



ADVISORY COUNCIL ON HISTORIC PRESERVATION

**Notice of Amendments to the Program Comment to Avoid
Duplicative Reviews for the Wireless Communications
Facilities Construction and Modification**

AGENCY: Advisory Council on Historic Preservation

ACTION: Notice of Issuance of Amendments to the Program Comment to Avoid Duplicative Reviews for the Wireless Communications Facilities Construction and Modification.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has approved amendments to the Program Comment that sets forth the way in which various agencies comply with Section 106 of the National Historic Preservation Act for telecommunications project already subject to Section 106 review by the Federal Communications Commission. The amendments add the Office of Surface Mining Reclamation and Enforcement to the Program Comment and authorize the Chairman of the ACHP to amend the Program Comment to add new agencies to it or extend its duration.

DATES: The amendments went into effect on July 31, 2020.

ADDRESSES: Address any questions concerning the amendments to Jaime Loichinger, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 401 F Street, NW., Suite 308, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jaime Loichinger, (202) 517-0219, jloichinger@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 USC 306108, requires federal agencies to consider the effects of projects they carry out, license, or assist (undertakings) on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which federal agencies comply with these duties at 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities regarding the effects of particular aspects of those undertakings by taking into account an applicable Program Comment and following the steps set forth in that comment.

I. Background on Amendments

On October 23, 2009, the ACHP issued the "Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas" (Broadband PC). The Broadband PC relieves various agencies from conducting duplicate reviews under Section 106 when those agencies assist a telecommunications project subject to Section 106 review by the Federal Communications Commission (FCC). For background on the original Broadband PC, please refer to 74 FR 60280-60281 (November 20, 2009).

Earlier this year, the Office of Surface Mining Reclamation and Enforcement (OSMRE) asked the ACHP to include them in the Broadband PC. OSMRE has made funding available for projects in the Abandoned Mine Land Reclamation Economic Development Pilot Program (AMLPP) as authorized by the Consolidated Appropriations Acts (PL 114-113 (2016); PL 115-31 (2017); PL 115-141 (2018), and PL 116-6 (2019)), and which may continue under annual appropriation cycles. OSMRE is providing financial assistance under the AMLPP to the West Virginia Department of Environmental Protection (DEP), issued to the Upshur County Development Authority (UCDA) as a sub-recipient, for

the purposes of: (1) increasing the availability of broadband to unserved and under-served communities in West Virginia by construction of an open-access transport network across West Virginia on Abandoned Mine Land sites; and (2) constructing a series of towers consisting of fiber connected towers as the network backbone with wireless transport to aggregation and last mile towers using a "hub and spoke" architecture.

During consultation for ways to handle Section 106 reviews for these projects, it became apparent that some of the proposed actions would be subject to FCC's existing Section 106 Nationwide Programmatic Agreement and collocation Programmatic Agreement, and that OSMRE would benefit from being added to the Broadband PC to avoid duplicative reviews. This would allow OSMRE to use the exemptions contained in those FCC agreements, and streamline review in the future. OSMRE would still need to have ways to comply with Section 106 to address the other components of their undertakings that do not include the construction of the cell towers, but adding them to the Broadband PC would move along a good portion of the projects consistent with how FCC handles tower construction.

ACHP staff also took the opportunity to propose authorizing the ACHP Chairman to amend the Broadband PC without the need for a full ACHP membership vote, to add new agencies to the Broadband PC or extend its duration. The ACHP Chairman could do that after notifying the ACHP membership about such amendments and providing them an opportunity to object and thereby move the matter to full membership consideration.

The ACHP membership voted in favor of issuing the mentioned amendments on July 31, 2020.

II. Text of Broadband PC as Amended

What follows is the current text of the Broadband PC, incorporating the amendments adopted on August 31, 2020 and previously adopted amendments:

Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement and/or the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (as amended on September 24, 2015 and July 31, 2020).

