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| **Current definition “waters of the United States” (40 CFR 122.2)**Waters of the United States or waters of the U.S. means:  | **Proposed Rule RIN: 2040-AF30** |
| (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; | *New section 122.2 (a)(1)* *No change in wording* |
| (b) All interstate waters, including interstate ‘‘wetlands;’’ | *New section (a)(2)* *No change in wording*  |
| (f) The territorial seas | *New section (a)(3)* *No change in wording*  |
| (d) All impoundments of waters otherwise defined as waters of the United States under this definition; | *New section (a)(4)* *Minor change in wording*All impoundments of waters identified in paragraphs (a)(1) through(3) and (5) of this definition; |
| (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; | *New section (a)(5)**Minor change in wording*“All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment;”*Note: the proposed rule describes the definition and nexus of tributaries in great detail.* |
| (g) ‘‘Wetlands’’ adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition | *New section (a)(6)**Minor change in wording:*“All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary”*Note: the proposed rule describes the nexus of adjacent waters in great detail.* |
| (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ‘‘wetlands,’’ sloughs, prairie potholes, wet meadows, playa lakes, or \natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;  (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or  (3) Which are used or could be used for industrial purposes by industries in interstate commerce; | *New section (a)(7)**Major change*On a case-specific basis, other waters, including wetlands, providedthat those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have asignificant nexus to a water identified in paragraphs (a)(1) through (3) of this definition. |
| **Exclusions (40 CFR 122.2)** | **Exclusions Proposed Rule** |
| Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. | *New section 122.2 (b)(1)*No change |
| Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. | *New section (b)(2)*No change |
|  | *Major changes - Added*(3) Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow.(4) Ditches that do not contribute flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this definition.(5) The following features: (i) Artificially irrigated areas that would revert to upland shouldapplication of irrigation water to that area cease;(ii) Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;(iii) Artificial reflecting pools or swimming pools created by excavatingand/or diking dry land;(iv) Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons;(v) Water-filled depressions created incidental to construction activity;(vi) Groundwater, including groundwater drained through subsurface drainage systems; and(vii) Gullies and rills and non-wetland swales. |