



DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 240325-0086]

RIN 0660-XC056

National Environmental Policy Act Procedures and Categorical Exclusions

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

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (“NTIA”) publishes this Notice that it will follow the First Responder Network Authority’s (“FirstNet Authority”) National Environmental Policy Act (“NEPA”) procedures on an interim basis with modifications to account for NTIA’s internal organization and establish 30 new categorical exclusions (“CEs”) in compliance with NEPA, Council on Environmental Quality (“CEQ”) regulations, and other related authorities.

DATES: The use of these procedures and CEs will take effect as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Amanda Pereira, Environmental Program Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4878, Washington, DC 20230, by phone at 202-834-4016, or by email at apereira@ntia.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NTIA is the executive branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA’s programs and policymaking 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.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act, Public Law 117-58, (“IIJA”) into law. Passage of the IIJA is a significant step forward in achieving the Biden-Harris Administration’s goal of providing broadband access to the entire United States. The IIJA sets forth a \$65 billion investment into broadband; \$48.2 billion of that investment will be administered by NTIA. This investment will leverage NTIA’s experience in promoting broadband infrastructure development and digital inclusion efforts. To facilitate NTIA’s compliance with the IIJA and because of the critical need to expand and secure broadband access across the United States, NTIA must find opportunities to accelerate effective use of its appropriated funding while ensuring compliance with all relevant authorities, including NEPA.

Presently, CEQ is undertaking a multiphase rulemaking process to review and revise the NEPA implementing regulations.¹ Therefore, NTIA proposed to establish new CEs and otherwise follow the existing NEPA implementing procedures of the FirstNet Authority, an independent authority within NTIA, in the interim while CEQ completes its rulemaking processes. Following the FirstNet Authority’s procedures² will facilitate the IIJA’s large-scale investment in NTIA programs and the need for NTIA to fulfill the mandates of the IIJA in a timely manner, by ensuring NTIA make the most efficient use of time and available funding and resources to fulfill its environmental analysis and decision-making responsibilities. Following CEQ’s revisions to the NEPA regulations, NTIA intends to propose comprehensive NEPA procedures. In the interim, NTIA will rely on the FirstNet Authority procedures consistent with how they are written and currently executed, with the exception of the Roles and Responsibilities

¹ 86 FR 55759 (Oct. 7, 2021).

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

section, which NTIA will address by publishing guidance on its website reflecting NTIA's internal organization. In addition, NTIA is establishing and publishing CEs specific to NTIA's actions.

Accordingly, on March 30, 2023, NTIA published for comment its proposal to rely on the FirstNet Authority's NEPA implementing procedures and establish NTIA's CEs.³ Publication of the Notice began a 30-day comment period that ended on May 1, 2023. NTIA received eight substantive submissions from the broadband and telecommunications community, including one state regional cooperative and seven industry associations. A complete set of comments filed in response to the proposal may be viewed at <https://www.regulations.gov>, searching for Docket ID NTIA-2023-0004.

In response to that Notice, commenters encouraged NTIA to maintain or incorporate CEs established by the Department of Commerce in 2009 (which have been used by NTIA since 2009) and to acknowledge the applicability of CEs established by FirstNet in 2018 to NTIA's actions. NTIA undertook a comparative review of the existing Department programs to identify the applicable Department-wide CEs already available to NTIA. In light of this review, NTIA is not finalizing the CEs proposed as B-5 and C-8 because the actions they cover are encompassed by existing Department-wide CEs. In response to comments, NTIA also made minor editorial revisions to several of the proposed CEs for consistency with Department-wide and FirstNet Authority CEs, as explained throughout this Notice, and updated its administrative record to explain the changes. This Notice finalizes newly established CEs that NTIA may apply to its proposed actions and the implementing procedures it will use in the interim. Additionally, where appropriate, NTIA may continue to apply Departmental CEs that are currently available to NTIA when they would best support NTIA's mission and NEPA activities. Accordingly, while this Notice establishes new CEs, in so doing NTIA clarifies that Departmental CEs remain applicable

³ 88 FR 19089 (March 30, 2023).

to NTIA programs and that it may adopt or establish additional CEs through separate and subsequent processes.