I. Background

Due to their role in providing financial assistance and/or carrying out other responsibilities for undertakings that involve the construction of communications towers and

collocation of communications equipment on existing facilities, the Rural Utilities Service (RUS), the National Telecommunications and Information Administration (NTIA), the Department of Homeland Security (DHS), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the First Responder Network Authority (FirstNet), and the Office of Surface Mining Reclamation and Enforcement in the U.S. Department of the Interior (OSMRE) are required to comply with Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, and its implementing regulations at 36 CFR part 800 (Section 106 review) for such undertakings. Some of those communications towers and antennas are also federal undertakings of the Federal Communications Commission (FCC), and therefore undergo, or are exempted from, Section 106 review under the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the FCC (FCC Nationwide PA) and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended (FCC Collocation PA). The FCC Nationwide PA was executed by the FCC, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) on October 4, 2004. The FCC Collocation PA was executed by

the FCC, ACHP, and NCSHPO on March 16, 2001, and was amended on August 29, 2016 and July 10, 2020. The undertakings addressed by the FCC Nationwide PA primarily include the construction and modification of communications towers. The undertakings addressed by the FCC Collocation PA include the collocation of communications equipment on existing structures and towers.

This Program Comment is intended to streamline Section 106 review of the construction and modification of communications towers and antennas for which FCC and RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE share Section 106 responsibility. Such streamlining is consistent with the broad purpose of the Presidential Memorandum: Unleashing the Wireless Broadband Revolution dated June 28, 2010, Executive Order 13616: Accelerating Broadband Infrastructure Deployment, dated June 14, 2012, and the Presidential Memorandum: Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training, dated March 23, 2015.

The term "DHS," as used in this Program Comment, refers to all of that agency's operational and support components. For a list of such components, you may refer to: [http:// www.dhs.gov/components-directorates- and-offices](http://www.dhs.gov/components-directorates-and-offices).

Nothing in this Program Comment alters or modifies the FCC Nationwide PA or the FCC Collocation PA (collectively, the FCC NPAs), or imposes Section 106 responsibilities on the FCC for elements of a RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE undertaking that are unrelated to a communications facility within the FCC's jurisdiction or are beyond the scope of the FCC NPAs.

The Program Comment, as originally issued in October 23, 2009, only covered RUS, NTIA, and the Federal Emergency Management Agency (FEMA). Because of the successful implementation of this Program Comment, as originally issued, the DHS sought to expand its participation beyond FEMA to all of its components which provide federal assistance for the construction and modification of communications towers, and the collocation of communications equipment on existing structures and towers. Four additional agencies, the FRA, which supports railroading with funding that may be used to improve safety and rail infrastructure, the FTA, which provides financial assistance to eligible applicants to support public transportation, FirstNet, an independent authority within the NTIA that was created by Congress in 2012, and OSMRE, which supports reclamation and economic growth for abandoned mine lands, also wished to become part of Program

Comment in order to benefit from the efficiencies in the timely delivery of their respective programs.

DHS, FRA, FTA, and OSMRE provide financial assistance to applicants for various undertakings, including the construction of communications towers and collocation of communications equipment on existing facilities.

Conversely, FirstNet is the entity responsible for ensuring the building, deployment, and operation of the nationwide public safety broadband network, which will likely include the construction of communications towers and the collocation of equipment on existing facilities. DHS, FRA, FTA, FirstNet, and OSMRE must therefore comply with Section 106 for these undertakings. Some of the communications towers and collocated communications equipment assisted by DHS components, FRA, FTA, FirstNet, and OSMRE are also the FCC's undertakings, and therefore undergo Section 106 review governed by the FCC NPAs.

Accordingly, the ACHP amended this Program Comment on September 24, 2015, to add all DHS components, FRA, FTA and FirstNet to the list of agencies subject to the terms of the Program Comment along with RUS, NTIA, and FEMA, and to extend its period of applicability, which originally would have ended on September 30, 2015. The ACHP subsequently amended this Program Comment on July 31, 2020, to add OSMRE

to the list of agencies subject to the terms of the Program Comment.

