

Legal Alert

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404 Jurisdictional Determination Extensions - Upcoming Deadline

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The recent prepublication on April 21, 2014 of the Final Rule defining “Waters of the United States” under the Clean Water Act allows an existing delineation to be grandfathered under the current rule as long as the extension is requested before the rule is published. The Final Rule is effective 60 days after the date of publication in the *Federal Register*, which is expected within the next two weeks.

Under existing Army Corps of Engineers’ regulations and guidance, approved jurisdictional determinations generally are valid for five years. With respect to the treatment of existing jurisdictional determinations under the new rule, the preamble to the new rule provides:

“As a general matter, the agencies’ actions are governed by the rule in effect at the time the agency issues a jurisdictional determination or permit authorization... However, any jurisdictional determinations issued prior to the effective date of the rule and jurisdictional determinations associated with permit applications deemed by the Corps to have been complete on the date this rule is published in the *Federal Register*, including complete pre-construction notifications, will be made consistent with the existing rule, unless the applicant requests that its approved jurisdictional determination or permit authorization be decided after the effective date of the new rule. Reliance on preliminary jurisdictional determinations is also not affected by the issuance of this rule. All other jurisdictional determinations and requests for authorization requiring an approved jurisdictional determination issued on or after the effective date of this rule will be made consistent with this rule.”

Entities with an expired jurisdictional delineation, or one that is about to expire, may be able to request and obtain an extension from the Corps

under the existing rule. Please note this request must be made prior to the Final Rule's publication in the *Federal Register*. Gammage and Burnham can provide assistance to its clients in requesting and obtaining an extension from the Corps.

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