29, 2018, and received 770,000 public comments. The Step 1 Final Rule provides regulatory certainty by removing the patchwork of regulations that existed across the country as a result of various judicial decision enjoining the 2015 Rule, and it reestablishes national consistency across the country by returning all jurisdictions to the longstanding regulatory framework that existed prior to the 2015 Rule, which is more familiar to the agencies, States, Tribes, local governments, regulated entities, and the public.

The Step 1 Final Rule provides the aforementioned regulatory certainty while the agencies engage in the second step of rulemaking to revise the definition of WOTUS. The second step, or the Step 2 Proposed Rule, was published in the Federal Register on February 14, 2019, and the public comment period closed on April 15, 2019. The agencies are currently reviewing over 600,000 public comments before taking final action.

More information regarding the WOTUS rulemaking can be found at EPA's website: <https://www.epa.gov/wotus-rule>. If you have specific questions regarding this Step 1 Final Rule, please contact a local Corps District office or EPA Regional office.