Commenters generally supported NTIA's interim use of FirstNet's NEPA implementing procedures; however, NTIA received several comments expressing concerns about how NTIA will implement NEPA for the Broadband Equity Access and Deployment (BEAD) Program. In the near term, NTIA will follow the FirstNet implementing procedures for BEAD and all other NTIA actions and will also consider all procedural comments in developing its final implementing procedures once CEQ completes its rulemaking process.

NTIA consulted with CEQ on the proposed and final revisions to the FirstNet Authority's NEPA implementing procedures and NTIA's newly established CEs. CEQ issued a letter stating that it has reviewed the revised procedures, including the newly established CEs, and found them to be in conformity with NEPA and CEQ regulations.⁴ The final CEs and administrative record will be available for review at ntia.gov.

II. Comments and Agency Responses

Comments on the proposed procedures and CEs included several similar positions, inquiries both within and outside the scope of the Notice, and recommendations stemming from the proposed procedural adoption and development of categorical exclusions. NTIA has carefully considered each of the comments submitted, grouped and summarized the comments by issues raised, and responded accordingly.

NEPA Should Not Apply to BEAD

Comment: One commenter was concerned that imposing NEPA's environmental review standards on BEAD recipients will have the effect of unduly delaying the construction of broadband networks by adding unnecessarily burdensome and time-consuming environmental

⁴ See CEQ NTIA Conformity Letter (March 1, 2024) available at www.ntia.gov.

review that is not required by the statute. As a result, the commenter suggested that NTIA should determine that NEPA does not apply to the BEAD program.

Response: NTIA has determined that the issuance of \$42.5B in Federal grant funding meets NEPA's statutory definition of major Federal action because these Federal funds are under substantial Federal control through requirements associated with 2 CFR part 200. NEPA requires Federal agencies to interpret and administer Federal laws in accordance with NEPA's policies to ensure sound decision making. NTIA is committed to work with CEQ to find ways to ensure NEPA efficiencies, including through the development of these CEs.

Multiple Permitting and Approval Processes

Comment: Several commenters noted that broadband installations often require permits and approvals on Federal lands, along interstate and state highways, through local and private rights-of-way (ROWs), and on poles and across railroad crossings across and from multiple entities and jurisdictions. Commenters expressed a general need for an efficient and streamlined approach to NTIA's environmental review and other approvals necessary to reach the unserved and underserved in a timely manner.

Response: NTIA recognizes that the execution and deployment of projects throughout its programs may involve multiple permits, approvals, entities and jurisdictions. NTIA is proactively engaging with Federal, State, and local agencies and Tribes to reduce redundancies, avoid duplicative reviews, and attempt to streamline permitting and approvals processes for these important broadband infrastructure projects.

As a result of IIJA's large-scale investment in NTIA programs and the need for NTIA to fulfill the mandates of IIJA, in 2022, NTIA stood up a Permitting Tiger Team to identify the most efficient approach to fulfilling the agency's environmental analysis and decision-making responsibilities under NEPA. NTIA's extensive work with CEQ to finalize these newly established CEs directly benefits recipients by providing a thoughtful and thorough streamlining

tool that can improve the predictability of reviews where NTIA is the lead agency. In addition, if other agencies see benefits to adopting these newly established CEs or other applicable CEs to efficiently execute aspects of broadband deployment in their jurisdiction, NTIA will coordinate with them to do so when appropriate.

Through its participation in the American Broadband Initiative (ABI) and its roles and responsibilities under the MOBILE NOW Act, NTIA participates in the “Streamlining Federal Permitting” workstream (led by the Departments of Homeland Security, the Interior, and Agriculture) and has aligned interagency colleagues in a range of initiatives to streamline and facilitate the deployment of communications installations. For example, NTIA identified a potential bottleneck for deploying communication facilities on Tribal lands managed by the Bureau of Indian Affairs (“BIA”). NTIA and BIA have executed a memorandum of understanding (“MOU”) that defines the relationship between NTIA and BIA and their individual and collective roles and responsibilities in complying with environmental, historic preservation, and cultural resources requirements related to the Tribal Broadband Connectivity Program (“TBCP”) established by the Consolidated Appropriations Act of 2021 (“CAA”). The MOU streamlines NEPA reviews and environmental permitting for both NTIA, as the lead Federal agency for grant programs, and BIA, as authorized to grant ROWs over and across land held in trust by the United States under the Indian Right-of-Way Act.