II. Establishment and Authority

This Program Comment was originally issued by the ACHP on October 23, 2009 pursuant to 36 CFR 800.14(e), and was subsequently amended, effective on September 24, 2015 and July 31, 2020, pursuant to its Stipulation VI.

III. Date of Effect

This Program Comment, as originally issued, went into effect on October 23, 2009. It was subsequently amended to its current version on September 24, 2015 and July 31, 2020, effective on those dates respectively.

IV. Use of This Program Comment To Comply With Section 106 for the Effects of Facilities Construction or Modification Reviewed Under the FCC Nationwide PA and/or the FCC Collocation PA

RUS, NTIA, DHS, FRA, FTA, FirstNet, and OSMRE will not need to comply with Section 106 with regard to the effects of communications facilities construction or modification that has either undergone or will undergo Section 106 review, or is exempt from Section 106 review, by the FCC under the FCC Nationwide PA and/or the FCC Collocation PA. For purposes of this program comment, review under the FCC Nationwide PA means the historic preservation review that

is necessary to complete the FCC's Section 106 responsibility for an undertaking that is subject to the FCC Nationwide PA.

When an RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE undertaking includes both communications facilities construction or modification components that are covered by the FCC Nationwide PA or Collocation PA and components other than such communications facilities construction or modification, RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE, as applicable, will comply with Section 106 in accordance with the process set forth at 36 CFR 800.3 through 800.7, or 36 CFR 800.8(c), or another applicable alternate procedure under 36 CFR 800.14, for the components other than communications facilities construction or modification. However, RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE will not have to consider the effects of the communications facilities construction or modification component of the undertaking on historic properties.

Whenever RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE uses this Program Comment for such undertakings, RUS, NTIA, DHS, FRA, FTA, FirstNet, or OSMRE will apprise the relevant State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) of the use of this

Program Comment for the relevant communications facilities construction or modification component.

V. Reporting

No later than March 1, 2016, the FCC, RUS, NTIA, DHS, FRA, FTA, and FirstNet, and in the case of OSMRE no later than February 1, 2021, will inform the ACHP as to the reporting system that they will utilize to collectively provide annual reports to the ACHP. The intent of the annual reports will be to enable the monitoring of the use of the Program Comment.

VI. Amendment

The terms of this Program Comment may be amended by the ACHP membership after the ACHP consults with FCC, RUS, NTIA, DHS, FRA, FTA, FirstNet, OSMRE, and other parties, as appropriate. Such amendments will then be published in the Federal Register.

However, terms of this Program Comment that solely affect its duration or add a Federal agency to it may be amended by the Chairman of the ACHP after notifying the rest of the ACHP membership in writing and not receiving a written objection therefrom within 10 calendar days, and consulting the FCC, RUS, NTIA, DHS, FRA, FTA, FirstNet, OSMRE and other parties as appropriate. Such amendments will then be published in the Federal Register. If the ACHP

Chairman receives an ACHP member written objection within the 10-day period, the amendment shall not be issued by the ACHP Chairman alone but may be issued by the ACHP membership.

Any Federal agency that wishes to take advantage of this Program Comment may notify the ACHP to that effect. An amendment, as set forth above, is needed in order to add such an agency to this Program Comment.

VII. Sunset Clause

This Program Comment will terminate on September 30, 2025, unless it is amended to extend the period in which it is in effect.

The ACHP may extend the Program Comment for an additional five years beyond 2025 through an amendment per Stipulation VI of this Program Comment.

VIII. Termination

The ACHP may terminate this Program Comment, pursuant to 36 CFR 800.14(e)(6), by publication of a notice in the Federal Register thirty (30) days before the termination takes effect.

(END OF DOCUMENT)

Authority: 36 CFR 800.14(e)

Dated: August 6, 2020.

Javier Marqués,

General Counsel.

[FR Doc. 2020-19165 Filed: 8/28/2020 8:45 am; Publication Date: 8/31/2020]