

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 oper-

ational 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

(B) not later than 14 days after the date on which a report is submitted under subparagraph (A), make publicly available, including on the internet, a copy of that report.

(Added Pub. L. 117-58, div. A, title I, §11309(a), Nov. 15, 2021, 135 Stat. 535.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 2021, see section 10003 of Pub. L. 117-58, set out as an Effective Date of 2021 Amendment note under section 101 of this title.

#### § 332. Pollinator-friendly practices on roadsides and highway rights-of-way

(a) IN GENERAL.—The Secretary shall establish a program to provide grants to eligible entities to carry out activities to benefit pollinators on roadsides and highway rights-of-way, including the planting and seeding of native, locally-appropriate grasses and wildflowers, including milkweed.

(b) ELIGIBLE ENTITIES.—An entity eligible to receive a grant under this section is—

- (1) a State department of transportation;
- (2) an Indian tribe; or
- (3) a Federal land management agency.

(c) APPLICATION.—To be eligible to receive a grant under this section, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a pollinator-friendly practices plan described in subsection (d).

(d) POLLINATOR-FRIENDLY PRACTICES PLAN.—

(1) IN GENERAL.—An eligible entity shall include in the application under subsection (c) a plan that describes the pollinator-friendly practices that the eligible entity has implemented or plans to implement, including—

(A) practices relating to mowing strategies that promote early successional vegetation and limit disturbance during periods of highest use by target pollinator species on roadsides and highway rights-of-way, such as—

- (i) reducing the mowing swath outside of the State-designated safety zone;
- (ii) increasing the mowing height;
- (iii) reducing the mowing frequency;
- (iv) refraining from mowing monarch and other pollinator habitat during periods in which monarchs or other pollinators are present;
- (v) use of a flushing bar and cutting at reduced speeds to reduce pollinator deaths due to mowing; or
- (vi) reducing raking along roadsides and highway rights-of-way;

(B) implementation of an integrated vegetation management plan that includes approaches such as mechanical tree and brush removal, targeted and judicious use of herbicides, and mowing, to address weed issues on roadsides and highway rights-of-way;

(C) planting or seeding of native, locally-appropriate grasses and wildflowers, including milkweed, on roadsides and highway rights-of-way to enhance pollinator habitat, including larval host plants;

(D) removing nonnative grasses from planting and seeding mixes, except for use as nurse or cover crops;

(E) obtaining expert training or assistance on pollinator-friendly practices, including—

- (i) native plant identification;
- (ii) establishment and management of locally-appropriate native plants that benefit pollinators;
- (iii) land management practices that benefit pollinators; and
- (iv) pollinator-focused integrated vegetation management; or

(F) any other pollinator-friendly practices the Secretary determines to be appropriate.

(2) COORDINATION.—In developing a plan under paragraph (1), an eligible entity that is a State department of transportation or a Federal land management agency shall coordinate with applicable State agencies, including State agencies with jurisdiction over agriculture and fish and wildlife.

(3) CONSULTATION.—In developing a plan under paragraph (1)—

(A) an eligible entity that is a State department of transportation or a Federal land management agency shall consult with affected or interested Indian tribes; and

(B) any eligible entity may consult with nonprofit organizations, institutions of higher education, metropolitan planning organizations, and any other relevant entities.

(e) AWARD OF GRANTS.—

(1) IN GENERAL.—The Secretary shall provide a grant to each eligible entity that submits an application under subsection (c), including a plan under subsection (d), that the Secretary determines to be satisfactory.

(2) AMOUNT OF GRANTS.—The amount of a grant under this section—

- (A) shall be based on the number of pollinator-friendly practices the eligible entity has implemented or plans to implement; and
- (B) shall not exceed \$150,000.

(f) USE OF FUNDS.—An eligible entity that receives a grant under this section shall use the funds for the implementation, improvement, or further development of the plan under subsection (d).

(g) FEDERAL SHARE.—The Federal share of the cost of an activity carried out with a grant under this section shall be 100 percent.

(h) BEST PRACTICES.—The Secretary shall develop and make available to eligible entities best practices for, and a priority ranking of, pollinator-friendly practices on roadsides and highway rights-of-way.

(i) TECHNICAL ASSISTANCE.—On request of an eligible entity that receives a grant under this section, the Secretary shall provide technical assistance with the implementation, improvement, or further development of a plan under subsection (d).

(j) ADMINISTRATIVE COSTS.—For each fiscal year, the Secretary may use not more than 2 percent of the amounts made available to carry out this section for the administrative costs of carrying out this section.

(k) REPORT.—Not later than 1 year after the date on which the first grant is provided under