In July 2023, NTIA circulated its Federal Permitting Coordination Strategy to obtain input from Federal permitting agencies. In August 2023, NTIA began implementing strategies that foster open communication so that project-level problems and delays can be identified as early as possible, and collaborative solutions can be developed. NTIA has provided predictive mapping tools to assist permitting agencies in identifying and planning for application surges and has worked with the Federal Permitting Improvement Steering Council to fund supplemental permitting staff and resources.

At the project level, NTIA environmental reviewers work closely and cooperatively with Federal agencies when projects are sited on federally managed lands and will continue to do so in accordance with new obligations under NEPA that require the designation of a lead agency when multiple agencies have independent but intersecting NEPA responsibilities on a single action. In such instances, NTIA engages in early coordination to align its approvals with the authorities of Federal land managing agencies, which have the expertise and local area knowledge of the resources and communities potentially affected by proposed projects, with the goal of reducing or eliminating duplication of effort wherever possible.

NTIA Should Adopt the Findings of Other Agencies

Comment: Commenters also noted that environmental reviews are often required by multiple agencies and may require redundant and duplicative analysis. They suggested that, when projects require review by multiple agencies, NTIA should adopt the findings of the other Federal agency or agencies without further environmental review to support compliance with NEPA.

Response: While NTIA has an independent obligation to ensure that analysis of its actions meets legal and technical sufficiency requirements, NTIA strives to reduce or eliminate duplication of effort to gain efficiency in the environmental compliance process. Changes to NEPA as a result of the Fiscal Responsibility Act of 2023 (FRA) require that “[t]o the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.” Additionally, where NTIA has an action that is substantially the same as one considered in another agency’s NEPA document or categorical exclusion determination, NTIA will consider adopting it if consistent with 40 CFR 1506.3.

NEPA Approvals Should Be Provided at Grant Award

Comment: One commenter noted that competition for fiber contractors and availability of materials are challenging to project timelines and suggested that providing NEPA approvals at grant award would enable grantees to immediately begin construction.

Response: NTIA can approve projects when there is an "actionable" project and NEPA documentation is complete. A project is actionable once NTIA has decided to award a grant. To make a NEPA decision on a project, NTIA must have adequate information about the project to evaluate the project's potential environmental impacts. NTIA may approve CEs for projects with no ground disturbance and no impacts on buildings or structures upon grant award if the application includes sufficient information to support such a determination. Otherwise, NTIA will either conduct the NEPA review based on the information the grantee provides or condition the award on provision of sufficient information to allow NTIA to complete the NEPA review prior to releasing funds.

While NTIA encourages grantees to provide a detailed description of their proposed project and the area in which it would be sited with their grant applications, NTIA does not require grant applicants to develop a full NEPA analysis prior to award. If a grantee voluntarily elects to submit a complete environmental analysis pre-award, NTIA will review this information to ascertain if a NEPA decision is possible at the time of grant award.

Clarify Environmental Review Timelines

Comment: Some commenters noted that the environmental analysis and review process could delay construction and put projects and grant funding at risk and requested that NTIA clarify buildout deadlines and extensions and environmental review timelines under IIA. Commenters also thought that NTIA should consider applying "shot clocks" to allow projects to move forward within an established timeframe even if environmental review has not been completed.

Response: Recent changes to NEPA require agencies to conclude environmental analysis within 1 year for EAs and within 2 years for EISs. NTIA has previously estimated that the CE process can take approximately 3 to 6 months.⁵ NTIA's newly established CEs ensure that this streamlined NEPA option is available to most grant funded broadband projects. As a cooperating agency to FirstNet's Programmatic EIS documents, NTIA is further exploring how to use these analyses to streamline NEPA for projects that may not qualify as categorically excluded but where the substantial record of past review supports that, where mitigation measures and best management practices are incorporated into the proposed action, such measures and practices can eliminate potentially significant environmental impacts.

NTIA does not currently apply shot clocks to environmental review but makes every effort to complete the NEPA review process in a timely and efficient manner upon receipt of legally and technically sufficient analysis.

Allow Segmentation of Projects

Comment: Several commenters suggested that NTIA should allow the environmental review of projects to proceed in segments to enable recipients to initiate construction of parts of projects prior to the completion of NEPA for the full project.

