

114TH CONGRESS  
1ST SESSION

# H. R. 1732

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IN THE SENATE OF THE UNITED STATES

MAY 13, 2015

Received

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## AN ACT

To preserve existing rights and responsibilities with respect  
to waters of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Regulatory Integrity  
3 Protection Act of 2015”.

4 **SEC. 2. WITHDRAWAL OF EXISTING PROPOSED RULE.**

5 Not later than 30 days after the date of enactment  
6 of this Act, the Secretary of the Army and the Adminis-  
7 trator of the Environmental Protection Agency shall with-  
8 draw the proposed rule described in the notice of proposed  
9 rule published in the Federal Register entitled “Definition  
10 of ‘Waters of the United States’ Under the Clean Water  
11 Act” (79 Fed. Reg. 22188 (April 21, 2014)) and any final  
12 rule based on such proposed rule (including RIN 2040–  
13 AF30).

14 **SEC. 3. DEVELOPMENT OF NEW PROPOSED RULE.**

15 (a) IN GENERAL.—The Secretary of the Army and  
16 the Administrator of the Environmental Protection Agen-  
17 cy shall develop a new proposed rule to define the term  
18 “waters of the United States” as used in the Federal  
19 Water Pollution Control Act (33 U.S.C. 1251 et seq.).

20 (b) DEVELOPMENT OF NEW PROPOSED RULE.—In  
21 developing the new proposed rule under subsection (a), the  
22 Secretary and the Administrator shall—

23 (1) take into consideration the public comments  
24 received on—

25 (A) the proposed rule referred to in section

26 2;

1 (B) the accompanying economic analysis of  
2 the proposed rule entitled “Economic Analysis  
3 of Proposed Revised Definition of Waters of the  
4 United States” (dated March 2014); and

5 (C) the report entitled “Connectivity of  
6 Streams & Wetlands to Downstream Waters: A  
7 Review & Synthesis of Scientific Evidence”  
8 (EPA/600/R-14/475F; dated January 2015);

9 (2) jointly consult with and solicit advice and  
10 recommendations from representative State and  
11 local officials, stakeholders, and other interested par-  
12 ties on how to define the term “waters of the United  
13 States” as used in the Federal Water Pollution Con-  
14 trol Act; and

15 (3) prepare a regulatory proposal that will, con-  
16 sistent with applicable rulings of the United States  
17 Supreme Court, specifically identify those waters  
18 covered under, and those waters not covered under,  
19 the Federal Water Pollution Control Act—

20 (A) taking into consideration—

21 (i) the public comments referred to in  
22 paragraph (1); and

23 (ii) the advice and recommendations  
24 made by the State and local officials,

1                   stakeholders, and other interested parties  
2                   consulted under this section; and

3                   (B) incorporating the areas and issues  
4                   where consensus was reached with the parties.

5           (c) FEDERALISM CONSULTATION REQUIREMENTS.—

6 As part of consulting with and soliciting advice and rec-  
7 ommendations from State and local officials under sub-  
8 section (b), the Secretary and the Administrator shall—

9                   (1) seek to reach consensus with the State and  
10                  local officials on how to define the term “waters of  
11                  the United States” as used in the Federal Water  
12                  Pollution Control Act;

13                  (2) provide the State and local officials with no-  
14                  tice and an opportunity to participate in the con-  
15                  sultation process under subsection (b);

16                  (3) consult with State and local officials that  
17                  represent a broad cross-section of regional, eco-  
18                  nomic, policy, and geographic perspectives in the  
19                  United States;

20                  (4) emphasize the importance of collaboration  
21                  with and among the State and local officials;

22                  (5) allow for meaningful and timely input by  
23                  the State and local officials;

24                  (6) recognize, preserve, and protect the primary  
25                  rights and responsibilities of the States to protect

1 water quality under the Federal Water Pollution  
2 Control Act, and to plan and control the develop-  
3 ment and use of land and water resources in the  
4 States;

5 (7) protect the authorities of State and local  
6 governments and rights of private property owners  
7 over natural and manmade water features, including  
8 the continued recognition of Federal deference to  
9 State primacy in the development of water law, the  
10 governance of water rights, and the establishment of  
11 the legal system by which States mediate disputes  
12 over water use;

13 (8) incorporate the advice and recommendations  
14 of the State and local officials regarding matters in-  
15 volving differences in State and local geography, hy-  
16 drology, climate, legal frameworks, economies, prior-  
17 ities, and needs; and

18 (9) ensure transparency in the consultation  
19 process, including promptly making accessible to the  
20 public all communications, records, and other docu-  
21 ments of all meetings that are part of the consulta-  
22 tion process.

