

CWA 401 Rule
Revision
and
Tribal Baseline
Water Quality
Standards



Waters of the United States (WOTUS)

- Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021)
- New Rulemaking Efforts
 - Proposed Rule to restore the WOTUS definition that was in place prior to 2015
 - Subsequent rule to promulgate a new durable definition
- Current Status

The 401 Rule Revision Effort

Why is EPA revising the 2020 401
Water Certification Rule?

What is the intent behind the
rulemaking?

What aspects of the rule may be
revised?

Why is EPA revising the 2020 401 Rule?

1. President Biden's Executive Order 13990
2. Preserve State and Tribal authority under the Clean Water Act
3. Challenges in implementing the 2020 401 Certification Rule





What is the intent behind the rulemaking?

- Principles of Cooperative Federalism
- Ensure procedural components comport with the CWA
- Robust Stakeholder input

Focal Points of the Rule Revision (Part 1)

Pre-filing meeting requests

Certification request

Reasonable period of time

Scope of certification

Focal Points of the Rule Revision (Part 2)

Federal Agency Review

Enforcement

Modifications

Neighboring Jurisdictions



Stakeholder Input and Tribal Consultation

- Public comment solicitation on NOI from June 2 – August 2, 2021
 - EPA received over 3000 comment letters
- Three webinars for States and Tribes held on June 14, 23, and 24, 2021
- Pre-Proposal Tribal Outreach and Coordination from June 7 – September 7, 2021
 - Two national Tribal informational webinars held on June 29 and July 7, 2021
- Region 9: RTOC Clean Water Workgroup call on August 12, 2021
- Upcoming:
 - Continued Engagement
 - Offers to Consult after draft Rule is released



Additional Information and EPA Contact

www.epa.gov/cwa-401

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Tribal Baseline Water Quality Standards

Why is EPA engaging in rulemaking?

What is the intent behind the rulemaking?

What will change as a result?

Why is EPA engaging in Rulemaking?

- Long-standing EPA effort
- Very few tribes have Tribal WQS
- Gap in human health and environmental protections for Tribal waters





What is the intent behind the rulemaking?

- Develop a more durable framework to protect Tribal waters
- Fill the gap for Tribes that do not have TAS for WQS

What Will Change?

- Establish WQS for Tribes without TAS which may impact other CWA programs such as NPDES permitting and 401 Certifications
- Example: NPDES permits





Tribal Consultation and Stakeholder Input

- Two online national listening sessions for Tribes
 - July 8 and August 31, 2021
- Pre-Proposal Consultation and Coordination
 - June 15-September 13, 2021
- Upcoming
 - Continued Engagement: EPA will try to address comments submitted after September 13, 2021
 - Consultation offered again after Rule is proposed (anticipated in Spring 2022)
 - Pursuant to EPA regulations, EPA will also seek feedback from the public and other stakeholders, including states.



Additional Information and EPA Contact

www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act

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