Response: NEPA and the CEQ regulations do not allow an agency to break a single project into multiple components (i.e., phased or staged) without completing environmental review for the entire project, whether by CE, EA, or EIS.⁶ In the rare cases where a grant includes multiple subgrantees/subrecipients proposing projects that are completely independent of each other, separate NEPA analyses are appropriate, NTIA may find sufficient "independent utility" to allow one segment to proceed while others are still receiving NEPA review.⁷

⁵ NEPA: Environmental and Historic Preservation Compliance (webinar), <https://youtu.be/BzYFheHqL0I?si=6yOB-7vibAMbpmFT>.

⁶ Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Commission, 196 U.S. App. D.C. 354, 606 F.2d 1261, 1269 (D.C. Cir. 1979).

⁷ Save Barton Creek Association v. Federal Highway Administration, 950 F.2d 1129, 1133 (5th Cir. 1992).

NTIA assesses independent utility based on a project's independent function, absent the construction of other components of the project. Only component parts of a grant that could be constructed even if the other phases were not built and can functionally operate on their own can be considered as separate, single, and complete projects with independent utility. In contrast, component parts of a grant or a multi-phase project that depend upon other projects, phases, stages, or segments of the project do not have independent utility.⁸

When a Federal action is divided and analyzed into smaller separate components it is known as "segmentation."⁹ When an agency intentionally attempts to affect the NEPA analysis by dividing a Federal action into smaller components in order to allow those smaller components to avoid studying the overall impacts of the single project, improper segmentation has occurred.¹⁰ Furthermore, until an agency issues a NEPA determination for the single project, any action taken for component parts would limit the choice of reasonable alternatives and could prejudice the ultimate NEPA decision (40 CFR 1506.1). Thus, it is unlawful for all agencies, including NTIA, to evade their responsibilities under NEPA by artificially dividing a major Federal action into smaller components, each without significant impact.

Remove the Requirement for Draft EAs and EISs to be Submitted and Reviewed and the Public Comment Period for EAs

Comment: Several commenters suggested that NTIA should remove the requirement for Draft EAs and EISs to be submitted and reviewed as it adds an additional layer of review and time to the environmental review process. One commenter suggested that NTIA should not utilize a formal public notice and comment cycle unless the project is similar to one that normally needs an EIS or is unprecedented.

⁸ See 40 CFR 1501.9(e) and 1502.4 (Mentioning the concept of "connected actions" and "unconnected single actions.").

⁹ *West Chicago, IL. v. U.S. Nuclear Regulatory Commission.*, 701 F.2d at 650 (7th Cir. 1983).

¹⁰ *O'Reilly v. U.S. Army Corps of Engineers*, 950 F.2d 1129 (5th Cir. 2007).

Response: CEQ regulations are clear that an EIS is a two-stage process that requires agencies to publish a Draft EIS (40 CFR 1502.9). NTIA has historically required notice of EAs to allow for public comment, consistent with NEPA's commitment to transparency and public involvement. NTIA has elected to follow FirstNet's NEPA implementing procedures and will consider all procedural comments in developing its final NEPA implementing procedures after CEQ concludes its rulemaking process.

Streamline NHPA Process

Comment: Several commenters suggested that NTIA should streamline its process for compliance with section 106 of the National Historic Preservation Act (NHPA). They noted that through program alternatives and/or adoption of other agencies' processes, NHPA review could also be streamlined to avoid redundancies and delays.

Response: NEPA and NHPA are separate statutes. While CEs are not applicable to section 106 reviews, the Advisory Council on Historic Preservation (ACHP) NHPA implementing regulations allow for "program alternatives" that can improve the effectiveness and efficiency of the standard section 106 process and streamline routine reviews while focusing effort on the more complex projects or historic properties most important to communities.¹¹ The ACHP has issued several program alternatives for telecommunications projects that apply to NTIA grant funded activities.

NTIA currently applies the ACHP's *Program Comment for Streamlining Section 106 Review for Wireless Communications Facilities Construction and Modification Subject to Review Under the FCC Nationwide Programmatic Agreement* to eliminate the duplicative section 106 review of facilities licensed or approved by the FCC.

¹¹ 36 CFR 800.14.