23 (d) **STAKEHOLDER CONSULTATION REQUIRE-**  
24 **MENTS.**—As part of consulting with and soliciting rec-  
25 ommendations from stakeholders and other interested par-

1 ties under subsection (b), the Secretary and the Adminis-  
2 trator shall—

3           (1) identify representatives of public and pri-  
4 vate stakeholders and other interested parties, in-  
5 cluding small entities (as defined in section 601 of  
6 title 5, United States Code), representing a broad  
7 cross-section of regional, economic, and geographic  
8 perspectives in the United States, which could poten-  
9 tially be affected, directly or indirectly, by the new  
10 proposed rule under subsection (a), for the purpose  
11 of obtaining advice and recommendations from those  
12 representatives about the potential adverse impacts  
13 of the new proposed rule and means for reducing  
14 such impacts in the new proposed rule; and

15           (2) ensure transparency in the consultation  
16 process, including promptly making accessible to the  
17 public all communications, records, and other docu-  
18 ments of all meetings that are part of the consulta-  
19 tion process.

20       (e) **TIMING OF FEDERALISM AND STAKEHOLDER**  
21 **CONSULTATION.**—Not later than 3 months after the date  
22 of enactment of this Act, the Secretary and the Adminis-  
23 trator shall initiate consultations with State and local offi-  
24 cials, stakeholders, and other interested parties under sub-  
25 section (b).

1 (f) REPORT.—The Secretary and the Administrator  
2 shall prepare a report that—

3 (1) identifies and responds to each of the public  
4 comments filed on—

5 (A) the proposed rule referred to in section  
6 2;

7 (B) the accompanying economic analysis of  
8 the proposed rule entitled “Economic Analysis  
9 of Proposed Revised Definition of Waters of the  
10 United States” (dated March 2014); and

11 (C) the report entitled “Connectivity of  
12 Streams & Wetlands to Downstream Waters: A  
13 Review & Synthesis of Scientific Evidence”  
14 (EPA/600/R-14/475F; dated January 2015);

15 (2) provides a detailed explanation of how the  
16 new proposed rule under subsection (a) addresses  
17 the public comments referred to in paragraph (1);

18 (3) describes in detail—

19 (A) the advice and recommendations ob-  
20 tained from the State and local officials con-  
21 sulted under this section;

22 (B) the areas and issues where consensus  
23 was reached with the State and local officials  
24 consulted under this section;

1 (C) the areas and issues of continuing dis-  
2 agreement that resulted in the failure to reach  
3 consensus; and

4 (D) the reasons for the continuing dis-  
5 agreements;

6 (4) provides a detailed explanation of how the  
7 new proposed rule addresses the advice and rec-  
8 ommendations provided by the State and local offi-  
9 cials consulted under this section, including the  
10 areas and issues where consensus was reached with  
11 the State and local officials;

12 (5) describes in detail—

13 (A) the advice and recommendations ob-  
14 tained from the stakeholders and other inter-  
15 ested parties, including small entities, consulted  
16 under this section about the potential adverse  
17 impacts of the new proposed rule and means for  
18 reducing such impacts in the new proposed rule;  
19 and

20 (B) how the new proposed rule addresses  
21 such advice and recommendations;

22 (6) provides a detailed explanation of how the  
23 new proposed rule—

24 (A) recognizes, preserves, and protects the  
25 primary rights and responsibilities of the States

1 to protect water quality and to plan and control  
2 the development and use of land and water re-  
3 sources in the States; and

4 (B) is consistent with the applicable rul-  
5 ings of the United States Supreme Court re-  
6 garding the scope of waters to be covered under  
7 the Federal Water Pollution Control Act; and

8 (7) provides comprehensive regulatory and eco-  
9 nomic impact analyses, utilizing the latest data and  
10 other information, on how definitional changes in  
11 the new proposed rule will impact, directly or indi-  
12 rectly—

13 (A) each program under the Federal Water  
14 Pollution Control Act for Federal, State, and  
15 local government agencies; and

16 (B) public and private stakeholders and  
17 other interested parties, including small enti-  
18 ties, regulated under each such program.

