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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

Docket Number: 131219999-7305-03

RIN 0660-XC009

Revised National Environmental Policy Act Procedures and Categorical Exclusions

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The First Responder Network Authority (FirstNet) publishes this notice to request comments on proposed revisions to its procedures for implementing the National Environmental Policy Act (NEPA), categorical exclusions, and related extraordinary circumstances. Pursuant to Council on Environmental Quality (CEQ) regulations, FirstNet is soliciting comments on its proposed revisions to its NEPA implementing procedures from members of the interested public. Additionally, in this notice, FirstNet is providing a synopsis of the proposed changes to its NEPA implementing procedures and categorical exclusions to assist the public in reviewing those changes.

DATES: Comments due on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The public is invited to submit written comments to FirstNet's proposed revisions to its NEPA implementing procedures, categorical exclusions, and related

extraordinary circumstances. Written comments may be submitted electronically through www.regulations.gov or by mail to Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 3122 Sterling Circle, Suite 100 Boulder, CO 80301. FirstNet may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. Comments received in response to this docket will be made a part of the public record and be posted to www.regulations.gov without change. Comments should be machine-readable and should not be copy-protected. All personally identifiable information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. FirstNet will make this notice and the draft Revised FirstNet NEPA Implementing Procedures, Categorical Exclusions, and supporting administrative record available for public inspection at www.firstnet.gov.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 3122 Sterling Circle, Suite 100 Boulder, CO 80301 or elijah.veenendaal@firstnet.gov.

SUPPLEMENTARY INFORMATION:

National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to major

federal actions that may significantly affect the quality of the human environment.¹ NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (*see* 40 CFR part 1500 *et. seq.*). Among other considerations, CEQ regulations at 40 CFR 1507.3 require federal agencies to 1) adopt their own implementing procedures to supplement CEQ's regulations, and 2) consult with CEQ during development of these supplemental procedures prior to publication in the *Federal Register*. Agency-specific NEPA implementing procedures are intended to provide guidance that assists agencies in fulfilling their responsibilities under NEPA. The requirements for establishing NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

Further, NEPA and the CEQ implementing regulations provide for environmental review of a proposed government action in the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). A CE is “a category of actions which do not individually or cumulatively have a significant effect on the human environment,” and does not require further NEPA review in the form of either an EA or EIS. *See* 40 CFR 1508.4; CEQ, “Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act” (75 FR 75628; December 6, 2010). A CE does not exempt an action from NEPA review; rather, it is one form of environmental review under NEPA. *See* 75 FR 75631. A CE may be applied to a proposed action after an agency has reviewed and determined that the action fits within the category of actions encompassed by the CE. *See* 40 CFR 1508.4. In making this determination, the decision maker must also consider whether extraordinary circumstances apply, which would lead to a normally categorically excluded action to have the potential for significant impacts.

¹ *See* 42 U.S.C. 4332.

Thus, a CE does not eliminate environmental review of a proposed action, but reduces paperwork and delay and allows an agency to efficiently focus its resources on proposed actions with the potential for significant environmental effects.

FirstNet NEPA Implementing Procedures

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, Title VI, 126 Stat. 156 (codified at 47 U.S.C. 1401 *et seq.*)) (the “Act”) established the First Responder Network Authority (“FirstNet”) as an independent authority within the National Telecommunications and Information Administration (“NTIA”). FirstNet’s statutory mission is to take all actions necessary to ensure the establishment of a nationwide public safety broadband network (“NPSBN”).² Moreover, the Act meets a long-standing and critical national infrastructure need to create a single, nationwide interoperable network that will, for the first time, allow public safety entities such as police officers, fire fighters, emergency medical service professionals, and other public safety personnel to effectively communicate with each other across agencies and jurisdictions. Consequently, because of the critical nature of this network, the Act requires FirstNet to, among other things, seek opportunities to speed the deployment of the network.³

To help facilitate FirstNet’s mission, the Act requires the Federal Communications Commission (“FCC”) to reallocate and grant a license to FirstNet for the use of the 700MHz D block spectrum and existing public safety broadband spectrum.⁴ As a result, FirstNet is in the unique position of being the only entity that is both an independent federal authority and a FCC

² 47 U.S.C. 1426(b).