In addition, NTIA requested that the ACHP amend the *Program Comment for Communications Projects on Federal Lands and Property* to expand its availability beyond public lands and establish it as the section 106 review process for all broadband projects. On March 14, 2024, in response to NTIA's request, the ACHP announced an amendment that makes the provisions of the 2017 program comment, which establishes streamlined historic preservation permitting rules for communications infrastructure projects on Federal lands, available to *all* Internet for All programs and broadband projects from all Federal agencies, both on and off Federal lands.¹²

NTIA recognizes its obligations to conduct meaningful consultation with State Historic Preservation Offices,¹³ Tribal Historic Preservation Offices,¹⁴ federally recognized Tribes,¹⁵ and the public¹⁶ and will continue to work with the ACHP and consulting parties to streamline its processes and create efficiencies that eliminate section 106 duplication and redundancies while appropriately taking historic preservation into account.

Proposed CEs Should Not Change Once NTIA Finalizes Its Implementing Procedures

Comment: One commenter urged that NTIA not alter the proposed CEs once NTIA is able to draft and finalize its own NEPA implementing procedures.

Response: While the use of the FirstNet Authority's NEPA implementing procedures will be interim until CEQ completes its rulemaking process and NTIA establishes final NEPA implementing procedures, NTIA considers these CEs final and does not intend to modify these newly established CEs in the near future.

¹² ACHP Announces Program Comment Amendment to Support President Biden's Broadband Initiative, Mar. 14, 2024, available at, ACHP Announces Program Comment Amendment to Support President Biden's Broadband Initiative | Advisory Council on Historic Preservation.

¹³ 36 CFR 800.2(c)(1).

¹⁴ 36 CFR 800.2(c)(2)(i)(A).

¹⁵ 36 CFR 800.2(c)(2)(i)(B) and (c)(2)(ii), and 36 CFR 800.4(a)(4).

¹⁶ 36 CFR 800.2(c)(5) and (d).

NTIA should maintain other applicable Department of Commerce CEs

Comment: One commenter noted that the Department of Commerce has CEs that are available to NTIA, several of which are applicable to broadband deployments, and NTIA should continue to use those CEs when helpful. Several commenters noted the applicability of FirstNet CEs to NTIA actions and requested that NTIA maintain consistency in its approach, including for extraordinary circumstances.

Response: NTIA is currently using the Department's CEs to execute its programs. NTIA also made limited changes to the text of the proposed CEs to align them with the FirstNet CEs. While this Notice establishes new CEs, in so doing, NTIA clarifies that Departmental CEs remain applicable to NTIA programs and that it may adopt or establish additional CEs through separate and subsequent processes.

Ensure that NTIA's CEs reflect that Wireless Deployment Is Different Than Wireline

Comment: One commenter noted FirstNet's charge to build a wireless broadband network and urged NTIA to ensure that its final CEs explicitly and unequivocally contemplate the installation of wireline infrastructure, as wireless backhaul and wireline networks are different.

Response: NTIA recognizes this point of clarification and the differences between wireless backhaul and a wireline network. NTIA's CEs address the full range of the agency's administrative, real property/facility, and operational activities and are intended to apply to broadband networks that are fiber, wireless, or a combination of the two. In response to this comment, NTIA made minor modifications to CEs C-4 and C-8 (originally proposed as C-9). While this Notice establishes new CEs, NTIA clarifies that Departmental CEs remain applicable to NTIA programs and that it may adopt or establish additional CEs through separate and subsequent processes.

Create CE for Two-Way Dispatch Communications for Critical Infrastructure Industry

Comment: One commenter suggested that NTIA should consider a CE for commercial service providers that offer primarily two-way dispatch communications for the critical infrastructure industry.

Response: NTIA has determined that CEs B-5 and C-7 are broad enough to support the telecommunication towers, antennas, and support/associated equipment required for such deployment; therefore, no additional specific CE is required.

Clarify CE C-8 (originally proposed as C-9) Applicability and Remove Caveat Regarding Existing ROWs

Comment: Several commenters requested that NTIA clarify whether CE C-8 applies to aerial and buried fiber construction. Additionally, some commenters suggested that restricting the CE's applicability to construction within existing ROWs was unduly burdensome.

Response: NTIA intends for CE C-8 to apply to both aerial and buried fiber optic construction. NTIA could apply this CE either to direct or grant-funded actions for such activities as fiber installation through trenching, vibratory plowing, or directional boring, installation of fiber or cable into existing conduit, and aerial fiber or cable deployment. For clarity, NTIA has edited CE C-8 to read as follows: "Acquisition, installation, reconstruction, repair by replacement, and operation of aerial or buried utility (e.g., water, sewer, electrical), communication (e.g., fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements."

