under section 5313 of Title 5, Government Organization and Employees.

INVASIVE PLANT ELIMINATION PROGRAM

Pub. L. 117–58, div. A, title I, § 11522, Nov. 15, 2021, 135 Stat. 604, provided that:

''(a) DEFINITIONS.—In this section:

''(1) INVASIVE PLANT.—The term 'invasive plant' means a nonnative plant, tree, grass, or weed species, including, at a minimum, cheatgrass, Ventenata dubia, medusahead, bulbous bluegrass, Japanese brome, rattail fescue, Japanese honeysuckle, phragmites, autumn olive, Bradford pear, wild parsnip, sericea lespedeza, spotted knapweed, garlic mustard, and palmer amaranth.

''(2) PROGRAM.—The term 'program' means the grant program established under subsection (b).

''(3) TRANSPORTATION CORRIDOR.—The term 'transportation corridor' means a road, highway, railroad, or other surface transportation route.

''(b) ESTABLISHMENT.—The Secretary [of Transportation] shall carry out a program to provide grants to States to eliminate or control existing invasive plants or prevent introduction of or encroachment by new invasive plants along and in areas adjacent to transportation corridor rights-of-way.

''(c) APPLICATION.—To be eligible to receive a grant under the program, a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(d) ELIGIBLE ACTIVITIES.—

''(1) IN GENERAL.—Subject to this subsection, a State that receives a grant under the program may use the grant funds to carry out activities to eliminate or control existing invasive plants or prevent introduction of or encroachment by new invasive plants along and in areas adjacent to transportation corridor rights-of-way.

''(2) PRIORITIZATION OF PROJECTS.—In carrying out the program, the Secretary shall give priority to projects that utilize revegetation with native plants and wildflowers, including those that are pollinator-friendly.

''(3) PROHIBITION ON CERTAIN USES OF FUNDS.—Amounts provided to a State under the program may not be used for costs relating to mowing a transportation corridor right-of-way or the adjacent area unless—

''(A) mowing is identified as the best means of treatment according to best management practices; or

''(B) mowing is used in conjunction with another treatment.

''(4) LIMITATION.—Not more than 10 percent of the amounts provided to a State under the program may be used for the purchase of equipment.

''(5) ADMINISTRATIVE AND INDIRECT COSTS.—Not more than 5 percent of the amounts provided to a State under the program may be used for the administrative and other indirect costs (such as full time employee salaries, rent, insurance, subscriptions, utilities, and office supplies) of carrying out eligible activities.

''(e) REQUIREMENTS.—

''(1) COORDINATION.—In carrying out eligible activities with a grant under the program, a State shall coordinate with—

''(A) units of local government, political subdivisions of the State, and Tribal authorities that are carrying out eligible activities in the areas to be treated;

''(B) local regulatory authorities, in the case of a treatment along or adjacent to a railroad right-of-way; and

''(C) with respect to the most effective roadside control methods, State and Federal land management agencies and any relevant Tribal authorities.

''(2) ANNUAL REPORT.—Not later than 1 year after the date on which a State receives a grant under the program, and annually thereafter, that State shall provide to the Secretary an annual report on the treatments carried out using funds from the grant.

''(f) FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share of the cost of an eligible activity carried out using funds from a grant under the program shall be—

''(A) in the case of a project that utilizes revegetation with native plants and wildflowers, including those that are pollinator-friendly, 75 percent; and

''(B) in the case of any other project not described in subparagraph (A), 50 percent.

''(2) CERTAIN FUNDS COUNTED TOWARD NON-FEDERAL SHARE.—A State may include amounts expended by the State or a unit of local government in the State to address current invasive plant populations and prevent future infestation along or in areas adjacent to transportation corridor rights-of-way in calculating the non-Federal share required under the program.

''(g) FUNDING.—There is authorized to be appropriated to carry out the program $50,000,000 for each of fiscal years 2022 through 2026.''

§ 330. Program for eliminating duplication of environmental reviews

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a pilot program to authorize States that have assumed responsibilities of the Secretary under section 327 and are approved to participate in the program under this section to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), consistent with the requirements of this section.

