

114TH CONGRESS
2D SESSION

H. R. 1732

IN THE SENATE OF THE UNITED STATES

MAY 13, 2015

Received

JULY 14, 2016

Read twice and referred to the Committee on Environment and Public Works

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

1 (2) to disapprove a proposed permit under a
2 State permit program referred to in subsection (a).

Passed the House of Representatives May 12, 2015.

Attest:

KAREN L. HAAS,

Clerk.