NTIA has generated a substantial record of past analyses supporting the conclusion that sensitive resources are unlikely to occur within "existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements" that are presumably previously

disturbed and regularly maintained, and thus potentially significant impacts to sensitive resources within these corridors is unlikely. In joint comments, the Rural Broadband Association and the National Rural Electric Cooperative Association noted that the deployment of wireline broadband networks typically include buried and aerial fiber optic cable “in rights-of-way or easements,” substantiating that these CEs should apply in most cases.

Extraordinary Circumstances are Vague and Will Force Most Projects into an EA

Comment: Several commenters requested that NTIA provide more concrete parameters for extraordinary circumstances and objected to the “reasonable likelihood” standard as vague.

Response: Consistent with 40 CFR 1501.4(b) of CEQ regulations, when considering applying a CE NTIA is required to evaluate an action for circumstances in which a normally excluded action may have a significant effect. In response to comments, NTIA considered the need for grant recipients to clearly understand extraordinary circumstances in order to be able to identify and avoid them in project planning and made clarifying edits and modified the language to remove “reasonable likelihood” references. Extraordinary circumstance 8 was further edited to clarify that it would not apply to an action taken in proximity to a hazardous waste site or involving the handling of hazardous substances if NTIA determines the action is consistent with an approved remediation plan. NTIA also agrees that extraordinary circumstance 9 should comport with established and industry-recognized FCC exposure limits. The revised extraordinary circumstance 9 states, “Reasonable likelihood that the proposed action would involve human exposure to ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission’s established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.”

Clarify the Low-Income and Minority Community Provision in Extraordinary Circumstance 7

Comment: Two commenters suggested that NTIA should clarify how grantees should analyze extraordinary circumstance 7 concerning low-income and minority communities, since,

by its nature, an increase in broadband availability is a positive impact to low-income and minority communities.

Response: As a point of clarification, NTIA's CEs are intended to encompass the entirety of NTIA's actions, short- and long-term and across business units, beyond IJJA. The Low-Income and Minority Community provision in extraordinary circumstance 7 is directly related to the concept of environmental justice as memorialized in Executive Order (E.O.) 12898 and section 3(a)(ix) of E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice* (April 2023) that reinforces and codifies longstanding Federal agency practice regarding environmental justice and NEPA. Environmental justice impacts and analyses could differ across different projects and programs.¹⁷

Given the BEAD program's likely benefits to communities with environmental justice concerns, addressing this extraordinary circumstance can be accomplished with a fairly simple analysis of the demographics of the community within the project area and an explanation of how that community would benefit from the project. (Such benefits would not discount an extraordinary circumstance giving rise to the potential of significant effects, which would require an EA or EIS). NTIA has provided and will continue to make available examples of previous projects that have received NTIA grants to demonstrate the level of environmental analysis required for this extraordinary circumstance.

III. Revisions to Specific Categorical Exclusions

NTIA is not including in this Notice the CEs proposed as B-5 and C-8 because the actions they cover are encompassed by existing Department-wide CEs. In addition, NTIA has responded to comments on the proposed set of CEs and list of extraordinary circumstances by

¹⁷ For further guidance, see CEQ's *Environmental Justice: Guidance Under the National Environmental Policy Act*, and EPA's *Promising Practices for EJ Methodologies in NEPA Reviews*.

incorporating the following seven clarifications to specific CEs and framing modifications that affect all 13 extraordinary circumstances.

B-6 (originally proposed as B-7): In response to comments expressing support for the existing Department CEs, including FirstNet CEs, NTIA clarifies that Departmental CEs remain applicable to NTIA programs. NTIA made an editorial change removing the qualifier “space within” existing facilities to ensure that B-7 is consistent with the existing FirstNet CE A-4 and because this qualifier does not provide any additional information about how NTIA may apply the CE.

C-4: In response to comments expressing support for the existing Department CEs, including FirstNet CEs, NTIA clarifies that Departmental CEs remain applicable to NTIA programs. NTIA made changes to promote consistency between these rules, including ensuring that improvements of land remain covered and that, consistent with the Department’s A-2, actions taking place in a developed area may be categorically excluded where no extraordinary circumstances apply. NTIA also clarified that this CE is applicable to both wired and wireless facilities.

C-5: This CE is established as originally proposed with minor editorial changes.

