

2026 Supplemental Proposed “Waters of the United States” Rule

On September 4, 2026, the U.S. Environmental Protection Agency and the Department of the Army announced a Supplemental Notice of Proposed Rulemaking to gather input on additional regulatory alternatives to be considered alongside the 2025 *Updated Definition of “Waters of the United States”* (WOTUS) proposed rule. The supplemental proposal will help the agencies consider a wider range of options as they develop a final rule updating the definition of WOTUS, which establishes the scope of waters covered by Clean Water Act regulatory programs. This action advances the agencies’ commitment to radical transparency and developing a durable, final definition of WOTUS that adheres to the Supreme Court’s direction in *Sackett v. EPA*, cuts bureaucratic red tape, and protects water quality while recognizing that states and Tribes know their water resources best.

Details about the supplemental proposal

The purpose of this supplemental proposal is to provide an opportunity for public input on a limited number of new regulatory alternatives that will be considered alongside the regulatory alternatives from the 2025 proposed rule. The regulatory text presented reflects only the options in this supplemental proposed rule and does not change or modify the options considered in the [2025 proposed rule](#). The additional regulatory options for consideration include a proposed definition of “perennial” and alternatives for defining “relatively permanent” and “continuous surface connection.”

Specifically, the agencies seek comment on the following:

- Defining “perennial” in the regulatory text to mean “having standing or continuously flowing water every day of the year during ordinary conditions” or, alternatively, to mean “surface water flowing continuously year-round,” consistent with the 2020 Navigable Waters Protection Rule.
- Defining “relatively permanent” to focus on those waters that are perennial bodies of water, except during anomalous events such as drought or dry spell or due to a non-anomalous event resulting in temporary interruption for no more than 30 consecutive days in any given year such as low tide or a regularly occurring dry spell.
- Defining “continuous surface connection” to mean perennial surface water in a wetland that is continuously connected with the surface water in the jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins, with an exception for temporary interruptions in the surface water connection as the result of anomalous events such as drought or dry spell or a temporary interruption in the surface water connection lasting no more than 30 consecutive days in any given year as a result of non-anomalous events such as low tide or a regularly occurring dry spell.
- As an alternative, revising the current category of jurisdictional waters for adjacent wetlands to include only wetlands that are indistinguishably part of a traditional navigable water, the territorial seas, a jurisdictional impoundment, or a jurisdictional tributary (*i.e.*, when surface water in a wetland is continuously connected with the surface water in the jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins). This alternative would also result in deleting the definition of “adjacent.”

Next steps

EPA and Army will accept public comments on the supplemental notice of proposed rulemaking for 30 days once it is published in the *Federal Register*. Details about commenting can be found on EPA's [Waters of the United States website](#). The agencies plan to take final action on the rulemaking after considering comments on the supplemental notice along with the comments received on the 2025 proposed rule.