FACT SHEET

Step 2: Proposed Revised Definition of "Waters of the United States" Economic Analysis

BACKGROUND

- On December 11, 2018, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) proposed a new definition for "waters of the United States," which would establish the scope of federal regulatory authority under the Clean Water Act in a clear and understandable way.
- The agencies' proposal would help landowners better understand whether a project on his or her property would require a federal permit or not. As directed by the Clean Water Act, the agencies have proposed to limit where federal regulations apply and, as a result, give states and tribes more flexibility to determine how best to manage waters within their borders.
- Together, the agencies' proposed definition and existing state and tribal regulations and programs would provide a network of coverage for the nation's water resources in accordance with the objective and policies of the Clean Water Act.

ECONOMIC ANALYSIS

- EPA and the Army developed an illustrative economic analysis for the proposed rule that looks at the potential costs and benefits of the proposed changes to the definition of "waters of the United States" relative to existing regulations.
- EPA and the Army have identified, where possible, how the proposed definition might affect categories of water resources across the country and potential effects on Clean Water Act programs. The agencies have also identified data limitations that prevent quantitative national estimates for most Clean Water Act programs.
- The agencies confronted several data limitations that would not allow for a single quantitative cost-benefit analysis of the proposed rule relative to both the 2015 Rule baseline and the pre-2015 practice alternate baseline. Therefore, the agencies prepared a two-stage economic analysis of the proposal as described below.

Two-stage Analysis

- The agencies conducted a two-stage analysis of the proposed rule using available data to illustrate:
    - **Stage 1:** The change in costs and benefits between the 2015 Rule to the pre-2015 practice (i.e., the 1980s regulations by EPA and Corps as implemented consistent with Supreme Court decisions and informed by applicable guidance documents and longstanding agency practice), and
    - **Stage 2:** The change in costs and benefits between the pre-2015 practice to the current proposal.

Stage 1

- As part of the Stage 1 analysis, the agencies revised the 2015 Rule's economic analysis to 1) factor in the role the states play in regulating water resources, 2) update the wetland benefits, and 3) make other corrections to the 2015 analysis.
- The agencies then conducted a wide range of scenarios to reflect different assumptions of how states could respond to the proposed regulatory change when compared to the 2015 Rule:
    - Under the scenario that assumes the fewest number of states would regulate waters that would no longer be considered "waters of the United States" if the agencies' proposed rule were finalized, the agencies estimate the proposed rule would result in annual avoided costs ranging between $98 and $164 million and annual forgone benefits ranging between $33 to $38 million.
    - When assuming the greatest number of states would regulate waters that would no longer be "waters of the United States" under the proposed definition, the agencies estimate there would be avoided annual costs ranging from $9 to $15 million and annual forgone benefits are estimated to be approximately $3 million.

Stage 2

- For the second stage of the analysis—comparing pre-2015 practice to the proposed rule—the agencies provided a qualitative assessment of the potential impacts across Clean Water Act programs.
- The agencies developed three case studies where the agencies had more robust aquatic resource data. The case studies considered potential ecological effects and the accompanying potential economic effects for the Clean Water Act oil spill, National Pollution Discharge Elimination System (NPDES), and dredge/fill permit programs.
- Based on the limited data available, the agencies were able to provide Stage 2 national-level estimates of the potential avoided permit and mitigation costs and forgone benefits for the Clean Water Act section 404 dredge/fill program.
    - Using the same methodologies employed in the case studies and a national benefits analysis of wetlands, the national annual avoided costs of the Clean Water Act 404 program are estimated to range from $28 million to $266 million, and national annual forgone benefits from the Clean Water Act section 404 program are estimated to range from $7 million to $47 million.
- Together these analyses show that the agencies' proposed definition would result in significant cost savings for the regulated community.

HOW TO COMMENT

- The agencies are asking for public comment on all aspects of the analyses performed, including the assumptions made and information used, and request that commenters provide any data that may assist the agencies in evaluating and characterizing potential effects of the proposed change of the definition of "waters of the United States."
- The agencies will take comment on the proposal for 60 days after publication in the Federal Register. The agencies will also hold an informational webcast on January 10, 2019, and will host a public listening session on the proposed rule in Kansas City, KS, on January 23, 2019. Additional information on both engagements is available at https://www.epa.gov/wotus-rule.

- Comments on the proposal should be identified by Docket ID No. EPA-HQ-OW-2018-0149 and may be submitted online. Go to https://www.regulations.gov and follow the online instructions for submitting comments to Docket ID No. EPA-HQ-OW-2018-0149.
- For additional information, including the full EPA public comment policy, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

FOR MORE INFORMATION

- Additional fact sheets along with copies of the proposed rule and supporting analyses are available on EPA's website at https://www.epa.gov/wotus-rule.