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FEDERAL COMMUNICTIONS COMMISSION

47 CFR Parts 1, 2, 5, 17, 22, 27, 30, 63, 73, 74, 78, 80, 90, 97, and 101

[WT Docket No. 25-217; FCC 26-64; FR ID 374712]

Modernizing the Commission's National Environmental Policy Act Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document (*Order*), the Federal Communications Commission ("Commission" or "FCC") takes action to cut through outdated and unnecessary burdens that have slowed deployment of critical communications networks. These reforms restore balance to the Commission's National Environmental Policy Act (NEPA) implementation by providing clear and predictable rules to ensure NEPA serves as a tool for informed decision-making rather than a barrier to investment, innovation, and connectivity.

DATES: These rules are effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for instruction 2 (§ 1.61), instruction 3 (§ 1.923), instruction 4 (§ 1.929), instruction 6 (§ 1.1303), instruction 7 (§ 1.1304), instruction 8 (§ 1.1305), instruction 9 (§ 1.1306), instruction 10 (§ 1.1307), instruction 11 (§ 1.1308), instruction 12 (§ 1.1309), instruction 13 (§§ 1.1311 through 1.1313), instruction 14 (§§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320), instruction 15 (§ 1.1706), instruction 16 (§ 1.2113), instruction 17 (§ 1.6002), instruction 18 (§ 1.9010), instruction 19 (§ 1.70007), instruction 20 (§§ 1.90000 through 1.90002), instruction 22 (§ 2.1091), instruction 23 (§ 2.1093), instruction 25 (§ 5.63), instruction 27 (§ 17.4), instruction 28 (§ 17.6), instruction 30 (§ 22.143), instruction 31 (§ 22.165), instruction 32 (§ 22.503), instruction 34 (§ 27.11), instruction 35 (§ 27.803), instruction 36 (§ 27.903), instruction 37 (§ 27.1208), instruction 39 (§ 30.101), instruction 41 (§ 63.01), instruction 42 (§ 63.18), instruction 44 (§ 73.406), instruction 45 (§ 73.1010), instruction 47 (§ 74.5), instruction 48 (§ 74.25), instruction 50 (§ 78.15), instruction 51 (§ 78.109), instruction 53 (§ 80.371), instruction 55 (§ 90.129), instruction 56 (§ 90.159), instruction 57 (§ 90.169), instruction 58 (§ 90.655), instruction 59 (§ 90.683), instruction 60 (§ 90.733), instruction 61 (§ 90.1207), instruction 63 (§ 97.13), instruction 65 (§ 101.31), instruction 66 (§ 101.1009), instruction 67 (§ 101.1329), and instruction 68 (§

101.1523), which are delayed indefinitely. The Federal Communications Commission will publish a document in the *Federal Register* announcing the effective date of these rule sections.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Modernizing the Commission's National Environmental Policy Act Rules Report and Order (*Order*), FCC 26-64, adopted on September 30, 2026, and released on October 1, 2026. The full text of this document is available at https://docs.fcc.gov/public/attachments/FCC-26-64A1.pdf. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Order* on small entities. The FRFA is set forth section IV.

Paperwork Reduction Act

The *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

SYNOPSIS

I. INTRODUCTION

1. In this Report and Order (*Order*), the Commission takes action to cut through outdated and unnecessary burdens that have slowed deployment of critical communications networks. These reforms restore balance to the Commission's National Environmental Policy Act (NEPA) implementation by providing clear and predictable rules to ensure NEPA serves as a tool for informed decision-making rather than a barrier to investment, innovation, and connectivity.

2. These updates to the Commission's NEPA rules answer the call from all three branches of government. Congress recognized the need for reform by amending the NEPA statute to codify core definitions, exempt certain actions from review, and expedite agency action. In implementing these changes to the amended NEPA statute, President Trump directed agencies to streamline their procedures for environmental review and to "prioritize efficiency and certainty." And the Supreme Court in *Seven County Infrastructure Coalition* provided what it described as a "course correction" to lower courts, affirming the amended NEPA's status as a "purely procedural statute."

3. The burdens associated with the NEPA regulatory regime have long been one of the biggest obstacles to new infrastructure builds, and the record in this proceeding confirms that NEPA-related costs and delays associated with NEPA compliance continue to deter needed infrastructure deployment, even as projects pose no or minimal risk of environmental harm. One study, for example, indicates that compliance adds "an estimated five-month delay in deploying new technologies and service upgrades," that under the Commission's legacy environmental rules, "mobile wireless providers would spend in excess of $2.2 billion on regulatory compliance over the next decade alone," and that the "overall economic harm from the current policies amounts to at least $7.5 billion in welfare and economic activity loss over the next ten years." Conversely, the record demonstrates that reducing the excessive costs and delays associated with burdensome NEPA reviews would yield substantial consumer and public benefits, accelerating the roll-out of new technologies and expanding access to more communities faster. The Commission anticipates that reducing regulatory barriers that delay the deployment of wireless facilities, combined with efforts by Congress, the FCC, and the broader Administration to establish a pipeline of dedicated spectrum will facilitate the continued deployment of 5G, and will help advance U.S. leadership in 6G.

4. In the *Order*, the Commission does its part to streamline its environmental review

process, promote efficiency, and encourage deployment of infrastructure that results in more competition and technological innovation. The Commission adopts its proposal to codify the statutory definition of major Federal action (MFA), the prerequisite to trigger federal agencies' NEPA obligations, in the Commission's rules, and the Commission clarifies which Commission actions are MFAs. The Commission adopts reforms to streamline other aspects of its NEPA rules, including the Commission's requirements for categorical exclusions (CEs), environmental assessments (EAs), environmental impact statements (EISs), joint agency actions, and emergency situations. The Commission also makes changes to its rules to separate NEPA requirements from its National Historic Preservation Act (NHPA) rules to account for the revisions to environmental review rules in this *Order*. Throughout, the Commission clarifies the Commission's role with respect to other statutory responsibilities, as these may have intersected with its NEPA work in the past. As part of this proceeding, the Commission also issued a *Further Notice,* published in the *Federal Register* on October 19, 2026 (91 FR 66062), seeking additional comment on its NHPA and Endangered Species Act (ESA) frameworks. Taking these actions to expedite, simplify, and reduce the costs of environmental review will help clear the way for faster and more infrastructure builds across the country and deliver significant benefits to the American public

II. BACKGROUND

A. NEPA and Related CEQ Regulations

5. NEPA was signed into law on January 1, 1970, and requires federal agencies to determine whether any proposed MFAs will significantly affect the quality of the human environment and, if so, to assess those environmental impacts. The statute created the Council on Environmental Quality (CEQ), which assists with NEPA implementation across the federal government. Federal agencies issue their own NEPA implementing procedures in consultation with CEQ.

6. Recent developments have significantly altered NEPA's framework. First, Congress amended NEPA in June 2023 to promulgate a statutory definition of MFA, specify relevant exclusions to that definition, and codify various aspects of the environmental review process, including CEs, EAs, and EISs. Then, in an interim final rule issued in February 2025, CEQ rescinded its longstanding interagency NEPA regulations, and affirmed the recission in a final rule in January 2026. CEQ later issued guidance and a template to assist federal agencies in structuring agency-specific NEPA rules and procedures. In

April of 2026, CEQ issued guidance to assist federal agencies in establishing, revising, adopting, and applying categorical exclusions in accordance with the NEPA, replacing initial guidance on the same subject issued in 2010.

7. Finally, the Supreme Court confirmed that that an agency implementing NEPA makes "fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry" within "a broad zone of reasonableness" and need not consider the environmental effects of a "project separate from the one under NEPA review by virtue of temporal or geographic distance."

B. The Commission's Current Environmental Rules

8. The structure and history of the Commission's current environmental rules, as set forth in greater detail in the Modernizing the Commission's National Environmental Policy Act Rules Notice of Proposed Rulemaking (*NEPA NPRM*), 90 Fed Reg 40295, published on August 19, 2025, establish procedures to comply with statutory obligations that pertain to environmental and historic resources. These rules were designed to support the Commission's compliance with NEPA, among other statutory obligations.

9. The Commission meets its NEPA obligations through its regulations, which impose enforceable duties on its licensees, applicants, and registrants, such as commercial licensees, utilities, public safety entities, and others, and relies upon those entities to make the initial evaluation of potential environmental effects. Tower owners that are neither licensees nor applicants must also follow these rules if they intend their towers to host antennas supporting Commission-licensed services.

10. The Commission's NEPA rules currently contain an overarching CE framework by which Commission actions generally "are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing." The regulation describes the limited instances, commonly referred to as extraordinary circumstances, under which additional environmental processing is required. This broad CE applies to both new actions as well as modifications to existing or authorized facilities and equipment. If one of the enumerated extraordinary circumstances is present, then applicants are generally required to prepare an EA. The Commission's rules also require the preparation of an EA if an interested person files a written petition alleging that a particular action, otherwise categorically excluded, will have a significant

environmental effect and the Commission, through the responsible Bureau, determines that the action may have a significant environmental impact. In addition, the Commission's rules require the preparation of an EA if the responsible Bureau determines on its own motion that a particular action, otherwise categorically excluded, may have a significant environmental impact.

11. When an applicant submits an EA, the Commission reviews the EA and makes an independent finding as to whether the proposed action will or will not have a significant environmental effect requiring additional environmental processing in the form of an EIS. If the responsible Bureau or the Commission determines that the proposal will not have a significant impact, it will make a finding of no significant impact (FONSI). After the issuance of a FONSI, the application will be processed. The Commission must issue a FONSI before a proposed action for which an EA has been submitted may be implemented. The Commission's rules require the applicant to provide local public notice of the FONSI "[p]ursuant to CEQ regulations" after it is issued. If the responsible Bureau or the Commission determines that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant, and the applicant will have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. If the matter is not resolved by an application amendment, the rules provide that the Bureau will prepare a draft EIS and a Final EIS.

12. The Commission's rules related to historic preservation are located in §§ 1.1307(a)(4) and 1.1320 of the Commission's current environmental rules. Commission undertakings are addressed through the Commission's historic preservation review procedures, which includes application of the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (collectively the NPAs). These provisions and NPAs implement section 106 of the NHPA, which requires federal agencies to consider the effects of federal undertakings on historic properties.

13. Finally, the Commission's Antenna Structure Registration (ASR) rules can be found in part 17 of the Commission's regulations. These rules contain environmental notification provisions, which must be completed by all ASR applicants unless an exception applies or a waiver is granted. The environmental notification process applies to new tower registrations and to certain modifications of registered towers that may have a significant environmental effect. Under the ASR rules, interested

persons may submit a request for further environmental review within 30 days of the national notice date alleging that the proposed facility or modification may have a significant environmental effect. The responsible Bureau will issue a decision as to whether further environmental processing in the form of an EA, submitted by the applicant, is required. If an EA is required, the responsible Bureau will review the EA and, if the responsible Bureau determines there will be a significant environmental effect, give the applicant an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems and then determine whether to issue a FONSI or advise the applicant that an EIS is required.