³ *See, e.g.*, 47 U.S.C. 1426 (b)(3).

⁴ 47 U.S.C. 1421(a) (consistent with this provision FCC granted a license to FirstNet for the use of the 700 MHz D block spectrum under Call Sign WQQE234 on November 15, 2012).

licensee. Accordingly, FirstNet must comply with potentially duplicative regulations, such as those imposed under NEPA and the CEQ regulations and by FCC regulations. Consequently, it was determined that aligning the FirstNet and FCC NEPA processes was necessary in order to avoid duplicating analysis and documentation resulting in additional costs or delays in network deployment, which could severely impact FirstNet's ability to complete its statutory mission and ensure the establishment of a network for public safety.

On April 28, 2014, FirstNet, as a newly created federal entity, published a notice in the *Federal Register* finalizing its original NEPA implementing procedures.⁵ These NEPA implementing procedures provide the framework for FirstNet's establishment of a NEPA compliance program and applying the appropriate level of NEPA review for major federal actions related to the deployment of the NPSBN. More specifically, FirstNet's NEPA implementing procedures supplement CEQ regulations and provide guidance to FirstNet employees and potential Applicants regarding the procedural requirements for the application of NEPA.

Proposed Changes to NEPA Implementing Procedures

As it has continued to mature as an organization, FirstNet, as mentioned above, has identified the need to modify its NEPA implementing procedures, CEs, and related extraordinary circumstances to ensure that such procedures better align with FirstNet's statutory mission and activities related to the deployment of the NPSBN, as well as better assist FirstNet in complying with NEPA and FCC regulations. More specifically, FirstNet, as both an independent federal authority and a licensee of the FCC, must satisfy its own NEPA requirements as well as comply with FCC-promulgated NEPA procedures. Under CEQ regulations, federal agencies with

⁵ FirstNet National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 79 Fed. Reg. 23950 (April 29, 2014) (hereinafter "NEPA Procedures").

overlapping NEPA requirements related to the same project are encouraged to streamline their NEPA implementing procedures to avoid duplicative NEPA review.⁶ Accordingly, FirstNet is proposing to modify its NEPA procedures and CEs to better align with FCC procedures in order to avoid duplicative NEPA reviews that would otherwise likely result in unnecessary costs to and delays in the deployment of the NPSBN.

Generally, FirstNet's proposed revisions include: (1) updates to the process for determining and documenting categorically excluded activities; (2) the addition of criteria that may trigger the need for the development of an EA; (3) modifications necessary to account for FirstNet's changes in organizational structure and internal policies and procedures; (4) modifications to the definition and role of an Applicant in the environmental review process; and (5) the establishment of two new CEs and updates to its extraordinary circumstances. A synopsis of proposed changes is listed below and a full version of the revised implementing procedures and administrative record supporting the establishment of two new CEs is available at www.firstnet.gov.

Synopsis of Proposed Changes to Implementing Procedures

Administrative

FirstNet is seeking to modify its implementing procedures to reflect organizational changes that have occurred since the publishing of its existing procedures. Primary changes include: (1) renaming the General Manager to Chief Executive Officer (CEO); (2) clarifying the roles of the Director of Environmental Compliance and/or NEPA Coordinator, the Office of Chief Counsel, and an Applicant; (3) updating the procedures from a Directive to a Policy; (4) the addition, removal, and updates to legal authorities used or cited throughout the policy; and

⁶ See generally 40 CFR 1507.3.

(5) corrections to any minor clerical errors.

Definitions

FirstNet proposes moving the “Definition” section from Appendix B to the body of the policy and adding references to applicable definitions from the FCC regulations. FirstNet is also seeking to modify the term “Applicant” to mean “any person, entity, or Federal, state, tribal, or territorial government body that seeks to take an action related to the NPSBN or an action that is otherwise under the direct control and responsibility of FirstNet, including, but not limited to, actions that occur under any type of agreement related to the use of the spectrum licensed to FirstNet under station license call sign WQQE234, or actions requiring the approval of or funding provided by FirstNet.”

