

New “Waters of the United States” Rule and Food Security Act Wetlands

“Waters of the United States” Definition Does Not Affect NRCS Wetland Determinations



New regulatory language that defines the types of waters and wetlands that are federally regulated under the Clean Water Act (CWA) does not impact wetland determinations conducted by the U.S. Department of Agriculture’s (USDA’s) Natural Resources Conservation Service (NRCS).

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) announced a final rule amending the 2023 definition of “waters of the United States” (WOTUS). According to EPA and Army, the amendments were made to conform with the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*.

This EPA/Army rule does not alter the wetland conservation provisions of the Food Security Act of 1985, as amended. In the Food Security Act, Congress defined wetlands without respect to their connection to navigable waters, which differs from the CWA. This rulemaking also does not alter the roles or responsibilities of the NRCS, U.S. Army Corps of Engineers, or EPA under their respective statutory and regulatory authorities.

NRCS will continue to inform farmers and landowners that wetland determinations (performed by NRCS) may not be valid for CWA requirements, by including in communications advisement to consult with the U.S. Army Corps of Engineers, EPA, or state/local agencies for CWA or other jurisdictional determinations related to their activities. NRCS will continue to limit independent engagement with the regulatory agencies on behalf of the farmer or landowner without expressed written consent.

This EPA/Army rule also does not change any of the exclusions from the definition of WOTUS, including those for prior converted cropland, and does not affect the longstanding activity-based permitting exemptions provided to the agricultural community by the Clean Water Act.

For more information, please contact your local USDA Service Center.