(2) PARTICIPATING STATES.—The Secretary may select not more than 2 States to participate in the program.

(3) ALTERNATIVE ENVIRONMENTAL REVIEW AND APPROVAL PROCEDURES DEFINED.—In this section, the term ''alternative environmental review and approval procedures'' means—

(A) substitution of 1 or more State environmental laws for—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) any provisions of section 139 establishing procedures for the implementation of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that are under the authority of the Secretary, as the Secretary, in consultation with the State, considers appropriate; and

(iii) related regulations and Executive orders; and

(B) substitution of 1 or more State environmental regulations for—

(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) any provisions of section 139 establishing procedures for the implementation of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that are under the authority of the Secretary, as the Secretary, in consultation with the State, considers appropriate; and

(iii) related regulations and Executive orders.

(b) APPLICATION.—To be eligible to participate in the program, a State shall submit to the Sec-

retary an application containing such information as the Secretary may require, including—

(1) a full and complete description of the proposed alternative environmental review and approval procedures of the State, including—

(A) the procedures the State uses to engage the public and consider alternatives to the proposed action; and

(B) the extent to which the State considers environmental consequences or impacts on resources potentially impacted by the proposed action (such as air, water, or species);

(2) each Federal requirement described in subsection (a)(3) that the State is seeking to substitute;

(3) each State law or regulation that the State intends to substitute for such Federal requirement;

(4) an explanation of the basis for concluding that the State law or regulation is at least as stringent as the Federal requirement described in subsection (a)(3);

(5) a description of the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(6) verification that the State has the financial resources necessary to carry out the authority that may be granted under the program;

(7) evidence of having sought, received, and addressed comments on the proposed application from the public; and

(8) any such additional information as the Secretary, or, with respect to section (d)(1)(A), the Secretary in consultation with the Chair, may require.

(c) REVIEW OF APPLICATION.—In accordance with subsection (d), the Secretary shall—

(1) review and accept public comments on an application submitted under subsection (b);

(2) approve or disapprove the application not later than 120 days after the date of receipt of an application that the Secretary determines is complete; and

(3) transmit to the State notice of the approval or disapproval, together with a statement of the reasons for the approval or disapproval.

(d) APPROVAL OF APPLICATION.—

(1) IN GENERAL.—The Secretary shall approve an application submitted under subsection (b) only if—

(A) the Secretary, with the concurrence of the Chair and after considering any public comments received pursuant to subsection (c), determines that the laws and regulations of the State described in the application are at least as stringent as the Federal requirements described in subsection (a)(3);

(B) the Secretary, after considering any public comments received pursuant to subsection (c), determines that the State has the capacity, including financial and personnel, to assume the responsibility;

(C) the State has executed an agreement with the Secretary in accordance with section 327; and

(D) the State has executed an agreement with the Secretary under this section that—

(i) has been executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

(ii) is in such form as the Secretary may prescribe;

(iii) provides that the State—

(I) agrees to assume the responsibilities, as identified by the Secretary, under this section;

(II) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts under subsection (e)(1) for the compliance, discharge, and enforcement of any responsibility under this section;

(III) certifies that State laws (including regulations) are in effect that—

(aa) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(bb) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(IV) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(iv) requires the State to provide to the Secretary any information the Secretary reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(v) has a term of not more than 5 years; and

(vi) is renewable.

(2) EXCLUSION.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to a decision by the Secretary to approve or disapprove an application submitted under this section.

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State relating to the failure of the State—

(A) to meet the requirements of this section; or

(B) to follow the alternative environmental review and approval procedures approved pursuant to this section.

(2) LIMITATION ON REVIEW.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a claim seeking judicial review of a permit, license, or approval issued by a State under this section shall be barred unless the claim is filed not later than 150 days as set forth in section 139(*l*) after the date of publication in the Federal Register by the Secretary of a notice that the permit, license, or approval is final pursuant to the law under which the action is taken.