General Requirements for Categorical Exclusions

FirstNet is seeking to amend the process for applying and documenting CEs by removing and replacing all of the section entitled “General Requirements for Categorical Exclusions” with the following language:

“CEs are categories of actions that FirstNet has found, based on past experience with similar actions, do not individually or cumulatively have significant environmental impacts and normally do not require any further NEPA review. FirstNet actions, including those of Applicants, that fit the description of actions in Appendix B, Categorical Exclusions, and where no extraordinary circumstances exist, are categorically excluded from further environmental review. The approved list of FirstNet actions that normally qualify for a CE are only those listed in Appendix B, Categorical Exclusions. A CE may be applied to a proposed action in accordance with the following requirements:

- (a) FirstNet shall not be required to, but may at its discretion, document its determination that a CE applies to a proposed action.
- (b) Documentation prepared by an Applicant to demonstrate that an action qualifies for a CE shall be provided for FirstNet's independent review and evaluation.
- (c) Any action that normally would be classified as a CE but would involve any of the extraordinary circumstances identified in Appendix C shall require FirstNet, in cooperation with the Applicant, to conduct and document the appropriate environmental analysis to determine if the action warrants a CE or if the preparation of an EA or EIS is required.
- (d) Extraordinary circumstances that, if present, may result in a potentially significant environmental effect are listed in Appendix C.
- (e) The list of approved FirstNet CEs is subject to continual review and can be modified by amending/revising this policy, in consultation with CEQ.
- (f) The use of a CE does not relieve FirstNet or an Applicant of obligations to comply with other statutes or required consultations, such as under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) or the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*)."

General Requirements for Environmental Assessments

FirstNet is seeking to amend the requirements for determining the necessity of preparing an EA. Primary changes include adding criteria to account for existing FCC environmental regulatory requirements, removing overlapping or redundant language, and adding criteria for conducting tiered environmental reviews. Accordingly, FirstNet proposes removing and replacing all of the section entitled "General Requirements for Environmental Assessments" with

the following language:

“FirstNet or an Applicant shall prepare an EA, as defined in 40 CFR 1508.9, for a proposed action that FirstNet determines may have significant environmental impacts. Actions normally requiring an EA include those:

- (a) That fall within the scope of actions described in 47 CFR 1.1307(a);
- (b) Where a particular facility, operation, or transmitter would cause human exposure to levels of radiofrequency radiation in excess of applicable health and safety guidelines found in 47 CFR 1.1307(b);
- (c) That involve the construction or modification of certain antenna structures over 450 feet in height that are subject to the FCC’s antenna structure registration rules in 47 CFR Part 17;
- (d) That have an adverse effect on a historic property so as to require an EA under 47 CFR 1.1307(a)(4); and
- (e) That meet categorical exclusion criteria, but for which extraordinary circumstances are present, requiring further environmental analysis and potentially the preparation of an EA to determine if there are significant impacts associated with the action.”

Environmental Assessment Development Process

FirstNet is proposing to move portions of the section “General Requirements for Environmental Assessments” to a new section entitled, “Environmental Assessment Development Process.” Primary changes include removing overlapping or redundant language, and adding criteria for conducting tiered environmental reviews. Accordingly, FirstNet proposes

removing the section entitled “Environmental Assessment Development Process” to include the following language:

“FirstNet or an Applicant shall develop an EA in accordance with the following process and requirements.

