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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 232, 300, 302, and 401

[EPA-HQ-OW-2017-0480; FRL-9966-99-OW]

Definition of “Waters of the United States” – Schedule of Public Meetings

AGENCIES: Department of the Army; and Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting dates.

SUMMARY: The Environmental Protection Agency (EPA) and the U.S. Department of the Army (the agencies) will hold ten teleconferences to hear from stakeholders their recommendations to revise the definition of “Waters of the United States” under the Clean Water Act (CWA). Nine of the teleconferences will be tailored to a specific sector, *i.e.*, agriculture (row crop, livestock, silviculture); conservation (hunters and anglers); small entities (small businesses, small organizations, small jurisdictions); construction and transportation; environment and public advocacy (including health and environmental justice); mining; industry (energy, chemical, oil/gas); scientific organizations and academia; and stormwater, wastewater management, and drinking water agencies. One of the teleconferences will be open to the public at large. The teleconferences will run throughout the fall on Tuesdays from 1:00 p.m. – 3:00 p.m. eastern time, beginning on September 19, 2017. In addition, the agencies will hold an in-person meeting with small entities on October 23, 2017 from 9:00 a.m. – 11 a.m., and will accept written recommendations from any member of the public.

DATES: Written recommendation must be received on or before November 28, 2017.

ADDRESSES: Submit your recommendations, identified by Docket ID No. EPA-HQ-OW-2017-0480, at <http://www.regulations.gov>. This docket, established as a courtesy to the stakeholder community, will be included in the administrative record of the regulation revising the definition of “Waters of the United States” under the Clean Water Act (CWA). The agencies will not be formally responding to the recommendations. Follow the online instructions for submitting recommendations. Once submitted, your submission cannot be edited or removed from Regulations.gov. The agencies may publish any submission received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Damaris Christensen, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566-2428; email address: CWAwotus@epa.gov; or Ms. Stacey Jensen, Regulatory Community of Practice (CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314; telephone number: (202) 761-5903; email address: USACE_CWA_Rule@usace.army.mil.

SUPPLEMENTARY INFORMATION: On February 28, 2017, the President issued an Executive Order (E.O.) entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule”. This E.O. states that it is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution. The E.O. directs the

agencies to review the Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the E.O. directs that the agencies shall consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006). Justice Scalia's opinion considers CWA jurisdiction as including relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. For the first step, the agencies proposed on July 27, 2017, a rule to recodify the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.¹ The comment period for this first step proposed rule is open until September 27, 2017.

For the second step, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that is consistent with the approach outlined in the E.O. In June 2017, the agencies completed consultation processes with tribes as well as state and local governments on the step 2 rulemaking. The meetings described below will provide other interested stakeholders opportunity to provide pre-proposal feedback on this second step rule to revise the definition of "waters of the U.S."

Both EPA and the Corps are aware that the scope of CWA jurisdiction is of intense interest to a broad array of stakeholders and therefore want to provide time for broad pre-proposal input. The teleconferences in this notice are intended to solicit recommendations for Step 2 and potential

¹ The Clean Water Rule was promulgated on June 29, 2015 (80 FR 37054). It was in effect in most of the country for a two-month period before the Sixth Circuit Court of Appeals issued a nation-wide stay. The agencies are currently implementing the previous regulatory definition of "waters of the United States" in light of the stay.

approaches to defining “waters of the United States.” During the upcoming teleconferences, EPA will provide brief background information on the step 2 rulemaking, and progress to date.

Stakeholders will have the opportunity to provide input, particularly with regard to the charge in the E.O. and opinion of Justice Scalia.

The teleconferences will be held on a weekly basis beginning September 19 and will continue each Tuesday thereafter for ten weeks. Each will run from 1:00 p.m. to 3:00 p.m. eastern time.

Information on how to register for each of these meetings is available on the EPA website at <https://www.epa.gov/wotus-rule/outreach-meetings>. Registration for each webinar will close a week prior. Persons or organizations wishing to provide verbal recommendations during the teleconference will be selected on a first-come, first-serve basis. Due to the expected volume of participants, individuals will be asked to limit their oral presentation to three minutes.

Supporting materials and comments from those who did not have an opportunity to speak can be submitted to the docket as discussed above. The schedule for the Waters of the US webinars is as follows:

- Tuesday, September 19, 2017 – small entities (small businesses, small organizations and small governmental jurisdictions);
- Tuesday, September 26, 2017 – environment and public advocacy;
- Tuesday, October 3, 2017 – conservation, *e.g.*, hunters and anglers;
- Tuesday, October 10, 2017 – construction and transportation;
- Tuesday, October 17, 2017 – agriculture;
- Tuesday, October 24, 2017 - industry;
- Tuesday, October 31, 2017– mining;
- Tuesday, November 7, 2017 – scientific organizations and academia;

- Tuesday, November 14, 2017 – stormwater, wastewater management and drinking water agencies; and
- Tuesday, November 21, 2017 – open to general public

The agencies are also planning an in-person meeting with small entities, which will be held on **Monday, October 23, 2017, from 9:00 to 11:00 a.m. Eastern Time** at the U.S. EPA's Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20003. To facilitate the building security process, and to request reasonable accommodation, those who wish to attend must contact Joan B. Rogers (202-564-6568 or rogers.joanb@epa.gov), no later than **Friday, October 13, 2017**. RSVPs will be accepted until October 13, or until room capacity has been reached (100 max), whichever occurs first.

Dated: August 18, 2017.

John Goodin,
Acting Director,
Office of Wetlands, Oceans and Watersheds,
Office of Water,
Environmental Protection Agency.

Dated: August 18, 2017.

Douglas W. Lamont,

Deputy Assistant Secretary of the Army (Project Planning and Review), performing the duties of the Assistant Secretary of the Army for Civil Works.

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