(B) DEADLINES.—

(i) NOTIFICATION.—The State shall notify the Secretary of the final action of the State not later than 10 days after the final action is taken.

(ii) PUBLICATION.—The Secretary shall publish the notice of final action in the Federal Register not later than 30 days after the date of receipt of the notice under clause (i).

(C) SAVINGS PROVISION.—Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

(3) NEW INFORMATION.—

(A) IN GENERAL.—A State shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under section 771.130 of title 23, Code of Federal Regulations (or successor regulations).

(B) TREATMENT OF FINAL AGENCY ACTION.—

(i) IN GENERAL.—The final agency action that follows preparation of a supplemental environmental impact statement, if required, shall be considered a separate final agency action, and the deadline for filing a claim for judicial review of the action shall be 150 days as set forth in section 139(*l*) after the date of publication in the Federal Register by the Secretary of a notice announcing such action.

(ii) DEADLINES.—

(I) NOTIFICATION.—The State shall notify the Secretary of the final action of the State not later than 10 days after the final action is taken.

(II) PUBLICATION.—The Secretary shall publish the notice of final action in the Federal Register not later than 30 days after the date of receipt of the notice under subclause (I).

(f) ELECTION.—A State participating in the programs under this section and section 327, at the discretion of the State, may elect to apply the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) instead of the alternative environmental review and approval procedures of the State.

(g) ADOPTION OR INCORPORATION BY REFERENCE OF DOCUMENTS.—To the maximum extent practicable and consistent with Federal law, other Federal agencies with authority over a project subject to this section shall adopt or incorporate by reference documents produced by a participating State under this section to satisfy the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(h) RELATIONSHIP TO LOCALLY ADMINISTERED PROJECTS.—

(1) IN GENERAL.—A State with an approved program under this section, at the request of a local government, may exercise authority under that program on behalf of up to 25 local governments for locally administered projects.

(2) SCOPE.—For up to 25 local governments selected by a State with an approved program under this section, the State shall be responsible for ensuring that any environmental review, consultation, or other action required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the State program, or both, meets the requirements of such Act or program.

(i) REVIEW AND TERMINATION.—

(1) IN GENERAL.—A State program approved under this section shall at all times be in accordance with the requirements of this section.

(2) REVIEW.—The Secretary shall review each State program approved under this section not less than once every 5 years.

(3) PUBLIC NOTICE AND COMMENT.—In conducting the review process under paragraph (2), the Secretary shall provide notice and an opportunity for public comment.

(4) WITHDRAWAL OF APPROVAL.—If the Secretary, in consultation with the Chair, determines at any time that a State is not administering a State program approved under this section in accordance with the requirements of this section, the Secretary shall so notify the State, and if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days, the Secretary shall withdraw approval of the State program.

(5) EXTENSIONS AND TERMINATIONS.—At the conclusion of the review process under paragraph (2), the Secretary may extend for an additional 5-year period or terminate the authority of a State under this section to substitute the laws and regulations of the State for the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(j) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this section, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the administration of the program, including—

(1) the number of States participating in the program;

(2) the number and types of projects for which each State participating in the program has used alternative environmental review and approval procedures;

(3) a description and assessment of whether implementation of the program has resulted in more efficient review of projects; and

(4) any recommendations for modifications to the program.

(k) SUNSET.—The program shall terminate 12 years after the date of enactment of this section.

(*l*) DEFINITIONS.—In this section, the following definitions apply:

(1) CHAIR.—The term ''Chair'' means the Chair of the Council on Environmental Quality.

(2) MULTIMODAL PROJECT.—The term ''multimodal project'' has the meaning given that term in section 139(a).

(3) PROGRAM.—The term ''program'' means the pilot program established under this section.

(4) PROJECT.—The term ''project'' means—

(A) a project requiring approval under this title, chapter 53 of subtitle III of title 49, or subtitle V of title 49; and

(B) a multimodal project.

(Added Pub. L. 114–94, div. A, title I, § 1309(b), Dec. 4, 2015, 129 Stat. 1392; amended Pub. L.