- (a) The FirstNet CEO or delegate can decide to prepare an EA as a planning tool to inform decision makers of the environmental impacts of a proposed action.
- (b) FirstNet or an Applicant, in preparing an EA, shall ensure, at minimum, the contents of the EA: (1) comply with the requirements of 40 CFR 1508.9; (2) include the information specified in 47 CFR 1.1311; (3) explain the environmental consequences of the proposed action; and (4) set forth sufficient analysis for FirstNet to determine the potential impacts associated with the proposed action.
- (c) If FirstNet determines, based on an independent review, that the proposed action will not have a significant impact, FirstNet may issue a FONSI as described in 40 CFR 1508.13.
- (d) If, after review of the EA, FirstNet determines that the proposed action may have a significant environmental impact, FirstNet, in coordination with the Applicant, may amend the action described in the EA to avoid, minimize, or mitigate the potential environmental impacts.
- (e) If actions cannot be taken to avoid, minimize, or mitigate the potential environmental impacts and FirstNet determines that the proposed action will have a significant environmental impact, FirstNet, in coordination with the Applicant, shall proceed with the preparation of an EIS.

(f) Rather than preparing a single EA or EIS as a basis for approving an entire project, FirstNet, as necessary, may conduct one or more rounds or “tiers” of environmental reviews. These tiered reviews may cover general matters in a broader EA or EIS (e.g., contracts or policy statements) with subsequent narrower statements or environmental analyses (e.g., site-specific analyses), incorporating by reference the general discussion and concentrating solely on the issues specific to the statement subsequently prepared.”

Environmental Justice

FirstNet is proposing to remove extraneous and duplicative language from the body of the implementing procedures as this language is already cited in E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” which is referenced in this section.

Environmental Determinations and Final Decisions

FirstNet is seeking to amend the section entitled “Environmental Determinations and Final Decisions” related to CEs by removing language that conflicts with the proposed changes to the application of CEs. Accordingly, FirstNet proposes removing and replacing the existing language with the following:

“(a) Categorical Exclusion (CE)

1. FirstNet or Applicant actions that fall within a CE and where no extraordinary circumstances exist do not require any further NEPA review.
2. If a proposed action is determined to fall within a CE, FirstNet shall not be required to, but may at its discretion, document its determination that a CE applies to a proposed action, unless extraordinary circumstances exist.”

Extraordinary Circumstances

FirstNet proposes to remove and replace its existing list of extraordinary circumstances with the criteria established by the FCC regulations that require the development of an EA. Accordingly, the current list of extraordinary circumstances will be removed and replaced with the following:

“The following extraordinary circumstances or First Responder Network Authority (FirstNet) actions with respect to the following types of facilities may significantly affect the environment and may require further environmental review and the preparation of an Environmental Assessment (EA):

1. Facilities that are to be located in an officially designated wilderness area.
2. Facilities that are to be located in an officially designated wildlife preserve.
3. Facilities that: (i) may affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531).
4. Facilities that may affect prehistoric or historic districts, sites, buildings, structures, or objects that are significant in American history, architecture, archeology, engineering, or culture and that are listed, or are eligible for listing, in the National Register of Historic

Places (*See* 16 U.S.C. 470w(5); Parts 60 through 800 of Title 36 of the Code of Federal Regulations [36 CFR Parts 60 and 800]).⁷ However, these requirements do not apply to:

- a. The mounting of antennas⁸ (including associated equipment such as wiring, cabling, cabinets, or backup-power) on existing utility structures (including utility poles and electric transmission towers in active use by a "utility" as defined in Section 224 of the Communications Act of 1934, 47 U.S.C. 224, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) where the deployment meets the following conditions:
 - i. All antennas that are part of the deployment fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that are individually no more than three (3) cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that total no more than six (6) cubic feet in volume;
 - ii. All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground

⁷ To ascertain whether a proposed action may affect properties that are listed, or are eligible for listing, in the National Register of Historic Places, an Applicant shall follow the procedures set forth in the rules of the Advisory Council on Historic Preservation, 36 CFR Part 800, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (*See* 47 CFR Appendix B Part 1) and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (*See* 47 CFR Appendix C Part 1).