C-8 (originally proposed as C-9): In response to comments requesting that NTIA clarify that CE C-8 included both wireline and wireless infrastructure, NTIA has specified its applicability to both aerial and buried utilities, equipment, and systems.

Extraordinary Circumstances (General). In response to multiple comments identifying concerns that the “reasonable likelihood” measure was overly broad, vague, and subjective, NTIA modified the language to promote clarity and facilitate the assessment of how these 13 factors apply to otherwise categorically excluded actions.

EC-8: NTIA removed the qualifiers “unmitigable” (construction impacts) and “non-permittable” (generation) to clarify that CEs are not presumed to apply to actions involving contaminated or hazardous waste sites or substances.

IV. Final Categorical Exclusions and Extraordinary Circumstances

Categorical Exclusions

Administrative Actions

A-1: Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, recordkeeping, budgeting, personnel actions, contract administration, and travel.

A-2: Preparation, modification, and issuance of policy directives, rules, regulations, procedures, guidelines, guidance documents, bulletins, and informational publications that are of an administrative, financial, legal, technical, or procedural nature, for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be, in whole or part, subject later to the NEPA process, either collectively or on a case-by-case basis.

A-3: Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.

A-4: Planning, educational, informational, or advisory activities provided to other agencies, public and private entities, visitors, individuals, or the public, including training exercises and simulations conducted under appropriately controlled conditions and in accordance with all applicable laws, regulations, and requirements.

A-5: Software development, data analysis, or testing that does not involve ground disturbing activities.

A-6: Preparation and dissemination of scientific results, studies, surveys, audits, reports, plans, papers, recommendations, and technical advice.

A-7: Technical assistance to other Federal, Tribal, State, and local agencies or the public.

A-8: Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (*i.e.*, vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

A-9: Purchase of deployable mobile and portable telecommunications equipment (*e.g.*, radios, Cell on Wheels, Cell on Light Truck, System on Wheels) that will be housed in existing facilities when not deployed.

A-10: Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

A-11: Reductions, realignments, or relocation of personnel, equipment, or mobile assets that do not result in changing the use of NTIA facilities or space in such a way that could cause a change to existing environmental effects or exceed the infrastructure capacity outside of NTIA-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

A-12: Federal assistance, grants, and external funding for activities that do not concern environmental matters or where the environmental effects are negligible. Examples of relevant activities could include, but are not limited to, planning, studies, or programs such as the Digital TV transition, which provided rebates to consumers to subsidize the purchase of digital antennas, that have no potential to impact the environment. If an analysis determines that such activities have the potential to impact the environment, the CE cannot be applied.

A-13: Contracts, collaborative research agreements, cooperative research and development agreements, interagency agreements, and other agreements that do not concern environmental matters or where the environmental effects are negligible.

Real Property/Facility Actions

B-1: Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

B-2: Internal modifications, renovations, or additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

B-3: Exterior renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. Examples include the following:

(i) Painting, roofing, siding, or alterations to an existing building;

(ii) Adding a small storage shed to an existing building;

(iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, and installation of low-flow plumbing fixtures; or

(iv) Closing and demolishing a building not eligible for listing under the National Register for Historic Places.

B-4: Abatement of hazardous materials from existing facilities, including asbestos and lead-based paint, conducted in compliance with all applicable laws, regulations, and requirements established for the protection of human health and the environment. Examples include containment, removal, and disposal of lead-based paint or asbestos tiles and asbestos-containing materials from existing facilities; and remediation of hazardous materials in accordance with all applicable laws, regulations, and requirements as part of facility and space management activities.

B-5: Proposed new activities and operations conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

B-6: Acquisition or use of existing facilities or portion thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office or laboratory space through lease, purchase, or use agreement.

B-7: Transfer of administrative control over real property, including related personal property, between another Federal agency and NTIA that does not result in a change in the functional use of the property. Examples include transfer of facilities for use by NTIA and transfers of computer equipment, office equipment, and personal property, including laptops and cell phones.

B-8: Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment where the facility or equipment, including office equipment, telecommunications equipment, and computer equipment, is not used to prevent or control environmental impacts.

B-9: The determination and disposal of real property, such as excess office space, or personal property, including laptops and cell phones, that is excess to the needs of NTIA when the real property or personal property is excessed in conformity with applicable General Services Administration procedures or is statutorily authorized to be excessed.