14. On March 27, 2025, CTIA—The Wireless Association (CTIA) filed a Petition for Rulemaking for the Commission to revise its rules to provide that wireless facility deployments pursuant to a geographic area license that do not require antenna structure registration are not MFAs under NEPA. CTIA also asked the Commission to amend its NEPA rules to provide more definitive timelines and concrete standards of review.

15. In August 2025, the Commission adopted a Notice of Proposed Rulemaking (*NEPA NPRM*) seeking comment on the CTIA petition, along with a broad array of proposals discussed in greater detail below, to update its environmental review rules and procedures to ensure they comport with NEPA's amendments and accelerate infrastructure deployment. Given their historic interplay within the Commission's rules, the Commission asked for comment on the NHPA framework and what rule changes, if any, might be appropriate.

16. The Commission held a series of opportunities for federally recognized Tribal Nations and Native Hawaiian Organizations (NHOs) to consult with the Commission regarding the Commission's review of its NEPA rules. On July 15, 2025, the Commission held a nation-wide virtual Tribal consultation and listening session on the CTIA Petition. In total, there were 109 attendees representing 57 Tribal Nations and 11 Tribal entities. On July 28, 2025, Tribal consultation was conducted with the Osage Nation on the CTIA Petition. On September 8–9, 2025, the Commission conducted Tribal consultation on the *NEPA NPRM* and CTIA Petition in Reno, NV, which included separate, in-person consultation meetings with the Pit River Tribe and the Habematolel Pomo of Upper Lake. On September 11, 2025, the Commission held an FCC Tribal Workshop at the Coalition of Large Tribes Quarterly Meeting in Prior Lake, MN. The workshop addressed a variety of Commission initiatives that support the

deployment of communications infrastructure and services nationwide, including on Tribal lands, and included an overview of proposed changes to the Commission's NEPA rules. Following the presentation, Commission staff provided an opportunity for COLT and other Tribes to consult and heard from the Blackfeet Nation, the Oglala Sioux Tribe, the Standing Rock Sioux Tribe, Leech Lake Band of Ojibwe, and Sisseton Wahpeton Oyate. The Commission also held virtual tribal consultations to discuss proposed changes to the NEPA rules on December 11, 2025, and January 14, 2026. During these consultations Tribes expressed concerns about maintaining their ability to review wireless facility deployments. The Commission has considered these concerns in making the determinations in this *Order* as described more fully herein.

17. In response to the *NEPA NPRM*, service providers, including AT&T, T-Mobile, and Verizon, utilities, space operators, tower builders, and related trade associations support streamlining the Commission's environmental review rules, which, in their view, impose significant costs and delays on their efforts to deploy infrastructure facilities. Advocacy organizations, like bird conservation organizations and astronomical organizations, along with Tribal governments, historic preservation offices, and attorneys general from several states, oppose changes that, in their view, would reduce federal oversight of infrastructure deployments and their adverse effects.

III. DISCUSSION

A. Commission Actions Subject to Environmental Review

18. The Commission restructures its NEPA rules as proposed to align with recent statutory and judicial precedent. Historically, the Commission presumed, without any analysis, that certain activities constituted MFAs and then categorically excluded them unless an enumerated circumstance (as defined in its rules) required an EA. As the Commission noted in the *NEPA NPRM*, the Commission has never taken the position that every form of license or authorization demonstrates a sufficient federal nexus to qualify as a federal undertaking or MFA. Commenters contend that NEPA requires agencies to make a threshold determination about whether an action qualifies as an MFA before being subject to environmental processing. The Commission agrees. The Commission therefore revises its rules to first consider whether a proposed action constitutes an MFA. To that end, the Commission codifies the statutory definition of MFA and its exclusions. If the proposed action is an MFA, only then will the

Commission's revised rules determine whether it is categorically excluded. The Commission retains its existing CE to the extent a proposed action constitutes an MFA.

19. The Commission also establishes bright-line rules that independently operate from each other and clarify when certain actions fall outside NEPA applicability altogether. First, the Commission finds that the issuance of a spectrum license does not in itself create "substantial federal control and responsibility" over facilities deployed in connection with that license. Next, the Commission concludes that private infrastructure builds are not MFAs to the extent Commission funding is not directed towards them. The Commission also finds that its spectrum-licensing functions for earth stations and space stations do not constitute MFAs or give rise to MFAs. The Commission independently confirms, for the reasons detailed below, that deployments in connection with geographic area spectrum licenses are not MFAs, to the extent they do not require antenna structure registration. Under the Commission's rules, only towers that require notification to the FAA due to physical obstruction, as set forth in section 17.7, must be registered with the Commission. For the reasons described herein, the rules adopted in this *Order* support the Commission's goal of streamlining its environmental review process, promoting efficiency, and encouraging deployment of infrastructure that results in more competition and technological innovation. Though complementary, each of the separate rules serves its own distinct and specific purpose to promote that goal. It is the Commission's intent that each of these rules adopted in this *Order* shall be severable. If any of the rules are declared invalid or unenforceable for any reason, the Commission finds that the remaining portions of the regulatory framework continue to fulfill the Commission's goal of streamlining environmental review, promoting efficiency, and encouraging deployment of infrastructure that results in more competition and technological innovation, and that any remaining rules not deemed invalid or unenforceable shall remain in effect and be enforced to the fullest extent permitted by law.

20. The Commission does not alter the substance of the Commission's existing radiofrequency (RF) human-safety requirements for equipment and operations deployed in connection with spectrum licenses. The Commission also maintains the Commission's registration and compliance rules for antenna structures that require antenna structure registration. The Commission finds that these rules remain independently authorized under the Communications Act.

1. Defining Commission MFAs

21. The Commission codifies in the Commission's rules the statutory definition and exceptions for MFAs set forth in NEPA, as initially proposed. The new definition limits MFAs to those actions that "the agency carrying out such action determines is subject to substantial federal control and responsibility." A number of commenters supported the Commission's proposal. As the Commission previously noted, the Commission has traditionally borrowed from relevant definitions in CEQ's regulations implementing NEPA. Given CEQ's recission of those regulations, the Commission finds that codifying the contours of NEPA's definition into the Commission's rules will provide necessary clarity. The Commission adopts these provisions nearly wholesale, with slight modifications, to make clear that they pertain to the Commission's actions.

22. The Commission also supplements its MFA definition with bright-line rules that provide upfront clarity regarding the most common deployment scenarios that the Commission and regulated entities have encountered over the years. These rules are discussed in the sections that follow. Important principles of statutory and constitutional law guide the Commission's consideration of these scenarios, and the Commission finds them necessary to recount here.

23. First, NEPA does not enlarge an agency's powers or enable an agency to take decisions that are otherwise unauthorized or unlawful. NEPA only applies to actions or outcomes over which federal agencies have preexisting statutory authority. By its express terms, NEPA's "policies and goals" are "supplementary to those set forth in existing authorizations of Federal agencies." Agencies like the Commission, in turn, "have only those powers given to them by Congress, and enabling legislation is generally not an open book to which the agency [may] add pages and change the plot line." Agencies must interpret statutes through the lens of separation of powers and "a practical understanding of legislative intent," for "Congress intends to make major policy decisions itself, not leave those decisions to agencies." Congress does not "hide elephants in mouseholes" by "alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions." NEPA contains no grant of regulatory authority. Nor does NEPA operate to countermand, or impliedly repeal, requirements in an agency's primary statute. Rather, as the Supreme Court recently reaffirmed, NEPA is a "purely procedural" requirement that does not affect the operation of or authority granted by the agency's "governing statute

and any relevant substantive environmental laws." NEPA is a "procedural cross-check, not a substantive roadblock." In practical terms, NEPA does not mandate that an agency achieve particular environmental results, satisfy defined compliance benchmarks, or take specific mitigation activities. NEPA's processes are merely intended to constrain "uninformed—rather than unwise—agency action." So long as those processes are followed, the statute is agnostic as to outcomes. And in following those processes, agencies "are not required to analyze the effects of projects over which they do not exercise regulatory authority." That regulatory authority, in turn, is evaluated by virtue of an agency's primary statutory powers.

24. Nothing in the Communications Act or any other statute gives the Commission plenary authority over the construction of infrastructure deployed by its licensees. The Commission notes it has the authority to act under the public-interest and ancillary-authority provisions of the Communications Act but such authorities are bound by the Commission's primary statutory authorities. Time and again, the courts have recognized that the Communications Act does not explicitly "grant the Commission jurisdiction over the real estate industry, an area that is normally outside the Commission's scope of authority." After all, it would be quite odd if the Commission had authority to regulate the particulars of the Sears Tower's construction. So too with the terrestrial impacts from space launches, a responsibility expressly assigned to another agency but not the Commission. Nor does the Commission have express authority to address environmental issues relating to thermal, optical, and other emissions that use electromagnetic spectrum outside frequencies suitable, from a technical standpoint, for radiocommunications that the Commission otherwise regulates, for example, to prevent harmful interference. Rather, the Commission's relevant authorities requiring consideration of environmental effects principally extend to spectrum-based radiation that may pose a hazard to human health, along with a limited category of antenna structures deemed a "menace to air navigation."

25. Second, NEPA's "purely procedural" requirements attach to actions undertaken by the federal government. Indeed, Congress intended NEPA as a "responsibility of the Federal Government." And by its express terms, NEPA governs "Federal" action. Each "agency carrying out such action" is individually responsible for its own NEPA compliance and must "determine" if that action constitutes an MFA. In this regard, the relevant question before us is whether Commission action constitutes an MFA,

as relevant to discharge the Commission's procedural obligations under NEPA. On the other hand, "non-Federal action" generally falls outside an agency's NEPA procedural responsibilities.

26. The Commission lacks express authority to construct and operate communications infrastructure facilities like towers and earth stations and does not direct where such infrastructure should be placed by others. It generally does not direct funding towards the construction of specific infrastructure facilities but instead directs it toward the provision of service and rules respecting the service offered. Consequently, these facilities tend to be purely privately built, entirely with non-Commission funding, and the Commission regulate their radiofrequency emissions directly or indirectly by virtue of its authority to issue spectrum licenses.

27. Third, agency action is subject to NEPA only if the agency finds that it has "*substantial* Federal control and responsibility." This new substantiality requirement heightens the MFA standard. Before the FRA's passage, NEPA did not define MFA and the definition of MFA in CEQ's now-rescinded regulations did not contain a substantiality requirement.

