



DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 240325-0085]

RIN 0660-XC061

Adoption of First Responder Network Authority Categorical Exclusions under the National Environmental Policy Act

AGENCY: National Information and Technology Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Information and Technology Administration (NTIA) has identified categorical exclusions (CEs) established by the First Responder Network Authority (FirstNet Authority), an independent authority within NTIA, that cover categories of actions under the National Environmental Policy Act (NEPA) that NTIA proposes to take. This notice identifies the FirstNet Authority CEs and NTIA's categories of proposed actions for which it intends to use FirstNet Authority's CEs and describes the consultation between the agencies.

DATES: The CEs identified below are available for NTIA to use for its proposed actions effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Amanda Pereira, NTIA, telephone number 202-834-4016, email apereira@ntia.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

Congress enacted the National Environmental Policy Act, 42 U.S.C. 4321-4347, (NEPA) in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and

maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331.

NEPA seeks to ensure that agencies consider the environmental effects of their proposed major actions in their decision-making processes and inform and involve the public in that process.

NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

Under the CEQ regulations, to comply with NEPA, agencies determine the appropriate level of review of any major Federal action—an environmental impact statement (EIS), environmental assessment (EA), or categorical exclusion (CE). 40 CFR 1501.3. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an environmental assessment (EA), which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following the EA, the agency may conclude that the action will have no significant effects and document that conclusion in a finding of no significant impact. 40 CFR 1501.6. However, if, after the analysis, the agency concludes that the action is likely to have significant effects, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE could apply to a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If extraordinary circumstances are present, the agency nevertheless may still apply the categorical exclusion to the proposed

action if it determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt another Federal agency's CEs for its own proposed actions. 42 U.S.C. 4336c. To use another agency's CEs under section 109, the “adopting agency” must: identify the relevant CEs listed in the NEPA procedures of another agency (the “establishing agency”) that covers the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CEs for a category of actions is appropriate; identify to the public the CEs that the adopting agency plans to use for its proposed actions; and document adoption of the CE. 42 U.S.C. 4336c. NTIA has prepared this notice to meet these statutory requirements and identify to the public the FirstNet Authority CEs that NTIA is adopting.

NTIA’s Programs

NTIA is the Executive Branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA’s programs and policies focus largely on expanding broadband Internet access and adoption in the United States, expanding the use of spectrum by all users, and ensuring that the Internet remains an engine for continued innovation and economic growth. NTIA is engaged in a range of efforts to increase Internet access and adoption.

In November 2021, Congress passed the Infrastructure Investment and Jobs Act (“IIJA”).¹ The law provides NTIA with \$48.2 billion to establish five new broadband grant programs and to further implement the previously established Tribal Broadband Connectivity Program (“TBCP”). The largest new program is the Broadband Equity, Access, and Deployment Program (BEAD), which seeks to expand high-speed Internet access by funding planning, infrastructure deployment, and adoption programs in all 50 states, Washington D.C., Puerto Rico, the U.S.

¹ *Infrastructure Investment and Jobs Act, Public Law 117–58 (2021)*.

Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

II. FirstNet Authority Categorical Exclusions

NTIA has identified the following CEs listed in appendix B of the FirstNet Authority's Procedures for Implementing the National Environmental Policy Act.² Each of the FirstNet Authority CEs includes conditions on the scope or application of the CE within the text of the numbered paragraphs listed below. Under each CE, NTIA has described categories of proposed actions for which NTIA contemplates using the CE at this time; NTIA may apply the CEs identified below to other activities where NTIA determines the CE covers the activity and no extraordinary circumstances are present.

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

Potential application to NTIA activities:

- Financial assistance for construction or modification of aerial or buried fiber optic telecommunications equipment, including, but not limited to, fiber optic cable, transmission poles, including pole replacement, equipment sheds, and utility huts.
 - Construction or modification of aerial or buried fiber optic telecommunications equipment at NTIA facilities, including, but not limited to, fiber optic cable, transmission poles, including pole replacement, equipment sheds, and utility huts.
2. **[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.

² https://www.firstnet.gov/sites/default/files/FirstNet_Implementing_Procedures_January_2018.pdf

- Financial assistance for modification of existing transmission lines, including addition of aerial fiber optic cables to electric power lines and burial of fiber optic cables in existing powerlines or pipelines.
 - Modification of existing transmission lines at NTIA facilities, including addition of aerial fiber optic cables to electric power lines and burial of fiber optic cables in existing powerlines or pipelines.
3. **[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).