Operational Actions

C-1: Research activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts. Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

C-2: Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements. Examples include types of research, development, testing, and evaluation activities conducted outdoors where no new ground disturbance occurs and no sensitive resources (*e.g.*, threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

C-3: Periodic flight activities for training and research and development that are routine and comply with all applicable laws, Federal Aviation Administration regulations, and other requirements.

C-4: New construction or improvement of land, operations, or support facilities, switching stations, maintenance facilities, and other non-tower structures supporting wired or wireless

communications systems in a developed area and/or on previously disturbed ground with no more than 1 acre (0.4 hectare) of ground disturbance where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-5: Installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacement of existing microwave or radio communication towers, instruments, structures, or buildings that do not require ground disturbance outside of the original footprint, including installing or collocating equipment such as antennas, microwave dishes, or power units. For communications towers at or below 199 feet, renovations and equipment additions must not cause the total height of the tower to exceed 199 feet. Existing structures must not be eligible for listing in the National Register of Historic Places.¹⁸

C-6: New construction or improvement of temporary buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-7: New construction of self-supporting (e.g., monopole or lattice) wireless communication towers at or below 199 feet with no guy wires that require less than 1 acre (0.4 hectare) of ground disturbance and where another Federal agency would not require an EA or EIS for its acquisition, installation, operations, or maintenance.

¹⁸ In response to comments expressing support for existing Departmental CEs including those of FirstNet, NTIA notes that establishment of these new CEs does not preclude the use of Departmental or other CEs that may be otherwise available to NTIA where they apply to a proposed action. Two existing Department of Commerce CEs (the Department's A-4 and FirstNet's B-7) may be applicable to related actions. Commerce's A-4 covers *Siting, construction, operation, and maintenance of microwave/radio communication towers less than 200 feet in height without guy wires on previously disturbed ground*. FirstNet's B-7 covers *Changes or additions, including retrofit and upgrade, to telecommunications sites, towers under 200 feet, 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)*.

C-8: Acquisition, installation, reconstruction, repair by replacement, and operation of aerial or buried utility (e.g., water, sewer, electrical), communication (e.g., fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements.¹⁹

Extraordinary Circumstances

Extraordinary Circumstances that may preclude the use of a CE include:

1. Proposed action occurs within an environmentally sensitive or unique²⁰ geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.
2. Proposed action may adversely impact species listed or proposed to be listed as endangered or threatened or have adverse effects on designated critical habitat for these species.
3. Proposed action may adversely impact protected migratory birds or their habitats.
4. Proposed action may adversely affect historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, and properties listed or eligible for listing on the National Register of Historic Places.
5. Proposed action restricts access to and ceremonial use of Indian sacred sites by Indian practitioners or adversely affects the physical integrity of such religious sacred sites.
6. Proposed action occurs in floodplains or involves significant changes to or effects on waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water

¹⁹ In response to comments expressing support for existing Departmental CEs including those of FirstNet, NTIA notes that establishment of these new CEs does not preclude the use of Departmental or other CEs that may be otherwise available to NTIA where they apply to proposed actions involving buried and aerial lines, cables, and related facilities.

²⁰ “Environmentally sensitive or unique” resources and areas may include: federal lands; areas having special designation or recognition such as prime or unique or agricultural lands; designated wilderness or wilderness study areas; wild and scenic rivers; coastal zones; National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

supply systems, or State, local, or Tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.

7. Proposed action may have a disproportionate and adverse human health or environmental effect²¹ on low-income populations, minority populations, or other communities with environmental justice concerns.
8. Proposed action involving construction impacts on or near an active, inactive, or abandoned contaminated or hazardous waste site, or involving non-permitted generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment, unless NTIA determines the action is consistent with an approved remediation plan for the site.
9. Proposed action would involve human exposure to ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.
10. Proposed action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.
11. Proposed action may violate a federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.
12. Proposed size or scope of action is greater than is normal for an action of its type.

²¹ E.O. 14096 section 3(i).

13. Proposed action may cause other significant effects on human health or the environment that have not been otherwise addressed.

Dated: March 26, 2024.

Sean Conway,

Acting Chief Counsel,

National Telecommunications and Information Administration.

[FR Doc. 2024-06751 Filed: 4/1/2024 8:45 am; Publication Date: 4/2/2024]