



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 30, 2015

### **S. 1140** **Federal Water Quality Protection Act**

*As ordered reported by the Senate Committee on Environment and Public Works  
on June 10, 2015*

Under S. 1140, any rule issued after February 4, 2015, that would redefine the scope of waters protected by the Clean Water Act (CWA) would need to meet certain criteria. Some of the criteria specified in the bill concern the process used by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) when issuing a final rule. Other criteria concern the types of streams and wetlands that could be considered “waters of the United States.” (Under the CWA, EPA and the Corps, along with the states, serve as co-regulators of activities affecting the nation’s waters.) S. 1140 also would require that EPA and the Corps use their best efforts to issue a final rule by December 31, 2016, that defines “waters of the United States.”

According to EPA, enacting this legislation would result in the withdrawal of the proposed rule published in the *Federal Register* on April 21, 2014, that defines the scope of waters protected by the CWA (that is, “waters of the United States”). CBO estimates that implementing S. 1140 would cost \$5 million over the 2016-2020 period, subject to the availability of appropriations, to develop a new proposed rule. The legislation would affect direct spending because it would reduce fees collected by the Corps for issuing permits under the CWA (such fees are offsetting receipts, which are treated as reductions in direct spending). However, CBO estimates that the change in the amounts collected from those fees would be negligible. Because the legislation would affect direct spending, pay-as-you-go procedures apply. Enacting S. 1140 would not affect revenues.

In developing a new proposed rule under S. 1140, EPA and the Corps would be required to consult with state and local regulatory officials to review alternative approaches for defining “waters of the United States.” EPA and the Corps also would be required to prepare a report for the Congress that describes how the proposed new regulation would meet the criteria specified in the bill. In addition, S. 1140 would require the Government Accountability Office to report on the regulations issued by EPA and the Corps every three years. Finally, S. 1140 would require the Corps to establish statistically valid measures of the volume, duration, and frequency of water flow in streams.

Under S. 1140, CBO expects 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. However, based on EPA's prior experience in developing new regulations, CBO estimates that it would cost an additional \$4 million over the 2016-2020 period to conduct extensive outreach efforts to interested parties, address public comments, and prepare a report to the Congress. We also expect that it would cost the Corps about \$1 million over the same period to conduct field work and data analysis in coordination with the EPA to develop new rules for issuing permits under an alternative regulatory proposal.

The April 24, 2014, proposed rule would expand the area covered by CWA regulations and lead to an increase in the number of permits issued by the Corps under the CWA to dispose of dredged or fill material from development projects near regulated waters. CBO expects that the legislation would probably reduce or delay that expansion, leading to a reduction in the number of permits issued over the next several years. Because the amount charged for those permits is small, CBO estimates enacting S. 1140 would have an insignificant effect on offsetting receipts over the 2016-2025 period.

S. 1140 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act; any costs incurred by state, local, or tribal governments would result from participation in a voluntary federal program.

On April 27, 2015, CBO transmitted a cost estimate for H.R. 1732, the Regulatory Integrity Protection Act of 2015, as ordered reported by the House Committee on Transportation and Infrastructure on April 15, 2015. Both pieces of legislation would require EPA and the Corps to develop a new CWA rule. Although the bills include different requirements throughout the rulemaking process, the estimated costs for the bills are the same.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.