28. Here, the Commission's analysis will "presume that Congress is knowledgeable about existing law pertinent to interpreting the legislation it enacts" and "when Congress enacts statutes, it is aware of relevant judicial precedent." With the substantiality qualifier now added to NEPA, the Commission infers congressional intent to limit NEPA's applicability to Federal actions. The Commission's review of its NEPA rules will therefore give the inclusion of "substantial" due weight.

29. Finally, NEPA vests in the agency considerable discretion to find that an action is not an MFA. NEPA "does not mandate particular results, but simply prescribes the necessary process." If the Commission reasonably "determines," as a factual matter, that its level of control and responsibility is not "substantial," then that is the end of the matter. But this discretion does not flow equally in both directions. As noted above, the Commission may not treat its actions as MFAs if doing so would exceed the agency's statutory authorities.

2. Privately Funded Deployments

30. Because nearly all towers and communications infrastructure are privately built without targeted Commission funding, the Commission proposed to clarify the contours of the MFA exclusion for "non-Federal actions" with "no or minimal Federal funding" and incorporate them into its rules.

31. The Commission confirms, as proposed, that there is "no or minimal Federal funding" for deployments for its purposes unless Commission funding is expressly directed towards and conditioned on the construction of the particular communications facility in question. Commenters such as CTIA, UTC, and WISPA support this interpretation. The Commission likewise confirms, as proposed, that Commission funding for unspecified private deployments or operator expenses is insufficient to give rise to an MFA. The Commission rejects the contrary position, which implies that Commission funding for overall operator expenses would transform an inchoate set of infrastructure projects into Commission MFAs.

32. The Commission expects its findings as to private deployments to be outcome determinative for many infrastructure projects at issue. As the Court of Appeals for the Eleventh Circuit recently held, under NEPA's "plain text, either the absence of federal funding *or* the absence of federal control is sufficient to take a project outside the definition of 'major federal action.'" The Commission's conclusion applies with equal force to the wireless, satellite, and space deployments discussed below.

33. The Commission also declines, as proposed, to specify at this time what level of funding is "minimal." With little experience and few relevant examples before it, the Commission finds this issue unnecessary to resolve now and best handled on a case-by-case basis when it arises. In calling for a safe harbor based on "a dollar amount or percentage of project cost provided by federal funding," CCA claims that the Commission's proposed approach would "neither simplify nor expedite permitting." The Commission disagrees. The Commission provides clarity for a significant number of private deployments without targeted Commission funding. To the extent that providers may receive federal funding under existing programs related to deploying service in underserved areas across the country, that funding is not tied directly to specifically placing facilities and therefore the deployment of those facilities is excluded from the MFA definition based on the plain language of the statute.

3. Wireless Deployments

34. The Commission sought extensive comment on whether wireless infrastructure deployments in connection with Commission-issued spectrum licenses give rise to an MFA. The Commission also asked commenters to address Commission rules subjecting certain licensees to minimum buildout and coverage requirements, including whether such rules, and the Commission's

ability to enforce them, give the Commission substantial control and responsibility over the deployment of the facilities needed. Many parties have argued that common private infrastructure deployments are not MFAs because they lack the requisite Federal nexus.

35. The Commission first considered its general spectrum licensing activities. The Commission then examines considerations specific to geographic and site-based licenses. In addressing these issues, the Commission notes some ambiguity in how its analysis should proceed. On one hand, the relevant "action" might be characterized as "Federal" in view of the Commission's spectrum licensing functions. Under this framing, the relevant question is whether the Commission exercises "substantial Federal control and responsibility." On the other, the relevant "action" might be characterized as "non-Federal" given the primary role of private companies in building their wireless facilities. Here, the relevant question is whether there is "no or minimal [Commission] involvement where [the Commission] cannot control the outcome of the project." No matter how posed, the existence of "control" spans both framings and the Commission examines that common issue below. The Commission notes that the Eleventh Circuit recently considered this very issue—namely, how to characterize the non-Federal construction of a non-Federal building for MFA purposes, when a Federal agency would control or direct some of the building's operations after construction. Looking to substance rather than form, the court characterized the action as "non-Federal" because, for practical purposes, the action being challenged on environmental grounds was the "*construction* of the facility" not the "federal supervision of and support for immigration enforcement at the facility." *Friends of the Everglades, Inc.*, 174 F.4th at 832–33. In the end, the court found that this "non-Federal action" was not an MFA because the challengers failed to demonstrate both federal funding and federal control with respect to that construction. *Id.* Many commenters agree that the proper object of the MFA analysis for present purposes is the construction of private communications infrastructure, not the Commission's spectrum licensing activities. While the Commission finds *Friends of the Everglades* persuasive and compelling given its reasoning and materially similar fact pattern, our MFA analysis in the instant decision considers both "federal" and "non-federal" scenarios.

36. *Spectrum Licensing Generally.* The Commission finds that spectrum authorizations issued by the Commission do not constitute MFAs or give rise to MFAs. They do not condition

Commission authorization on subsequent non-Federal infrastructure deployments so as to require the Commission to consider the environmental effects of such deployments (if any) in a NEPA review before issuing a spectrum authorization. The Commission determines that its spectrum-licensing activities are too legally, factually, and causally attenuated from wireless deployments or their effects to create the requisite level of "control" for an MFA.

37. First, as commenters correctly observe, a Commission spectrum license is legally unrelated to subsequent infrastructure deployment. As defined by statute, a "license" allows for "the use or operation of apparatus for transmission of energy, or communications, or signals by radio." A spectrum license authorizes the use of frequencies and enables the provision of associated wireless services. The Commission issues spectrum licenses to prevent harmful interference among different users and to ensure the efficient use of scarce frequencies. A license does not constitute Commission approval to build wireless infrastructure. And the Communications Act does not require consideration of environmental factors in determining whether to issue a spectrum license.

38. The Commission's rules do not legally require licensees to build new communications infrastructure upon receiving a spectrum authorization. Under the Communications Act, licensees retain broad discretion regarding when and where to obtain a license, what infrastructure facilities they need to deploy service using their license, and where to locate those facilities. Buildout requirements, discussed below, do not affirmatively require the deployment of infrastructure. Indeed, they can be satisfied through preexisting towers, collocation, or deployment over other types of existing structures.

39. Nor does the Communications Act require other Commission authorizations to deploy wireless infrastructure. It specifically relieves the Commission from the requirement to issue a "permit for construction" for "mobile stations" or "privately owned fixed microwave stations." Moreover, the Communications Act expressly confirms that "[s]tate or local government[s] or instrumentalit[ies] thereof," not the Commission, retain "authority" over the "placement, construction, and modification" of wireless infrastructure. State and local governments are traditionally responsible for zoning and permitting decisions, which reveal a greater indicia of control than those taken by the Commission.

40. Likewise, the Commission's authority to revoke or modify licenses is too logically attenuated from infrastructure deployments to create the requisite level of control for an MFA, as some

have claimed. Here too, license revocation or modification affects the ability to transmit signals over spectrum and the service being offered. It does not affect the licensee's control of infrastructure facilities. Indeed, revocation or suspension of a license does not require dismantlement of a tower. In any event, the Commission does not have unfettered discretion to revoke or modify licenses. Sections 312 and 316 of the Communications Act of 1934, as amended (the Act), provide that the Commission may take such actions only in certain circumstances and only after completing required procedural steps.

41. Because licensees retain discretion over how and where they deploy the facilities they need to provide service, the Commission does not maintain control over the outcome of such infrastructure projects and does not need to consider the effects of non-Federal infrastructure deployment before issuing a spectrum license.

42. Second, the issuance of spectrum licenses bears no necessary factual connection with subsequent infrastructure deployments. As an initial matter, the holders of spectrum licenses need not deploy their own infrastructure. And they often do not. With the growth of neutral-host tower operators, spectrum licensees typically opt against building their own facilities. Industry data, for example, shows that the majority of towers are owned or operated by independent tower companies rather than Commission licensees. According to one estimate, the three top tower companies own 100,000 of the estimated 185,000 cell towers in the country." Based on information from the FCC's ASR database, which reflects a subset of towers, as of June 16, 2026, the Commission estimates that approximately 80,816 antenna structures registered in ASR are owned by infrastructure companies that own 100 or more antenna structures. This total represents a little over half of the antenna structures contained in the ASR database and also includes antenna structures owned by subsidiary and holding companies associated with these companies. Other entities (such as electric utilities, state and local governments, and transportation companies, for example) also own antenna structures. The data represents antenna structures requiring ASR registration and those voluntarily registered but would not include all antenna structures owned by these companies. In contrast, the Commission estimates that about 21,857 antenna structures are owned by service providers (including smaller wireless service providers) that own 100 or more antenna structures.

43. In most cases, tower owners and operators lease space on their towers to multiple wireless service providers. Neutral-host infrastructure operators do not necessarily build their facilities in response to the issuance of a spectrum license. In fact, infrastructure operators may build facilities without having secured any tenants.

44. Communications infrastructure often serves multiple purposes beyond spectrum-based services. For example, communications infrastructure facilities support a range of services including edge computing, AI and IoT applications. In fact, the underlying structure may have been built for purposes other than for hosting Commission-licensed services. Antennas and network equipment are often located on pre-existing building rooftops, water towers, or utility poles. These pre-existing structures were built primarily for other purposes but are used to support communications infrastructure equipment.

45. Finally, the Commission's licensing activity bears an insufficient causal connection with subsequent infrastructure deployments. The Commission rejects the argument that spectrum licensing turns non-Federal infrastructure deployment into MFAs—either because deployment is foreseeable or because it would not have occurred "but for" the Commission's issuance of a license.

46. Even if this argument were true—which it is not, for reasons explained immediately above—it would lack any meaningful limiting principle. Courts have recognized that "federal control and responsibility mean something more than the power to grant or withhold a permit, otherwise every project subject to federal permitting would be a major federal action" and that "the reach of the major federal action stops where the federal control stops and does not extend to those actions' second and third order effects." Likewise, "[a] property owner who builds an office building must comply with the Americans with Disabilities Act, but his compliance with federal law does not make it a federal building" that is subject to NEPA. Indeed, the Commission exercises far less Federal control over facilities through spectrum licensing than other agencies whose actions were found by the courts to bear a closer relationship to the environmental effects but still fell outside NEPA. Some of these judicial decisions are especially persuasive because they predate the 2023 amendments to limit NEPA's scope, during an era when courts were much more likely to find the existence of an MFA.

47. In addition to proving overbroad, an MFA analysis centered on but-for causation would also gloss over the intervening decisions by private companies to site their infrastructure. In reality, once spectrum authorizations are issued by the Commission, licensees retain control and responsibility over their facility deployments as they would with any other business decision. The existence of Commission-mandated buildout requirements does not change this conclusion. Buildout requirements require licensees to offer spectrum-based services to the public. They are intended to ensure that licensed spectrum is used robustly. But they are not a monolithic category of requirements. They vary by radio service, including establishing a single link operating on the licensed spectrum, or serving a percentage of the population in the license area, or serving a portion of the geography of the license area, within specified timeframes typically ranging from 1 year to 10 years depending on the license type.