⁸ A non-visible new antenna is in the "same vicinity" as a pre-existing antenna if it will be collocated on the same rooftop, facade, or other surface. A visible new antenna is in the "same vicinity" as a pre-existing antenna if it is on the same rooftop, facade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

associated with antennas on the structure, are cumulatively no more than 17 cubic feet in volume, exclusive of:

1. Vertical cable runs for the connection of power and other services;
 2. Ancillary equipment installed by other entities that is outside of the Applicant's ownership or control, and
 3. Comparable equipment from pre-existing wireless deployments on the structure;
- iii. The deployment will involve no new ground disturbance; and
 - iv. The deployment would otherwise require the preparation of an EA under 47 CFR 1.1307(a)(4) solely because of the age of the structure.
- b. The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on buildings or other non-tower structures where the deployment meets the following conditions:
- i. There is an existing antenna on the building or structure;
 - ii. One of the following criteria is met:
 1. Non-Visible Antennas. The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;
 2. Visible Replacement Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that:

- a. It is a replacement for a pre-existing antenna;
 - b. The new antenna will be located in the same vicinity as the pre-existing antenna,
 - c. The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,
 - d. The new antenna is not more than three (3) feet larger in height or width (including all protuberances) than the pre-existing antenna; and
 - e. No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or
3. Other Visible Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that:
- a. It is located in the same vicinity as a pre-existing antenna;
 - b. The new antenna is visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;
 - c. The pre-existing antenna was not deployed pursuant to the exclusion in this subsection (47 CFR 1.1307(a)(4)(ii)(B)(2)(iii));

- d. The new antenna is not more than three (3) feet larger in height or width (including all protuberances) than the pre-existing antenna; and
 - e. No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;
 - c. The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;
 - d. The deployment of the new antenna involves no new ground disturbance; and
 - e. The deployment would otherwise require the preparation of an EA under 47 CFR 1.1307(a)(4) solely because of the age of the structure.
- 5. Facilities that may affect tribal religious sites.
- 6. Facilities to be located in a floodplain (See Executive Order [E.O.] 11988, Floodplain Management, as amended).
- 7. Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation, water diversion). In the case of wetlands on federal property, see E.O. 11990, Protection of Wetlands.
- 8. Antenna towers and/or supporting structures that are to be equipped with high intensity white lights and located in residential neighborhoods, as defined by the applicable zoning law.

9. FirstNet actions granting permits or leases, or renewals thereof, or equipment authorizations or modifications in existing facilities require the preparation of an EA, subject to the specific conditions specified in 47 CFR 1.1307(b), if the particular facility, operation, or transmitter would cause human exposure levels of radio frequency radiation in excess of the limits described in 47 CFR 1.1310 and 2.1093.
10. If an interested person alleges that a particular action, otherwise categorically excluded, may have a significant environmental effect, the person shall submit to FirstNet a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. FirstNet shall review the petition and consider the environmental concerns that have been raised. If FirstNet determines that the action may have a significant environmental impact, FirstNet will require the Applicant to prepare an EA, which will serve as the basis for the determination to proceed with or terminate environmental processing.
11. FirstNet shall require an EA for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (Federal Communications Commission [FCC] Form 854) is required under 47 CFR Part 17, if the proposed antenna structure will be over 450 feet in height above ground level and involves either:
 - a. Construction of a new antenna structure;
 - b. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in 47 CFR (C)(1)(3) of Appendix B to Part

1, Nationwide Programmatic Agreement for Collocations of Wireless Antennas;
or

- c. Addition of lighting or adoption of a less preferred lighting style as defined in 47 CFR 17.4(c)(1)(iii) of this chapter. FirstNet shall consider whether to require an EA for other antenna structures subject to 47 CFR 17.4(c) of this chapter in accordance with 47 CFR 17.4(c)(8). An EA required pursuant to this note will be subject to the same procedures that apply to any EA required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in 47 CFR 17.4(c).

12. If FirstNet is responsible for processing a particular action otherwise categorically excluded, and determines that the proposal may have a significant environmental impact, FirstNet on its own motion, shall require the Applicant to submit an EA.”