115–254, div. B, title V, § 578, Oct. 5, 2018, 132 Stat. 3394.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (3)(A)(i), (ii), (B)(i), (ii), (d)(2), (f), (g), (h)(2), and (i)(5), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of this section, referred to in subsecs. (j) and (k), is the date of enactment of Pub. L. 114–94, which was approved Dec. 4, 2015.

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115–254, § 578(1), substituted ''2 States'' for ''5 States''.

Subsec. (e)(2)(A), (3)(B)(i). Pub. L. 115–254, § 578(2), substituted ''150 days as set forth in section 139(*l*)'' for ''2 years''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

PURPOSE

Pub. L. 114–94, div. A, title I, § 1309(a), Dec. 4, 2015, 129 Stat. 1392, provided that: ''The purpose of this section [enacting this section and provisions set out as a note under this section] is to eliminate duplication of environmental reviews and approvals under State laws and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''

RULEMAKING

Pub. L. 114–94, div. A, title I, § 1309(c), Dec. 4, 2015, 129 Stat. 1396, provided that:

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act [Dec. 4, 2015], the Secretary [of Transportation], in consultation with the Chair of the Council on Environmental Quality, shall promulgate regulations to implement the requirements of section 330 of title 23, United States Code, as added by this section.

''(2) DETERMINATION OF STRINGENCY.—As part of the rulemaking required under this subsection, the Chair shall—

''(A) establish the criteria necessary to determine that a State law or regulation is at least as stringent as a Federal requirement described in section 330(a)(3) of title 23, United States Code; and

''(B) ensure that the criteria, at a minimum—

''(i) provide for protection of the environment;

''(ii) provide opportunity for public participation and comment, including access to the documentation necessary to review the potential impact of a project; and

''(iii) ensure a consistent review of projects that would otherwise have been covered under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''

§ 331. Evaluation of projects within an operational right-of-way

(a) DEFINITIONS.—

(1) ELIGIBLE PROJECT OR ACTIVITY.—

(A) IN GENERAL.—In this section, the term ''eligible project or activity'' means a project or activity within an existing operational right-of-way (as defined in section 771.117(c)(22) of title 23, Code of Federal Regulations (or successor regulations))—

(i)(I) eligible for assistance under this title; or

(II) administered as if made available under this title;

(ii) that is—

(I) a preventive maintenance, preservation, or highway safety improvement project (as defined in section 148(a)); or

(II) a new turn lane that the State advises in writing to the Secretary would assist public safety; and

(iii) that—

(I) is classified as a categorical exclusion under section 771.117 of title 23, Code of Federal Regulations (or successor regulations); or

(II) if the project or activity does not receive assistance described in clause (i) would be considered a categorical exclusion if the project or activity received assistance described in clause (i).

(B) EXCLUSION.—The term ''eligible project or activity'' does not include a project to create a new travel lane.

(2) PRELIMINARY EVALUATION.—The term ''preliminary evaluation'', with respect to an application described in subsection (b)(1), means an evaluation that is customary or practicable for the relevant agency to complete within a 45-day period for similar applications.

(3) RELEVANT AGENCY.—The term ''relevant agency'' means a Federal agency, other than the Federal Highway Administration, with responsibility for review of an application from a State for a permit, approval, or jurisdictional determination for an eligible project or activity.

(b) ACTION REQUIRED.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 45 days after the date of receipt of an application by a State for a permit, approval, or jurisdictional determination for an eligible project or activity, the head of the relevant agency shall—

(A) make at least a preliminary evaluation of the application; and

(B) notify the State of the results of the preliminary evaluation under subparagraph (A).

(2) EXTENSION.—The head of the relevant agency may extend the review period under paragraph (1) by not more than 30 days if the head of the relevant agency provides to the State written notice that includes an explanation of the need for the extension.

(3) FAILURE TO ACT.—If the head of the relevant agency fails to meet a deadline under paragraph (1) or (2), as applicable, the head of the relevant agency shall—

(A) not later than 30 days after the date of the missed deadline, submit to the State, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes why the deadline was missed; and