48. Buildout requirements are performance-based standards. They specify the desired outcome through service-related metrics, but not the method of compliance or "the construction of particular facilities in any specific place." Licensees may elect to deploy antennas on new facilities or to collocate on existing towers or other infrastructure such as utility poles. They may elect to deploy on guyed towers, monopoles, small cells, or other novel structures. Indeed, meeting a buildout requirement may not require construction at all, in the case where improved technology allows a licensee to cover a greater population by, for example, changing an antenna.

49. The Commission's buildout requirements, notably, do *not* restrict the extent of wireless deployments on environmental grounds or otherwise. Indeed, geographic area licensees can and typically do continue to deploy facilities beyond those needed to satisfy the buildout requirements associated with a license, including to densify their network operations, to modify or add sites to improve coverage, and to maximize their use of licensed spectrum. That buildout requirements serve laudable objectives does not imply substantial Federal control and responsibility, as some have argued. Nor is it dispositive that buildout requirements may "have a substantial impact on licensees' construction plans." Again, these arguments would sweep too broadly by disregarding the intervening break in causation—namely, spectrum licensees' independent decisions to build infrastructure in the time, place, and manner of their choosing.

50. The Commission notes that the Supreme Court has strongly disfavored the kind of causally attenuated NEPA analysis that would tie Federal action to hypothetical downstream effects. The Court recently noted that "a mere 'but for' causal relationship is insufficient to make an agency responsible for a particular effect." The Court indicated that "[s]imply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project" and that "NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects." Although the Court's decision involved a different procedural posture, the Commission finds the recency and clarity of its guidance on NEPA causality persuasive here. The fact that non-Federal facilities might foreseeably be built following the issuance of the spectrum licenses does not mean that the Commission has substantial control and responsibility over the separate placement, number, and construction of those facilities. Based on the Commission's experience with both licensing activities and environmental review, the Commission believes that the connection is too attenuated to trigger NEPA's requirements.

51. For the foregoing reasons, the Commission finds that the issuance of a spectrum license does not give rise to an MFA. In addition to, and independently of, this overarching conclusion, the Commission also confirms that the issuance of several specific categories of Commission licenses on which the Commission sought comment in the *NEPA NPRM*, including geographic area, site-based, and earth station licenses, does not constitute an MFA.

52. *Geographic area licensing*. Geographic area licensing allows deployment anywhere in the authorized area. In the *Wireless Broadband Deployment Second R&O*, the Commission determined that a geographic license "only authorizes transmissions" and bears "an insufficient connection to in itself cause the construction [of facilities] to constitute . . . major Federal action under NEPA." Consistent with that previous determination, the Commission affirms that its issuance of a geographic area license does not create substantial Federal control and responsibility over facilities deployed in connection with that license and therefore is not an MFA.

53. Many commenters support the Commission's proposed treatment of geographic area licenses. CTIA, for instance, contends that the issuance of geographic area licenses is "remote in time

and regulatory reach from deployment of individual wireless facilities." T-Mobile agrees that there is an insufficient nexus, explaining that "[l]icensees may build anywhere within the geographic area the license covers; the Commission does not specify locations where [licensees] can or must build." Other commenters disagree. Dynamic Environmental, for example, argues that "[t]he granting of a geographic area license not only inevitably results in the construction or modification of countless facilities, it is a required component of that license." Wired Broadband argues that "it is reasonably foreseeable that licensees will build out facilities upon acquiring their spectrum licenses."

54. Independent from the Commission's general conclusions regarding spectrum licensing and other categories of licenses as discussed below, the Commission specifically finds that geographic area licensing does not provide for Commission involvement in facilities deployment decisions. Rather, geographic area licensees make their own determinations about what facilities to deploy, when to deploy them, and where to locate facilities to serve their broad licensed service area. For example, the Commission does not require a licensee to deploy on an existing structure, a building, or new towers; what facility to use is the licensee's decision. As commenters note, these licensees provide no information to the Commission about planned facility deployments such as information about project timelines, facility locations, facility designs, or local approvals. They also do not routinely provide the Commission with this information after facilities are deployed. As discussed above, geographic area licensees also often deploy facilities well beyond those needed to satisfy the buildout requirements associated with their licenses to densify their networks and improve their coverage. Indeed, it would not be operationally or legally practicable for the Commission to consider any effects of particular geographic-area deployments at the time of licensing. To attempt otherwise would require the Commission to speculate about the number and impact of hypothetical, future deployments before a multi-year license term has even begun. Decisions based on that speculative analysis would likely constrain providers' deployment plans in a way that would undermine the flexibility geographic-area licenses were intended to offer. Because individual, private deployment decisions cannot be foreseen with any degree of precision, their second- and third-order effects cannot be reasonably foreseeable. CTIA Reply at 7–8. As discussed herein, the Supreme Court recently confirmed that NEPA does not require agencies to consider such hypothetical downstream effects. As these factors demonstrate,

geographic area licensee choices about individual deployments are informed by business objectives and operate outside the Commission's regulatory reach.

55. *Site-based licensing.* With site-based licenses, the Commission has more information about the location of facilities, but still does not control or even influence licensees' facility deployment decisions. A site-based license is a permit for operating specific radio systems, such as land mobile, point-to-point, or point-to-multipoint systems, that are fixed to a particular physical location chosen by the licensee. Whereas geographic area licenses typically confer exclusive spectrum rights, site-specific licenses tend to authorize shared rights to use spectrum within a defined area. Accordingly, for site-specific deployments, the FCC requires an individualized permit for the primary purpose of deconflicting the potential of harmful interference between different licensees.

56. In the *NEPA NPRM*, the Commission sought comment on whether this type of licensing creates substantial Federal control and responsibility over the associated facilities deployment because the Commission has discretion to authorize the construction of specific facilities at a specific location, or whether additional indicia of Federal control and responsibility were necessary to determine that site-based licensing is an MFA. Some commenters argue that the requisite Federal nexus does not exist because, similar to geographic area licensing, with site-based licenses, the Commission "authorizes the use of spectrum, but the licensee is ultimately responsible for the actual construction at the site in compliance with the parameters of its permit without exceeding the authorized power or antenna height limits specified in the license." Others argue that issuance of site-based licenses should be viewed as an MFA because issuing an authorization for a specific site gives the Commission substantial control and responsibility for the project and its environmental effects. Dynamic Environmental also argues that deployment of facilities in connection with site-based licenses is an MFA because site-based licenses give the Commission discretion "to authorize construction of specific facilities at a specific location."

57. The Commission finds that the issuance of a site-based license does not create substantial Federal control and responsibility over the deployment of facilities in connection with that license and therefore is not an MFA. The Commission considers broadcast towers built pursuant to a Commission construction permit to constitute "site-based licensing" as used herein. Site-based licenses are different from geographic area licenses in that they authorize the provision of service from a transmitting facility in

a specific location. As with geographic area licensing, however, it is the provider, and not the Commission, that chooses to apply for a site-based license to provide service and chooses the location of its facilities, the equipment used, and the manner in which service is provided. And as with geographic area licensing, the provider may elect to deploy antennas on new facilities or to collocate on existing towers or other infrastructure such as utility poles. Accordingly, the Commission, in issuing a site-based license, does not exercise regulatory authority over the underlying infrastructure used to host licensed services, but rather over the use of spectrum by site-based licensees. As the Supreme Court has held, "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority." While service rules that apply to site-based licenses serve primarily to prevent harmful interference and may require an applicant to give the Commission information about planned deployments, such as the geographic coordinates, height, and transmitter angles of planned facilities, the applicant retains control over the deployment of any facilities needed to operate under the license and is responsible for complying with Commission-specified spectrum coordination procedures to ensure its proposed operations will not impermissibly interfere with another licensee's operations. If the applicant cannot successfully coordinate its proposed operations, it may choose to place its facilities in a different location, adopt alternative technical parameters to address the potential interference, or deploy service using another spectrum band. Also, to the extent that the Commission requires site-based licensees to meet certain performance benchmarks, to increase the efficient and intensive use of spectrum, the licensee retains control over how to meet those performance benchmarks.

58. *Unlicensed and License-by-Rule Operations.* In the *NEPA NPRM*, the Commission asked about other actions the Commission should consider as it updates its rules to account for the new definition of MFA. In particular, the Commission asked commenters to discuss whether it would be beneficial for the Commission to clarify that certain actions do not satisfy the definition of MFA or that they meet any of its enumerated exclusions, particularly those relating to non-Federal actions. For example, the Commission noted that the Commission has always considered NEPA as inapplicable to deployment of unlicensed wireless facilities, and the Commission proposed to codify that practice into its rules.

59. In responding comments, CTIA and WISPA agreed that the Commission should clarify that NEPA does not apply to unlicensed wireless facilities while Wired Broadband argues that authorizing spectrum for unlicensed use should be viewed as an MFA. WISPA further requested that the Commission clarify that deployment of facilities authorized-by-rule pursuant to section 307(e) of the Communications Act are not MFAs. The Commission agrees that the deployment of facilities to provide unlicensed or licensed-by-rule wireless services is not an MFA under the amended NEPA. Consistent with its determinations above, the Commission finds that no MFA exists because the Commission's involvement with respect to the deployment of such facilities is too limited because the Commission lacks control over unlicensed and license-by-rule providers' facility deployment decisions and instead focuses on technical rules with respect to their use of the spectrum. The Commission amends section 1.1302 of the rules to codify this determination.

4. Satellite and Space Deployments

60. *Satellite earth stations*. The Commission also concludes, for the same reasons, that infrastructure deployments associated with earth station licenses are not subject to Commission control and responsibility. With respect to earth stations, the *NEPA NPRM* sought comment on the same basic questions concerning the definition of MFA as for other types of spectrum licensing.

61. Several commenters support the Commission's proposed finding as to earth stations. Satellite Operators states, for example, that the Commission's involvement with respect to the earth station facilities deployment is limited because the Commission is involved only with "authorizing use of the relevant spectrum frequencies, prevention of harmful interference among various spectrum users, certification of the relevant radiofrequency equipment, and ensuring emissions are within radiation hazard limits." Other commenters disagree, arguing that any ground-based facilities deployed in connection with earth station licenses should be viewed as MFAs.