Potential application to NTIA activities:

- Financial assistance for modifications to structures and sites supporting telecommunications service necessary to connect unserved or underserved locations.
 - Modifications to NTIA facilities supporting telecommunications service necessary to connect NTIA facilities.
4. **[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.

Potential application to NTIA activities:

- Financial assistance for construction or modification of aerial or buried fiber optic telecommunications equipment in or adjacent to transportation rights of way, including reconstruction of power or telecommunications lines to provide broadband service.
5. **[B.13.]** Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunications facilities.

Potential application to NTIA activities:

- Financial assistance for construction or modification of aerial or buried fiber optic cable to rural and underserved locations, including retrofitting, upgrading, or modernization of existing infrastructure when necessary to provide broadband service.
6. [B.15.] Deployment of Cells on Wheels, Systems on Wheels, or another deployable architecture intended for temporary placement (no more than two years) on an impervious surface.

Potential application to NTIA activities:

- Financial assistance for deployment and maintenance of mobile communication systems, including ground-based and aerial deployable technologies, to provide temporary broadband service in areas where such service is not available, including areas where infrastructure has been damaged by natural disaster.
- Deployment and maintenance of mobile communication systems at NTIA facilities, for testing purposes at temporary locations, or as needed in areas where infrastructure has been damaged by natural disaster, including ground-based and aerial deployable technologies, to provide temporary broadband service.

III. Consideration of Extraordinary Circumstances

If an agency determines that a CE covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). In a separate **Federal Register** notice concurrent with this notice, NTIA is publishing interim NEPA implementing procedures and establishes 30 categorical exclusions and a list of the extraordinary circumstances it considers in determining whether to apply a categorical exclusion. The CEs adopted from the FirstNet Authority will supplement NTIA's newly established CEs and the CEs that NTIA currently applies to its actions. NTIA will consider its newly established extraordinary circumstances, as well as the extraordinary circumstances established in the FirstNet Authority's procedures, in assessing

whether a proposed action has the potential to result in significant effects, and if so, whether there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects, consistent with 40 CFR 1501.4(b). If NTIA cannot apply a CE to a particular proposed action due to extraordinary circumstances, NTIA will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2), or determine if the action is covered under an existing NEPA document.

IV. Consultation with FirstNet Authority and Determination of Appropriateness

The FirstNet Authority is an independent authority within NTIA, established by the Middle-Class Tax Relief and Job Creation Act of 2012 to deploy and operate a nationwide public safety broadband network.³ Similar to NTIA's grant programs, the FirstNet Authority's mandate includes planning and constructing telecommunication and broadband infrastructure across the United States and its territories. The specific activities that NTIA now anticipates funding are comparable to the FirstNet Authority project implementation activities in both scope and geographic span.

Over the past year, NTIA consulted with the FirstNet Authority on the applicability of the FirstNet Authority's NEPA implementing procedures to NTIA's proposed actions and took public comment on a proposal to follow the FirstNet Authority's procedures on an interim basis.⁴ In recent months, NTIA and the FirstNet Authority have consulted on the appropriateness of NTIA adopting certain FirstNet Authority CEs in response to public comments NTIA received noting the applicability of certain FirstNet Authority CEs to NTIA's proposed actions. That recent consultation has included a review of the FirstNet Authority's experience developing and applying its CEs. The agencies determined that NTIA's proposed actions are similar to the projects that the FirstNet Authority funds (*i.e.*, communications infrastructure) and that the impacts of NTIA's proposed actions will be similar to the impacts of FirstNet Authority projects, which are not significant absent extraordinary circumstances. Therefore, NTIA has determined

³ 47 U.S.C. 1401

⁴ 88 FR 19089 (<https://www.federalregister.gov/documents/2023/03/30/2023-06575/national-environmental-policy-act-procedures-and-categorical-exclusions>)

that its proposed use of the CEs as described in this notice would be appropriate because the categories of actions for which NTIA plans to use the FirstNet Authority CEs are similar to FirstNet Authority's use of the CEs.

V. Conclusion

This notice documents adoption of the FirstNet Authority CEs listed above in accordance with 42 U.S.C. 4336c(4), and they are available for use by NTIA, effective immediately.

Dated: March 26, 2024.

Sean Conway,

Acting Chief Counsel,

National Telecommunications and Information Administration.

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