

## [H.R. 1732, the Regulatory Integrity Protection Act of 2015](#)

### FLOOR SITUATION

On Tuesday, May 12, 2015, the House will consider [H.R. 1732](#), *the Regulatory Integrity Protection Act of 2015*, under a [structured rule](#). H.R. 1732 was introduced on April 13, 2015, by Rep. Bill Shuster (R-PA) and was referred to the Committee on Transportation and Infrastructure, which ordered the bill reported by a vote of 36 to 22 on April 15, 2015.

### SUMMARY

H.R. 1732 requires the Secretary of the Army and the Administrator of the Environmental Protection Agency (EPA) to withdraw, within 30 days of enactment, the proposed rule published in the Federal Register on April 21, 2014 entitled "[Definition of 'Waters of the United States' Under the Clean Water Act](#)" (79 Fed. Reg. 22188) and any final rule based on such proposed rule (including [RIN 2040-AF30](#)).

The bill also requires the Secretary and the Administrator to develop a new proposed rule to define the term "waters of the United States" as used in the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"). When developing the new proposed rule, the Secretary and the Administrator must consider the public comments received on the original proposed rule, the accompanying economic analysis of the proposed rule ([Economic Analysis of Proposed Revised Definition of Waters of the United States](#)), and the report entitled "[Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of Scientific Evidence](#)."

The Secretary and Administrator also must jointly consult with and solicit advice and recommendations from State and local officials, stakeholders, and other interested parties on how the term "waters of the United States" should be defined, and prepare a new regulatory proposal that is consistent with U.S. Supreme Court rulings, the feedback from the public comments, and recommendations from the state and local officials, stakeholders, and others. The bill requires the Secretary and Administrator to seek to reach consensus with State and local officials on how to define the term, ensure their meaningful participation in the consultation process, and protect and preserve the primary rights and responsibilities of States to protect water quality under the Clean Water Act.

The bill also requires the Secretary and Administrator to publish in the Federal Register the new proposed rule and a description of the areas and issues where consensus was reached with the State and local officials that were consulted, a report identifying and responding to each of the public comments filed on the proposed rule, an explanation describing how the proposed rule responds to those comments, and a description of how the proposed rule addresses other requirements included in the bill. The bill requires such publication not later than three months after the completion of consultations with and solicitation of recommendations from State and local officials, stakeholders, and other interested parties.

## BACKGROUND

Congress enacted the Federal Water Pollution Control Act (known as the Clean Water Act) in 1972 to ensure “the restoration and maintenance of the chemical, physical, and biological integrity of the nation’s waters.”<sup>1</sup> The Clean Water Act (CWA) also established that it was the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution and to plan the development and use of land and water resources.<sup>2</sup>

The CWA consists of two primary parts. The first “authorizes federal financial assistance for municipal sewage treatment plant construction.”<sup>3</sup> The second establishes regulatory requirements that apply to the discharge of pollutants by industry and municipalities.<sup>4</sup> The CWA prohibits the discharge of pollutants unless they are in compliance with one of the enumerated permitting provisions of the Act.<sup>5</sup> The two permitting authorities are Section 402, which applies to discharges of pollutants from point sources; and Section 404, which applies to discharges of dredged or fill material in the nation’s waters (including wetlands).<sup>6</sup> EPA holds responsibility for implementing Section 402, and the Army Corps of Engineers shares responsibility with the EPA for Section 404.<sup>7</sup> Under Section 404, it is “unlawful to discharge dredged or fill materials into ‘navigable waters,’ unless the discharge is authorized by and in compliance with a dredge or fill permit issued by the Corps.”<sup>8</sup>

In enacting the CWA, Congress intended the States and EPA to implement the Act as a Federal-State partnership, where these parties act as co-regulators. The CWA established a system where EPA and the Corps provide a federal regulatory floor, from which States can receive approval from EPA to administer State water quality programs pursuant to State law, at equivalent or more stringent levels, in lieu of federal implementation.<sup>9</sup>

In April 2014, the Army Corps of Engineers and EPA proposed a rule that redefined the scope of waters that would be subject to federal jurisdiction under the Clean Water Act. According to the Committee, the proposed rule “misconstrues and manipulates two relevant Supreme Court holdings, effectively turning those cases that placed limits on CWA jurisdiction into a justification for the agencies to broaden their authority over all waters. The proposed rule goes far beyond merely clarifying the scope of waters subject to CWA programs. Rather, it is aimed at increasing the scope

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<sup>1</sup> Claudia Copeland, “[Clean Water Act: A Summary of the Law](#),” Congressional Research Service (October 30, 2014) at 2.

<sup>2</sup> [House Report 113-568](#) at 2.

<sup>3</sup> See Copeland at 2.

<sup>4</sup> Id. at 2.

<sup>5</sup> [House Report 113-568](#) at 2.

<sup>6</sup> Id at 2.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 2 and 3.

of the CWA’s jurisdiction over more waters.”<sup>10</sup> This change “could have serious consequences for the Nation’s economy, threaten jobs, invite costly litigation, and significantly restrict the ability of landowners to make decisions about their property and the rights of State and local governments to plan for their own development.”<sup>11</sup>

In the 113th Congress, the House passed [H.R. 5078](#), *the Waters of the United States Regulatory Overreach Protection Act of 2014*, on September 9, 2014, by a vote of [262 to 152](#). That bill would have prohibited the Secretary and the Administrator from developing, finalizing, adopting, implementing, applying, administering, or enforcing the proposed rule. The Senate did not act on the House-passed bill during the 113<sup>th</sup> Congress.

## **COST**

The Congressional Budget Office (CBO) [estimates](#) that funds that would have been used to develop and implement the current proposed rule and to draft guidance would be used to develop an alternative regulatory proposal, and based on past EPA rulemakings, H.R. 1732 would cost the agencies \$5 million over the 2016 to 2020 period. They also estimate that the legislation would affect direct spending because it would stop or delay the current proposed rulemaking that would expand the area covered by the CWA and increase the number of permits issued by the Corps. Because H.R. 1732 will stop the Corps from collecting more fees from issuing more permits under the greatly expanded regulatory proposal, CBO estimates this will reduce the expected fees collected by the Corps for issuing permits under the CWA. However, CBO estimates that the change in those fees would be negligible. Because the legislation would affect direct spending, pay-as-you-go procedures apply.

## **AMENDMENTS**

- 1) [Rep. Donna Edwards \(D-MD\) amendment](#)—The amendment provides policy provisions that the Secretary and Administrator are prohibited from including in a final rule.
- 2) [Rep. Dan Kildee \(D-MI\) amendment](#)—The amendment gives a state two years to become compliant with the new ‘waters of the U.S.’ rule in order to protect a state from automatically losing their state permitting programs through the Clean Water Act because of the new rule.

## **STAFF CONTACT**

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

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<sup>10</sup> House Committee on Transportation and Infrastructure “[The Regulatory Integrity Protection Act](#),” at 3.

<sup>11</sup> Id. at 4.