62. For the same reasons the Commission describes above with respect to terrestrial geographic area and site-based licenses, the Commission finds that the construction of earth stations is not an MFA. First, the Commission's rules do not legally obligate private satellite service providers to build communications infrastructure facilities. The Commission agrees with comments that, in issuing earth station licenses, the Commission does not exercise substantial control and responsibility over the

deployment of earth station facilities. Like geographic area and site-based licensees, earth station licensees retain broad discretion over their facilities deployment decisions. The earth station licensing rules serve the primary purpose of managing spectrum use and preventing harmful interference. The Commission notes that the Commission grants blanket earth station licenses when the possibility of interference is remote. They do not give the Commission control and responsibility over the facilities satellite providers choose to deploy and where they deploy them. While Commission rules that apply to earth station licenses may require an applicant to give the Commission information about planned deployments, such as the geographic coordinates, height, and transmitter angles of planned facilities, the applicant retains control over the subsequent deployment of facilities and is responsible for complying with Commission-specified coordination procedures to ensure its proposed operations will not impermissibly interfere with another licensee's operations. If the applicant cannot successfully coordinate its proposed operations, it may choose to place its facilities in a different location, adopt alternative technical parameters to address the potential interference, or deploy service using another spectrum band. Also, to the extent that the Commission requires earth station licensees to meet certain performance benchmarks, to increase the efficient and intensive use of spectrum, the licensee retains control over how to meet those performance benchmarks. Finally, because the non-Federal deployment of earth station facilities receives no Commission funding and, as outlined above, is not subject to Federal control and responsibility, it is independently disqualified as an MFA on that basis.

63. *Space-based Operations*. As proposed, the Commission finds that Commission licensed space-based operations do not constitute MFAs. As an initial matter, they are considered "extraterritorial activities" which are listed as excluded from NEPA's definition of MFA. The Commission also finds that spectrum authorizations for space-based operations do not create "Federal control and responsibility" over subsequent non-Federal space-based deployments so as to constitute MFAs or give rise to MFAs. Further, the Commission observes that certain space-based operations or activities (such as manufacturing of pharmaceutical products) will be excluded from the MFA definition to the extent they fall under NEPA's exclusion for non-Federal actions "with no or minimal Federal funding." Activities and operations are broad terms meant to capture a wide range of space-based undertakings ranging from debris removal to on-orbit satellite repair to activities still to be imagined. As the current space age

continues new business cases in space proliferate and are not necessarily confined to more traditional undertakings. The Commission speaks broadly of space undertakings with "activities" and "operations" here and, indeed, attempts to take into account new proliferations and innovations in policy considerations.

64. The Commission issues licenses under parts 5, 25, and 97 for satellite and space-based communications, and in the future the Commission will issue licenses under a new part 100. In the *NEPA NPRM*, the Commission sought comment on whether such licensing activities qualify as MFAs and noted that parties have alleged in certain cases that satellites in orbit can create impacts on the atmosphere from launches and reentries, impacts from satellites reflecting sunlight, and orbital debris caused by increased collisions in space." Commenters offered differing views. Some, like the Commercial Space Federation, argue that satellite and orbital operations are inherently extraterrestrial and therefore fall outside the scope of NEPA, which applies only to MFAs with impacts within the United States. Commenters also note that international law establishes that outer space is beyond the borders of any sovereign state, and thus actions occurring there cannot be said to occur within U.S. jurisdiction. Other commenters, such as Dark Sky International, contend that the NEPA exclusion for extraterritorial activities should not apply because certain space-related activities, such as rocket launches and satellite de-orbiting, result in environmental effects within the United States, including atmospheric impacts and light pollution.

65. The Commission finds that Commission licensed space-based operations and activities are excluded from the definition of MFA. Excluded from that definition are "extraterritorial" activities, defined as activities with effects located "entirely outside the jurisdiction of the United States." The Commission agrees with commenters that the potential effects of Commission licensed space-based operations do not take place within U.S. territory but instead occur in outer space. The jurisdiction of the United States extends only to territories where the United States is sovereign and the United States is not legally sovereign over outer space, as other nations are free to enter and operate there, including operations the United States disapproves of.

66. The Commission's conclusion also flows from the Outer Space Treaty, which confirms that outer space is not U.S. territory: "Outer space . . . is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." While Outer Space Treaty signatory

nations "retain jurisdiction and control" over objects and persons they send into space, this does not transform space into U.S. territory and is not dispositive of whether the effects of licensing space-based transmissions occur within the territorial jurisdiction of the United States. Specifically, the Commission declines to conclude, as some commenters urge, that because the United States writ large has certain treaty rights and obligations to exercise extraterritorial jurisdiction over outer space activities, such activities can be considered as within Commission jurisdiction for purposes of NEPA. The rule implementing this decision tracks the NEPA statute and excludes from the definition of MFA extraterritorial activities or decisions, which means Commission activities or decisions with effects located entirely outside of the jurisdiction of the United States. In this context, the Commission understands that the term jurisdiction is limited to territorial jurisdiction.

67. Certain commenters argue that NEPA regulations should apply to Commission-licensed space-based operations due to the potential for light pollution over U.S. territory. However, the Commission agrees with other commenters that "[w]hen the Commission authorizes a space station to utilize certain radio frequency spectrum from orbit, the immediate effect of the agency's decision is on the operation of satellites in space, outside the territorial jurisdiction of the United States." As the Commission discussed in the context of other licensing activities, courts have found that the scope of MFAs "stops where the federal control stops and does not extend to those actions' second and third order effects."

68. A few commenters such as Dark Sky International contend that certain aspects of space operations, including orbital debris mitigation, result in environmental effects within the United States. These comments do not allege an actual effect within U.S. jurisdiction, but instead refer to a vague and attenuated specter of undefined, ambiguous potential effects to the atmosphere. As the D.C. Circuit recently held, a contention that a project may give rise to "indirect domestic effects," in that case, through increased carbon emissions, "does not suffice to bring the Project within NEPA's ambit." The Commission's orbital debris rules are primarily focused on mitigating the effects of orbital debris in space. For example, Commission rules require GSO satellites be relocated at end of mission to an orbital altitude so as practically to never re-enter the Earth's atmosphere. For NGSO space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude, applicants must include

a statement disclosing whether any portion of the spacecraft is reasonably anticipated to survive atmospheric re-entry in an uncontrolled manner. Further, if an applicant is unable to certify their NGSO spacecraft will completely demise in the atmosphere, Commission rules require the applicant to certify that the calculated casualty risk for an individual spacecraft using the NASA Debris Assessment Software or a higher fidelity assessment tool is less than 0.0001 for the total earth's surface (of which the United States comprises 1.867%). Accordingly, the Commission agrees with other commenters that there is a lack of causal connection between the Commission's orbital debris rules and activity in the jurisdiction of the United States.

69. In any event, the Commission's debris mitigation rules are based on a specific determination that orbital debris could affect the cost, reliability, continuity, and safety of satellite operations and therefore has bearing on Congress's mandate that the Commission encourage "the larger and more effective use of radio in the public interest." NEPA analysis has never been required for the promulgation of the Commission's debris mitigation rules and, as with radio transmissions from space, the Commission finds no basis for requiring NEPA analysis of this exercise of the Commission's licensing function.

70. Additionally, as an independent and alternative basis for its decisions, the Commission finds that spectrum authorizations for space-based operations do not create "Federal control and responsibility" over subsequent non-Federal space-based deployments so as to convert them into MFAs. While the Commission, through its satellite licensing rules, assigns spectrum used in connection with space-based operations and as part of those assignments specifies some technical parameters, operational characteristics, and orbital location of the spacecraft, licensees retain broad discretion and control over other aspects related to the deployment and operations of their space systems, subject to other agencies' regulatory requirements. Many of the concerns commenters pose regarding the potential effects of space-based operations relate to the technical specifications and physical configuration of the satellite outside the control of the Commission. The private satellite operator, not the Commission, designs, controls, and executes its own plan for post mission disposal. For these reasons, similar to the Commission's geographic, site-based, and earth station licensing activities, the Commission finds that non-Federal space-based deployments and operations are not Commission MFAs.

5. Antenna Structure Registration

71. The Commission finds that regardless of whether Antenna Structure Registration (ASR) qualifies as an MFA, the Commission retains statutory authority to require review for the limited category of antenna structures that require notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction. Generally, and absent an exception, towers more than 200 feet above ground level or located near an airport require notice to the FAA and ASR registration with the FCC under FAA and FCC rules. Antenna structures that do not meet these requirements are not covered by the ASR rules and do not require registration.

72. In the *NEPA NPRM*, the Commission asked whether the ASR requirements give the Commission "substantial Federal control and responsibility" over antenna structure facilities. Alternatively, the Commission sought comment on whether ASR falls into the exclusion for non-Federal actions "with no or minimal Federal involvement" under which the Commission "cannot control the outcome of the project." The Commission asked whether the Commission's reliance on the FAA determination of no hazard should affect a determination of whether the Commission has sufficient control over tower facilities that are registered through the ASR system. The Commission also sought comment on whether ASR may fall into the exclusion for "activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority."

73. A number of commenters urge the Commission to continue to treat ASR as an MFA. AT&T, for example, states that "ASR filings require authorizations in which the FCC has significant control and responsibility." PEER argues, similarly, that "[b]ecause construction may not proceed without ASR registration, the FCC exercises sufficient control over tower construction to trigger NEPA." Other commenters argue that the Commission's involvement in tower registration is too limited. The Electric Utilities Coalition, for example, argues that ASR should not be considered an MFA because ASR is "a mere registration," and the "FCC relies on the FAA to determine whether construction of a tower poses a hazard to air navigation." It also contends that ASR should fall within the exclusion for non-Federal actions "with no or minimal Federal involvement" under which the Commission "cannot control the outcome of the project," because "ASR only provides FAA clearance that the tower does not present a

hazard to air navigation and does not involve any Commission funding for the construction of the tower or any other control over the construction of the tower."

74. The Commission first finds that the Commission has statutory authority to require ASR and related compliance obligations for antenna structures that are deemed a menace to air navigation. Section 303(q) of the Communications Act gives the Commission the authority "to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation." As part of a broader suite of aviation safety rules across different statutes, section 303(q) incorporates the judgment of the FAA Administrator and provides the Commission with discretion to exercise its judgment in determining whether the structure poses a threat to safety. The Commission has determined that registration and review of planned facility construction is necessary in order for it to fulfill its statutory responsibility to require not only painting and illumination but also to "require the owner to dismantle and remove the tower when the Administrator of the [FAA] determines that there is a reasonable possibility that it may constitute a menace to air navigation." Section 303(r) of the Act provides that the Commission shall "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter."