Proposed Revisions to FirstNet Categorical Exclusions

FirstNet, as discussed above, has a statutory mission to ensure the establishment of the NPSBN. As an FCC licensee, FirstNet actions related to network deployment will be the same activities as those undertaken by other FCC licensees and will be subject to the same FCC environmental review process. Thus, as federal entities, both FirstNet and the FCC are subject to the same NEPA requirements and will be performing a review of the same activities. Consequently, FirstNet, in an effort to establish a more efficient environmental review process, is seeking to more closely align its CEs with those of the FCC. More specifically, as described below, FirstNet’s proposed CE B-1 relies upon the FCC CE, as listed in 47 CFR 1.1306, as a benchmark for establishing the updated FirstNet CE B-1. In addition to proposed CE B-1, FirstNet is seeking to

establish a CE B-15 that will account for the use of cells on wheels, systems on wheels, and similar network equipment.

FirstNet has carefully reviewed the Administrative Record for the proposed CEs to ensure it fulfills the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements.⁹ Ultimately, FirstNet determined that the proposed CEs met both objectives. Moreover, FirstNet notes that proposed CE B-1 is currently part of the FCC's rules for environmental review process and ensures that licensees, such as FirstNet, take appropriate measure to protect environmental and historic resources when conducting tower and antenna siting activities (i.e., constructing a new tower or collocating an antenna on an existing structure). Likewise, FirstNet proposed CE B-14, which encompasses to the use of deployable devices, is supported by existing CEs of the Department of Homeland Security and the U.S. Army. Consequently, through a deliberative process, FirstNet determined that the proposed CEs encompass activities that do not inherently have individual or cumulative significant impacts on the human environment.

Synopsis of Proposed Changes to Categorical Exclusions

The following is a summary of the proposed revisions to the CEs that may be applied to actions related to the deployment of the NPSBN to which NEPA applies. Key proposed changes include: (1) reorganizing CEs into two separate groups (i.e., Group A covering administrative actions and Group B covering network deployment activities) and renumbering of existing CEs; (2) establishing two new CEs (B-1 and B-15); (3) removing the current CE A-7 in its entirety and the term "wireless" from the CE A-12 as activities related to wireless communications will be covered by the proposed CE B-1; and (4) removing current CE A-8 because it is unnecessary

⁹ The Administrative Record for these proposed CEs is available at www.firstnet.gov.

based on the scope of FirstNet actions. Accordingly, the following list presents FirstNet's proposed revisions to its CEs, along with a brief description of the reasoning for establishing a new CE or identifying substantive changes, if any, to the existing CE. As noted above, the Administrative Record supporting these CEs is available at www.firstnet.gov.

Administrative Actions

[A.1.] "The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices."

FirstNet does not propose any change to this existing CE.

[A.2.] "Procurement activities related to the day-to-day operation of FirstNet, including routine procurement of goods or services."

FirstNet does not propose any change to this existing CE.

[A.3.] "Personnel and Administrative Actions."

FirstNet does not propose any change to this existing CE.

[A.4.] "Purchase or lease of existing facilities or a portion thereof where use or operation will remain unchanged."

FirstNet does not propose any change to this existing CE.

Network Deployment Activities

[B.1.] "Actions related to network deployment that are subject to and satisfy the environmental requirements established under 47 C.F.R 1.1306 as described below:

- (a) Except as provided in 47 CFR 1.1307 (c) and (d), FirstNet's actions not covered by 47 CFR 1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.

(b) Specifically, any FirstNet action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:

(1) Involve a site location specified under 47 CFR 1.1307(a) (1) – (7)

(2) Involve high intensity lighting under 47 CFR 1.1307(a)(8).

(3) Result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

(c) Any FirstNet action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, subject to the following:

(1) Unless 47 CFR 1.1307(a)(4) is applicable, the provisions of 47 CFR 1.1307(a) requiring the preparation of Environmental Assessments (EAs) do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not:

- (A) Increase the height of the tower or non-tower structure by more than 10 percent or 20 feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;
- (B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;
- (C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or
- (D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to 47 CFR 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in 47 CFR 1.1307(b).