19 (g) PUBLICATION.—

20 (1) FEDERAL REGISTER NOTICE.—Not later  
21 than 3 months after the completion of consultations  
22 with and solicitation of recommendations from State  
23 and local officials, stakeholders, and other interested  
24 parties under subsection (b), the Secretary and the

1 Administrator shall publish for comment in the Fed-  
2 eral Register—

3 (A) the new proposed rule under sub-  
4 section (a);

5 (B) a description of the areas and issues  
6 where consensus was reached with the State  
7 and local officials consulted under this section;  
8 and

9 (C) the report described in subsection (f).

10 (2) DURATION OF REVIEW.—The Secretary and  
11 the Administrator shall provide not fewer than 180  
12 days for the public to review and comment on—

13 (A) the new proposed rule under sub-  
14 section (a);

15 (B) the accompanying economic analysis  
16 for the new proposed rule; and

17 (C) the report described in subsection (f).

18 (h) PROCEDURAL REQUIREMENTS.—Subchapter II  
19 of chapter 5, and chapter 7, of title 5, United States Code  
20 (commonly known as the “Administrative Procedure Act”)  
21 shall apply to the development and review of the new pro-  
22 posed rule under subsection (a).

23 (i) STATE AND LOCAL OFFICIALS DEFINED.—In this  
24 section, the term “State and local officials” means elected

1 or professional State and local government officials or  
2 their representative regional or national organizations.

3 **SEC. 4. NO ADDITIONAL AUTHORIZATION OF APPROPRIA-**  
4 **TIONS.**

5 No additional funds are authorized to be appro-  
6 priated to carry out this Act, and this Act shall be carried  
7 out using amounts otherwise available for such purpose.

8 **SEC. 5. EFFECT ON STATE PERMIT PROGRAMS.**

9 (a) IN GENERAL.—If the Administrator of the Envi-  
10 ronmental Protection Agency, based on the proposed rule  
11 developed under section 3, issues a final rule to define the  
12 term “waters of the United States” as used in the Federal  
13 Water Pollution Control Act (33 U.S.C. 1251 et seq.), the  
14 Administrator shall—

15 (1) not later than 90 days after the date of  
16 issuance of the final rule, review each permit pro-  
17 gram being administered by a State under section  
18 402, 404, or 405 of that Act (33 U.S.C. 1342,  
19 1344, or 1345) to determine whether the permit  
20 program complies with the terms of the final rule;  
21 and

22 (2) not later than 10 days after the date of  
23 completion of the review, notify the State of—

24 (A) the Administrator’s determination  
25 under paragraph (1); and

1                   (B) in any case in which the Administrator  
2                   determines that a permit program does not  
3                   comply with the final rule, the actions required  
4                   to bring the permit program into compliance.

5           (b) COMPLIANCE PERIOD.—During the 2-year period  
6 beginning on the date on which the Administrator provides  
7 notice to a State under subsection (a)(2), the Adminis-  
8 trator may not withdraw approval of a State permit pro-  
9 gram referred to in subsection (a)(1) on the basis that  
10 the permit program does not comply with the terms of  
11 a final rule described in subsection (a).

12           (c) LIMITATION ON STATUTORY CONSTRUCTION.—  
13 Nothing in this section may be construed to limit or other-  
14 wise affect the authority of the Administrator under the  
15 Federal Water Pollution Control Act or any other provi-  
16 sion of law—

17                   (1) to withdraw approval of a State permit pro-  
18                   gram referred to in subsection (a)(1), except as spe-  
19                   cifically prohibited by subsection (b); or