75. Based on this authority, the Commission's ASR rules require the registration of antenna structures that require notice of proposed construction to the FAA due to physical obstruction. Following FAA criteria, the rules provide that generally, and absent an exception, towers more than 200 feet above ground level or located near an airport require notice to the FAA and ASR registration with the FCC to ensure that they do not present a hazard to air navigation and incorporate FAA requirements for agency notification. The ASR rules do not apply to antenna structures that do not meet these criteria. Antenna structure owners must submit FCC Form 854 and a valid FAA determination of "no hazard" before the Commission will issue the antenna registration. To serve the public interest and ensure that members of the public have the opportunity to raise concerns about potential tower registrations, the rules include an environmental review component, requiring tower owners to conduct environmental review using the Commission's NEPA procedures. Under this requirement, applicants must complete a notice process and determine whether an EA, as specified under the agency's NEPA rules, is necessary for the proposed

tower. Interested persons may also submit a request for environmental processing of the proposed antenna structure registration.

76. In addition to its statutory authority to require ASR and associated compliance measures, the Commission also exercises more control over towers that must be registered in ASR due to physical obstruction. The Commission's ASR program is a direct implementation of exclusive federal sovereignty over airspace in the United States. The Commission's statutory mandate to require proper lighting and marking of communications towers furthers the nationwide regulatory framework for maintaining the safety of United States airspace.

6. Conclusion

77. The Commission amends § 1.1302 to codify in the Commission's rules the statutory definition and exceptions for MFA set forth in NEPA. The Commission also amends § 1.1302 of the rules to codify the Commission's independent determinations that deployments of facilities in connection with geographic area spectrum licenses, site-based spectrum licenses, unlicensed or licensed-by-rule wireless services, and satellite earth stations do not qualify as an MFAs to the extent the deployments do not require antenna structure registration and that actions associated with space-based operations, including the launch, deployment, and operation of space stations are not MFAs. The Commission adopts its proposal to rescind § 1.1312 from the rules to remove environmental review requirements for facilities deployed in connection with facilities for which no preconstruction authorization is required. The Commission finds that § 1.1312 is no longer necessary for compliance with NEPA requirements based on its determination that deployment of facilities in connection with geographic area licensing does not qualify as an MFA. The Commission notes, however, as described further below, that equipment and operations deployed in connection with spectrum licenses remain subject to the Commission's existing RF requirements. The Commission maintains its registration and compliance rules for antenna structures that require antenna structure registration. The Commission finds that these environmental rules remain authorized under the Communications Act.

78. The Commission finds that these updates reflect the "best reading" of the amended NEPA statute, the Commission's exercise of environmental responsibilities under the Communications Act and administrative law, and the Supreme Court's "course correction" to NEPA in *Seven County*

Infrastructure Coalition. Together, these developments outline a set of principles, discussed extensively at the beginning of this section, that provide the legal basis for the actions the Commission takes in this *Order*. The Commission agrees with comments that revising the Commission's NEPA rules to bring them into compliance with the current statutory and legal framework serves the public interest, consistent with section 319(d) of the Communications Act. To the extent that section 319(d) gives the Commission policy discretion to act in the public interest, that discretion does not enable the Commission to act ultra vires.

79. The Commission disagrees with comments suggesting that its findings would be inconsistent with the Court's decision in *United Keetoowah.* In *United Keetoowah,* the Court adopted a narrow holding that focused on the Commission's application of the public interest standard under section 319(d) in the context of its decision in the *Wireless Broadband Deployment Second R&O* to remove its limited approval authority to require environmental review of small cells under § 1.1312. The Court found that the Commission failed to justify its public interest determination and remanded back to the Commission to conduct further fact finding to justify its decision. The Court did not address the Commission's separate determination that a geographic license "only authorizes transmissions" and bears "an insufficient connection to in itself cause the construction [of facilities] to constitute . . . major Federal action under NEPA" nor did it find that the costs of greater flexibility outweighed its benefits. Here, the basis for the *Order*'s findings was not addressed in *United Keetoowah*. The Commission's *Order* responds to legislative, judicial, and executive branch developments that transpired after *United Keetoowah*. Moreover, whereas the court's decision considered NEPA and NHPA issues in a conjoined setting, the Commission's *Order* addresses NEPA only. Simply put, the questions before the court in *United Keewotah* arose from a different set of substantive rules and a unique procedural posture. Recent developments to narrow the scope of actions subject to NEPA review provide an independent, extrinsic legal basis for the Commission's rule changes and supersede any discretionary policy-based considerations to the contrary under a public interest analysis.

80. Additionally, the *United Keetoowah* decision focused on the Commission's limited approval authority in § 1.1312. At the time § 1.1312 was adopted, all Commission actions were assumed to be MFAs and the Commission retained limited approval authority to ensure that it could fully comply

with Federal environmental laws. In this *Order*, the Commission updates its NEPA framework to first consider whether a particular action meets the definition of an MFA under the amended NEPA's requirements. As a result of the Commission's determination that spectrum authorizations issued by the Commission, including geographic-area licenses, do not constitute MFAs or give rise to MFAs, the rationale for § 1.1312 no longer exists. In rescinding § 1.1312, the Commission now determines that the public interest cannot be served by categorically requiring preconstruction review over deployments that are not MFAs as a matter of law.

81. Even so, the Commission finds that its revised NEPA framework will serve the public interest by bringing consumer and public benefits. Congress amended NEPA in significant ways based on its public-interest determination that NEPA had generated outsized permitting burdens relative to its procedural benefits. The Commission finds that updating its NEPA rules will further the public-interest benefits that Congress intended when it adopted the FRA. Information in the record shows that NEPA compliance adds an estimated five months of delay to the deployment of new technologies and service upgrades and that, without permitting reforms, the Commission's legacy environmental rules would result in over $2.2 billion in direct regulatory compliance costs between 2025-2035, and a total of at least $7.5 billion in welfare and economic activity loss over that same period. Additionally, as described further in Appendix D, the Commission's regulatory impact analysis for this proceeding shows that the changes the Commission adopts will increase economic welfare by reducing costs for wireless licensees. The Commission estimates the present value of the increased economic welfare created by the streamlining of the NEPA review procedures for 2026–2030 is $169.5 million at a 3% discount rate or $157.4 million at a 7% discount rate. By contrast, the potential harms raised by some commenters are less significant and unsupported. The Commission finds that the benefits of reducing the costs and delays associated with environmental review outweigh the potential harms and the Commission expects the rule changes it adopts will encourage the deployment of infrastructure that will result in greater competition and innovation. The Commission also finds that *CTIA-Wireless Ass'n v. FCC*, 466 F.3d 105 (D.C. Cir. 2006), does not preclude the actions the Commission takes in this *Order.* That decision was issued well prior to the amendments to NEPA in 2023 and the Supreme Court's *Seven County Infrastructure Coalition*

decision in 2025. As a consequence, the CTIA case has no bearing on the post-2023 meaning of an MFA and the legal framework applicable to NEPA to which today's actions respond.

B. Streamlining the Commission's Review Procedures

1. Commission's Categorical Exclusion and Extraordinary Circumstances Rules

82. NEPA requires an agency to prepare an environmental document—either an EA or an EIS—for a proposed agency action unless the action is subject to a CE, is nondiscretionary, or when otherwise excluded by law. For over 40 years, the Commission has determined and repeatedly reaffirmed that telecommunications infrastructure deployment presents limited environmental impact. Accordingly, the Commission applies an overarching, broad CE rather than multiple CEs tailored to various agency actions. Under this broad CE, Commission MFAs are categorically excluded from further environmental processing unless one or more of the extraordinary circumstances listed in § 1.1307 are implicated. The Commission also categorically excludes certain actions that involve alterations to existing facilities, such as collocations of equipment on existing antenna structures, pole replacements, or towers constructed in an established "antenna farm." In the existing rules, § 1.1307(a), (b)(1)(i)(C), and the Note to (d) provide enumerated factors, which the Commission commonly refers to as extraordinary circumstances, that the Commission has determined, when present, may have a significant environmental effect and thus require preparation of an EA. Sections 1.1307(c) and (d) provide processes for identifying extraordinary circumstances not identified by applicants or otherwise enumerated in the rules which, if present, may have a significant environmental impact and thus require preparation of an EA. The Commission sought comment on whether changes to the Commission's rules governing when an EA is required are necessary, including whether it should keep its single broad CE or adopt a set of individual CEs, whether the Commission should delete or revise the list of extraordinary circumstances in § 1.1307(a) and the note to § 1.1307(d), and whether it should delete or revise §§ 1.1307(c) and 1.1307(d).

83. *Retention of the Commission's Broad Categorical Exclusion.* Under NEPA, an EA is required when a proposed MFA "does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown," unless the agency finds that the action is categorically excluded or excluded by another provision of law. For Commission actions,

applicants initially determine whether an enumerated factor—or extraordinary circumstance—requiring the preparation of an EA is present. The Commission has long found that, generally, Commission actions that do not involve the factors enumerated in the Commission's rules have no significant effect on the quality of the human environment and are thus categorically excluded.

84. Consistent with the Commission's historical finding that communications infrastructure has limited environmental effects, the Commission will continue its existing approach of applying a broad CE with enumerated extraordinary circumstances which, if present, require the preparation of an EA. Industry stakeholders support this approach and praise it for providing efficiency and regulatory certainty while ensuring communications infrastructure is deployed in a responsible and sustainable manner. While some commenters suggested changes to the Commission's approach, such as adopting new, action-specific CEs or expanding the scope of the existing CE, the Commission declines to adopt these proposals because they are unnecessary and unsupported by the record. Commenters arguing for the expansion of the CE provide examples of scenarios already addressed by the Commission's existing rules. Accordingly, the record does not contain sufficient, detailed, or technical evidence supporting the Commission changing course after 40 years to require a more particularized approach with greater compliance burdens. Further, such a change is not required by the amended statute, relevant case law, or Commission policy objectives.

85. *Adoption of Another Agency's Categorical Exclusion.* To accelerate permitting, the amended NEPA statute prescribes the process by which one agency may adopt another's CE, where appropriate. Under the statute, an agency must follow four steps when adopting another agency's CE: (i) identify the CE listed in another agency's NEPA procedures that covers a category of proposed actions or related actions; (ii) consult with the agency that established the CE to ensure that the proposed adoption of the CE to a category of actions is appropriate; (iii) identify to the public the CE that the agency plans to use for its proposed actions; and (iv) document adoption of the CE. The Commission now adopts a rule implementing this process.

86. In the *NEPA NPRM*, the Commission noted the potential for the Commission to adopt CEs from other agencies that have analyzed the potential environmental effects of communications facilities under NEPA, such as the NTIA or the Rural Utilities Service, and sought comment on whether

the Commission, when applying an adopted CE, should consider the extraordinary circumstances of the agency originating an adopted CE, the Commission's own extraordinary circumstances, or both. The Commission also sought comment on whether and how to address third party petitions when applying a CE adopted from another agency.