(d) The provisions of 47 CFR 1.1307(a) requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets,

or backup-power), on or in an existing building, or on an antenna tower or other man-made structure, unless 47 CFR 1.1307(a)(4) is applicable. Such antennas are subject to 47 CFR 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in 47 CFR 1.1307(b). The provisions of 47 CFR 1.1307 (a) and (b) do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the Applicant or others. The use of existing buildings, towers, or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of 47 CFR 1.1307(a) and (b) do not encompass the construction of new submarine cable systems.

- (e) The specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite Earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* 47 CFR 1.1307 and 1.1308, except as required by FirstNet or the FCC pursuant to the note to 47 CFR 1.1307(d).
- (f) The construction of an antenna tower or supporting structure in an established “antenna farm” (i.e., an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm) will be categorically excluded unless one or more of the antennas to be mounted on the tower or structure are subject to the provisions of 47 CFR 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure would cause human exposure in excess of the applicable health and safety guidelines cited in 47 CFR 1.1307(b).”

FirstNet proposes to establish this CE to better align its existing environmental review process with the FCC's rules for environmental review that FirstNet must comply with as a licensee of the FCC. Further, the establishment of this CE ensures that FirstNet takes appropriate measures to protect environmental and historic resources when conducting tower and antenna siting activities (i.e., constructing a new tower or collocating an antenna on an existing structure). This CE is supported by long-standing CEs and administrative records. In particular, these include exclusions from the Federal Communications Commission, U.S. Department of Agriculture, and U.S. Department of Energy.

[B.2.] "Internal modifications or equipment additions (e.g., computer facilities, relocating interior walls) to structures or buildings."

This CE was formerly classified as A-5 but has been reclassified as B-5. No other changes to this CE have been proposed.

[B.3.] "Construction of buried and aerial telecommunications lines, cables, and related facilities."

This CE was formerly classified as A-6 but has been reclassified as B-3. No other changes to this CE have been proposed.

[B.4.] "Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right of way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction."

This CE was formerly classified as A-9 but has been reclassified as B-5. No other changes to this CE have been proposed.

[B.5.] "Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring

one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property.”

This CE was formerly classified as A-10 but has been reclassified as B-5. No other changes to this CE have been proposed.

[B.6.] “Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property.”

This CE was formerly classified as A-11 but has been reclassified as B-6. No other changes to this CE have been proposed.

[B.7.] “Changes or additions to telecommunication sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).”

This CE was formerly classified as A-12 but has been reclassified as B-7. Further, FirstNet proposes to remove the term “wireless” from the CE as such activities related to wireless facilities fall within the scope of proposed CE B-1.

[B.8.] “Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites).”

This CE was formerly classified as A-13 but has been reclassified as B-8. No other changes to this CE have been proposed.

[B.9.] “The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site.”

This CE was formerly classified as A-14 but has been reclassified as B-9. No other changes to this CE have been proposed.

[B.10.] “Testing or monitoring work (*e.g.*, soil or rock core sampling, monitoring wells, air monitoring).”

This CE was formerly classified as A-15 but has been reclassified as B-10. No other changes to this CE have been proposed.

[B.11.] “Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.”

This CE was formerly classified as A-16 but has been reclassified as B-11. No other changes to this CE have been proposed.

[B.12.] “Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the Applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way.”

This CE was formerly classified as A-17 but has been reclassified as B-12. No other changes to this CE have been proposed.

[B.13.] “Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities.”

This CE was formerly classified as A-18 but has been reclassified as B-13. No other changes to this CE have been proposed.

[B.14.] “Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing Applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial, or agricultural facility served by the Applicant.”

This CE was formerly classified as A-19 but has been reclassified as B-14. No other changes to this CE have been proposed.

[B.15.] “Deployment of Cells on Wheels, Systems on Wheels, or other deployable architecture intended for temporary placement (no more than two years) on an impervious surface.”

FirstNet proposes to establish this CE to account for activities related to the use of deployable or similar equipment. This CE is supported by long-standing CEs and administrative records. In particular, these include exclusions from the U.S. Department of Homeland Security and U.S. Army.

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