87. While no commenters argue against the Commission's adoption of a rule allowing for the adoption of another agency's CE, some argue against the necessity or value of Commission's application of an adopted CE to a Commission MFA in some circumstances. The Commission agrees with comments that adopting another agency's CE may not make sense in many instances, for example, because of the broad nature of the Commission's own CE or because another agency's CE incorporates a requirement to determine whether an EA is required under the Commission's rules anyway. However, the Commission rejects the premise that there could never be circumstances under which it would be beneficial and appropriate for the Commission to adopt a CE from another agency. For example, it may be appropriate and beneficial to Commission licensees for the Commission to adopt another agency's CE applicable to new authorities or actions with which the Commission does not have adequate experience to make the determination required by 42 U.S.C. 4336e(1) and that are not otherwise categorically excluded under the Commission's rules. CEs across the federal government vary greatly and are subject to changes and additions over time. Accordingly, the Commission adopts this rule to account for circumstances in which it may be appropriate for the Commission, and beneficial to Commission applicants, for the Commission to adopt another agency's CE, whether now or in the future.

88. Consistent with 42 U.S.C. 4336c, the Commission will consult with the agency that established the CE the Commission wishes to adopt to ensure that the adoption is appropriate. The Commission anticipates that such a consultation would include discussion of appropriate considerations related to adoption of the CE, for example, whether the other agency's procedures include consideration of specific extraordinary circumstances that are relevant to that agency's application of its CE. The Commission and the agency should discuss whether to apply any of the Commission's own extraordinary circumstances or those of the originating agency to the adopted CE. The Commission declines to specifically follow the suggestion by Verizon and T-Mobile that the Commission follow only the extraordinary circumstances found in the original agency's rules. Instead, the Commission anticipates

that the Commission and the originating agency will consult on which extraordinary circumstances should apply to the adopted CE. The Commission finds that the deference afforded to that expert agency is most appropriately given during that time and that this approach will promote a NEPA review process for Commission applicants that is tailored to a specific CE.

89. Accordingly, when the Commission documents the adoption of a CE by publishing it on the Commission's website, the Commission will specify any extraordinary circumstances that applicants must evaluate when applying the adopted CE. The Commission clarifies that the Commission's RF rules at section 1.1307(b) will continue to apply to all Commission actions, regardless of whether the Commission has adopted another agency's CE. The Commission directs the reviewing Bureau, through notice and comment, to document adoption of another agency's CE as the Commission's CE and to specify any exceptions or additions to the extraordinary circumstances under § 1.1306(b). The Commission finds that this approach is consistent with the NEPA statute's requirement that the agencies consult on whether adoption of the CE is appropriate and promotes a NEPA review process for Commission applicants that is clear and appropriately tailored to a specific CE. Once adopted, the originating agency's CE becomes a Commission CE going forward. Accordingly, the Commission, and not the agency that established the CE, would adjudicate petitions from the public under § 1.1307(c). The Commission finds that it is unlikely the agency originating the CE would be familiar with the Commission's process for resolving petitions submitted pursuant to § 1.1307(c) of its rules, and that a decision otherwise would cause unnecessary burdens and delays.

90. *Reorganizing §§ 1.1306–1.1308, 1.1311*. In order to enhance the clarity of the Commission's regulations, as well as to condense and remove unnecessary language consistent with the *Delete, Delete, Delete* initiative, the Commission revises and reorganizes §§ 1.1306–1.1308 and 1.1311. The Commission revises section 1.1306 to consolidate in a single location the Commission's rules indicating when an MFA may significantly affect the human environment. The Commission revises § 1.1307 to reflect when an EA is required as well as the information that is required in an EA. The Commission accomplishes these revisions by first moving the list of enumerated extraordinary circumstances from § 1.1307(a) to § 1.1306(b). While the Commission makes clear in § 1.1306(b)(8) that human exposure to RF emissions in excess of the limits in the rules continues to constitute an

extraordinary circumstance for Commission MFAs, the Commission does not relocate § 1.1307(b) because, as discussed further herein, the Commission's RF rules apply to actions that are not otherwise Commission MFAs. The Commission also deletes §§ 1.1308 and 1.1311 and consolidates the substance of those sections into § 1.1307.

91. The Commission also makes changes to the text of former § 1.1307(a)(3), now § 1.1306(b)(3). The Commission makes non-substantive changes to correct citations to the Code of Federal Regulations that are no longer accurate. The Commission relocates the language from the former § 1.1307(a)(3) Note regarding consultation with the Fish and Wildlife Service (FWS) under the Endangered Species Act to the new § 1.1306(b)(3) Note 1. The Commission updates the resources applicants should review to ascertain the status of proposed species and habitats. The Commission also adds language to this Note to make clear the Commission's interpretation and explanation as to how this rule operates. Specifically, the Commission explain that consultation with the FWS or National Marine Fisheries Service (NMFS), as appropriate, is required for all actions, as defined by 50 CFR 402.02, and not just MFAs. The Commission discusses applicants' continued obligations under the ESA below.

92. *Further Revisions to § 1.1306.* The Commission sought comment on whether, in the event the Commission chose to retain a broad CE, as it is doing today, it should revise what is now section 1.1306(a) to more closely track NEPA's definition of "categorical exclusion" as "a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment." Accordingly, the Commission modifies § 1.1306(a) to read: "Except as provided in § 1.1307(c) of this chapter, the Commission has determined that a Commission major Federal action not covered by paragraphs (b) and (c) of this section normally does not significantly affect the quality of the human environment and is categorically excluded from further environmental processing." Among other changes to more closely adhere to the statutory definition, the Commission strikes the word "cumulatively" from the rules. These changes are supported by CTIA and WISPA.

93. The Commission rejects the contrary position of some commenters, including a coalition of state attorneys general, which argue that the Commission should evaluate cumulative effects because cumulative effects "occur as a result of the agency's decision" and are reasonably foreseeable, and because NEPA does not permit the wholesale discounting of a particular type of reasonably foreseeable

effects just because they are cumulative. As an initial matter, this argument appears to presuppose a broad and now-outdated definition of MFA that would encompass private activities that are not directly funded or controlled by the Commission. In any event, the argument is premised on CEQ guidance from 1997 that significantly predates the 2023 amendments to NEPA. Since the 2023 amendments, the Supreme Court clarified that NEPA requires consideration of the "project at hand," not the "environmental effects of [a] separate project" that "breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project." Even if the separate project is "factually foreseeable," the Court explained, an agency is not reasonably held responsible for those effects. Therefore, NEPA only requires the Commission to evaluate the impact of individual projects, not the cumulative effects of multiple projects lacking a proximate cause to the individual project, even if those effects may be foreseeable. In evaluating the impact of an individual project, applicants, and the FCC, will take into account the existing condition of the environment.

94. Former Note 1 to § 1.1306 exempts certain deployments from the extraordinary circumstances of § 1.1306(b). The Commission revises to clarify this point and moves the text of the Note to a new § 1.1306(d) because the language of the Note is regulatory and not explanatory in nature, and therefore is more appropriately treated as rule text.

95. Under former Note 3 to § 1.1306, towers constructed in areas where similar antenna towers are clustered, called antenna farms, are categorically excluded unless the addition of a tower would cause human exposure to RF emissions in excess of the Commission's health and safety guidelines cited in § 1.1307(b). As with former Note 1, the Commission revises and moves the text of former Note 3 to new § 1.1306(e). The Commission also clarifies in new § 1.1306(e) that towers over 450 feet tall continue to require the preparation of an EA, even if they are located in an antenna farm because of the potential for such a tower to affect protected migratory or other bird species.

96. WIA commented that the reference to locations where "similar antenna towers are clustered" is ambiguous and requested that the Commission instead exempt deployments "when there are two or more antenna towers or supporting structures in close proximity to each other." Verizon requests that the Commission expand the antenna farm exception to categorically exclude projects in a "technology served landscape," which Verizon defines as "an area where the environment is already

characterized by extensive infrastructure, including areas such as existing utility corridors, transportation right-of-way ('ROW'), or a cluster of two or more existing communications towers, where the marginal impact of adding new equipment is negligible." Verizon states this approach would mirror the approach of other federal agencies, including the United States Department of Agriculture and NTIA, that exclude burial of new telecommunications cables in previously disturbed ground. NATE suggests that the Commission "adopt a programmatic or batch review model for repetitive deployments, such as: Multiple small cells in an urban grid [or] Fiber trunk lines along an interstate corridor." The Commission declines to adopt these proposals at this time, based on the current state of the record. The Commission also declines to adopt NATE's proposal that the Commission adopt programmatic or batch processing at this time. In all cases, the Commission finds it unnecessary to address these requests at this juncture, given the limited pool of Commission MFAs that will be subject to NEPA review going forward.

97. *Documenting the Evaluation of the Applicability of the Categorical Exclusion*. Commission applicants make an initial determination of whether a proposed MFA is categorically excluded under the Commission's rules by completing the Commission's NEPA Checklist. The NEPA Checklist is used to determine whether any of the extraordinary circumstances are present. Historically, the Commission has informed applicants that documentation supporting their evaluation of the NEPA Checklist may be requested by the Commission, for example, in instances where requests for further environmental processing are received, but there is no standing requirement that applicants submit documentation to support application of a CE. PEER, in response to the Commission's proposal to revise for clarity the text of § 1.1307(a)(6)—facilities to be located in floodplains—suggests that the Commission requires applicants to submit proof of their compliance with NEPA rules. CEQ's NEPA Procedures Template, intended "to provide clarity and technical assistance" to agencies in developing their procedures, includes recommended provisions for agencies to document the application of CEs in appropriate circumstances determined by the agency and suggests that agencies identify the form they will use, such as a checklist, to do so. The Commission therefore modifies its rules by adding § 1.1306(g) requiring applicants for ASR required by § 17.4(a) to indicate and certify that none of the Commission's list of extraordinary circumstances requiring an EA are present. The Commission finds this requirement appropriate to ensure proper consideration of whether further environmental processing is needed. The

Commission will not require this certification for voluntarily-filed ASR applications. The responsible Bureau will determine the method and format of this certification.

98. In the *NEPA NPRM*, the Commission broadly sought comment on whether changes to its EA and categorical exclusion processes and its list of extraordinary circumstances are necessary to meet its obligations under the amended NEPA statute. Under the Commission's existing processes, applicants make the initial determination of whether one or more of the enumerated extraordinary circumstances requiring an EA applies to a proposed MFA. Therefore, the Commission finds it appropriate to adopt a requirement that ASR applicants retain their NEPA checklists and supporting documentation for a period of six years from the date of grant of an ASR registration application, except that documentation showing compliance with the Commission's radiofrequency safety standards must be retained throughout the duration of operation. ASR applicants must provide this documentation to Commission staff within five business days of any request. For MFAs, the Commission meets its obligations under the ESA through the NEPA process. Although the ESA prescribes no statute of limitations, most courts hold that "the general six-year statute of limitations for civil actions for suits against the United States applies." Accordingly, the Commission finds it appropriate to require applicants to retain their records for a period of six years, to ensure the Commission can access records demonstrating its compliance, through its applicants, with the ESA.

99. *Limits on Exposure to Radiofrequency Emissions*. In the *NEPA NPRM*, the Commission proposed not to make substantive changes to the Commission's radiofrequency (RF) emissions rules in this proceeding. The Commission sought comment, however, on whether, in the event certain licensing matters no longer require NEPA review, the Commission should modify any of the Commission's other rules to make clear that the RF emission limits continue to apply to licensees and regulated devices, and if so, how the Commission should do so. Given the change in scope of actions subject to NEPA, the Commission finds it appropriate to affirm the continued applicability of the Commission's RF emission limits to MFAs and non-MFAs alike and to underscore the Commission's continued authority to impose such limits. Irrespective of NEPA, the Commission has broad authority over spectrum management, including a central role in regulation of the environmental effects of RF emissions. The Commission's statutory objective, to "promot[e] safety of life and property through the use of wire and radio

communications," animates its exercise of its other statutory responsibilities. The Commission thus finds ample statutory authority for the rules limiting human exposure to RF from facilities operating on Commission-regulated radio spectrum and authorized equipment. The Commission received numerous comments related to this topic, most of which argued that the Commission should strengthen or broaden its RF emissions standards. Consistent with the Commission's proposal in the *NEPA NPRM*, considering substantive changes to the Commission's rules limiting human exposure to RF emissions is outside the scope of this proceeding.

100. The Commission takes its duty to protect the public from any potential harm from RF exposure seriously, and Commission-regulated equipment and operations will continue to receive necessary review to ensure compliance with its rules limiting human exposure to RF emissions. To ensure that RF-emitting equipment continues to receive review, even when associated with a deployment that does not otherwise qualify as an MFA, the Commission adds section 1.1302(d) to the rules. This section provides that "the Commission maintains responsibility for the certification of equipment and for operations on facilities pursuant to § 1.1307(b) and § 1.1310 and administers the Commission's radiofrequency radiation exposure limits through Subpart I—Procedures Implementing the National Environmental Policy Act of 1969." Accordingly, facilities operating on Commission-regulated radio spectrum will continue to require preparation of an EA if their operations will result in human exposure in excess of the applicable guidelines cited in § 1.1307(b), even if they do not otherwise qualify as MFAs. This amendment to § 1.1302 responds to comments from industry asking the Commission to affirm its exclusive jurisdiction over radiofrequency emissions of wireless facilities not otherwise subject to environmental review. In addition, the Commission finds it appropriate to add a cross-reference before the current text of § 1.1307(b), which remains unchanged, to make clear that Commission applicants must continue to follow the procedures of § 1.1307(b) for both Commission MFAs and non-MFAs. The additional language does not change the substance of the Commission's RF rules or the actions to which they apply.

101. *Information or Evidence Considered in Reviewing MFAs.* The Commission sought comment on whether any changes are needed to the Commission's rules, particularly § 1.1307, to conform to the NEPA provision stating that in preparing an EA or EIS an agency "may make use of any

reliable data source," but is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable. No comments were received in response. The Commission includes new language that tracks the language of the statute in §§ 1.1307 and 1.1312, which govern the production and writing of EAs and EISs.

102. *Decoupling NEPA and the NHPA*. Historically, the Commission's rules implementing section 106 of the NHPA have been incorporated in its NEPA rules and processes for purposes of efficiency and streamlining. Given the recent changes to the amended NEPA statute that require us to amend the Commission's NEPA rules and processes, the Commission sought comment on whether to decouple NEPA and NHPA review in its rules and, if so, whether to do so by deleting § 1.1307(a)(4), and whether there are any enumerated extraordinary circumstances which, if present, require the preparation of an EA, that should be omitted. For the reasons explained below, the Commission finds that that decoupling is appropriate and some streamlining of the categories of the Commission's extraordinary circumstances is warranted.

103. The Commission received numerous comments about this issue. Some comments do not address the issue directly, but express concern that attempts to streamline NEPA review may result in weakened NHPA review. The Village of Kasaan opposes decoupling on the basis that decoupling NEPA review from NHPA review "would have the practical effect of eliminating early Tribal notice and consultation." Several commenters argue that NEPA and NHPA have different requirements and should be considered separately.

104. The Commission disagrees that decoupling NEPA review and NHPA review will in any way weaken NHPA review or otherwise deprive Tribal Nations or Native Hawaiian Organization (NHOs) of notice and meaningful consultation. The Commission's decision today makes no material change to its longstanding rules implementing section 106 of the NHPA or its existing NPAs.

105. In 2020, the Commission clarified that a determination made as part of the Commission's section 106 review process, that a project will have an adverse effect on one or more historic properties does not, by itself, require an EA when the adverse effect(s) are mitigated by the execution of a memorandum of agreement consistent with the requirements of the Wireless NPA by the FCC and

applicants. Consistent with that clarification, today's decoupling of NEPA and NHPA in the Commission's rules preserves the Commission's section 106 review processes while the Commission makes changes to align the Commission's NEPA rules and processes with the amended NEPA statute. The Commission therefore finds it unnecessary to retain an extraordinary circumstance that would trigger the need to produce an EA solely for impacts to historic properties. The Commission emphasizes that the Commission decouples NHPA from its NEPA procedures for prudential reasons to preserve the status quo while the Commission considers next steps on NHPA.

106. In addition to removing § 1.1307(a)(4), the Commission also removes § 1.1307(a)(5)—facilities that may affect Indian religious sites—as an extraordinary circumstance. The Commission's process of identifying sites of religious importance to Indian Tribes has historically been coordinated through the Commission's consultation process under section 106 of NHPA. The Commission sees no reason to change this process. In decoupling NEPA from NHPA and removing this language from its NEPA regulations, the Commission anticipates the Commission and Commission applicants will continue to identify Indian religious sites through the section 106 process. NATHPO opposes removing § 1.1307(a)(5) and warns that removal would undermine the Commission's commitment to recognizing Tribal sovereignty. The Commission takes seriously its legal obligations and trust responsibility with Tribal nations and its commitment to engage in government-to-government consultation with them. As the Commission has explained here, the Commission will still satisfy its obligations through the existing section 106 process. The Commission further emphasizes that the removal of § 1.1307(a)(5) from its NEPA rules does not alter its current approach to how overlapping obligations are considered in the context of evaluation of historic preservation impacts.

107. To further implement these changes, the Commission also revises § 1.1306 by striking the words "unless § 1.1307(a)(4) is applicable" from § 1.1306(c)(1). The Commission added that language to § 1.1306 in 2014 to account for the potential impact of distributed antenna system (DAS) and small-cell deployments on historic properties. Prior to this change, collocations and replacement poles were categorically excluded unless the action would have an adverse effect on a historic property under former § 1.1307(a)(4). The change in the definition of MFA means that small-cell deployments are unlikely to qualify as MFAs under NEPA, and so the special exception based on impacts from small-cell

deployments to historic and cultural properties in former § 1.1306(c)(1) is no longer necessary. With respect to the NHPA, Commission undertakings are addressed through the Commission's historic preservation review procedures, which includes application of the NPAs. This change to section 1.1306 will not change section 106 review of DAS and small-cell deployments under the NPAs.

108. As discussed previously in this section, the Commission is deleting § 1.1308 and folding its substance into § 1.1307. In doing so The Commission deletes the portion of the Note to section 1.1308(b) pertaining to § 1.1307(4)–(5). The Note specifies that with respect to actions specified under § 1.1307(a)(4)–(5)—actions potentially impacting or affecting historically significant districts, sites, buildings, structures or objects, or impacting Indian religious sites—applicants will consult with the Department of Interior, the State Historic Preservation Officer and the Advisory Council on Historic Preservation, or solicit the views of the Tribal Nation or NHO whose religious site(s) may be affected, whichever is applicable. In order to accomplish the decoupling of NEPA and NHPA review, the Commission strikes from the Note the requirement to consult with the State Historic Preservation Officer and the Advisory Council on Historic Preservation. As with the changes to § 1.1306, the recodified NHPA rules the Commission adopts today do not alter the scope of section 106 review. Consultation with State Historic Preservation Officers and the Advisory Council on Historic Preservation remain a requirement of the NHPA and the NPAs. The Commission is also deleting the portion of the Note to § 1.1308(b) requiring applicants to consult with the affected Tribal Nation or NHO whose religious sites(s) may be affected for the same reasons the Commission is deleting § 1.1307(a)(5). Similar to the Commission's deletion of section 1.1305(a)(4), the Commission finds this consultation will be addressed through the Commission's section 106 process, and will not be required to be addressed within an EA.

109. The Commission also finds it appropriate to remove § 1.1320 from Subpart I—Procedures Implementing the National Environmental Policy Act of 1969—and to move it to the newly created Subpart HH—Procedures for Implementing the National Historic Preservation Act of 1966. In doing so, the Commission divides the original § 1.1320 into three sections—now §§ 1.90000–1.90002—to enhance the clarity and readability of the rules. Under the new § 1.90002(b), the Commission includes the installation of aerial wire or cable over existing aerial corridors and existing underground corridors as well as construction of new submarine cable systems as categories of undertakings that are excluded from

NHPA review consistent with the existing exclusions described in § 1.1306 Note 1. The Commission also strikes § 1.1320(b)(4)(v), which excludes from NHPA review collocations on buildings that would otherwise require an EA under § 1.1307(a)(4) due solely to the age of the building. The Commission finds that this provision is no longer necessary as it is covered by the Collocation NPA. Moreover, removal of this provision furthers the Commission's goal of helping to decouple the Commission's NHPA rules from NEPA.

110. In response to the Commission's proposal to cut § 1.1307(a)(4), some commenters requested that the Commission revise the terms of the NPAs, which govern the Commission's NHPA section 106 review. The Commission declines to do so today and note that such changes would require amending the agreements with the National Conference of State Historic Preservation Officers and Advisory Council on Historic Preservation (ACHP). In the event ACHP revises its rules, the Commission delegates to the Wireless Telecommunications Bureau authority to seek comment, as necessary, on updating the Commission's historic preservation rules to reflect ACHP's revisions.

111. *Updated List of Enumerated Extraordinary Circumstances.* The *NEPA NPRM* sought comment on whether to update the list of extraordinary circumstances in the Commission's rules and whether certain circumstances should be omitted. The Commission received numerous comments on this issue and makes certain updates to account for the amended NEPA statute and to provide further clarifications. First, the Commission adds the term "extraordinary circumstances" to the rules and clarifies that an extraordinary circumstance requires preparation of an EA for an otherwise categorically excluded action where an MFA "may have a reasonably foreseeable significant environmental effect." The Commission finds that this amendment to the rules clarifies the longstanding function of the enumerated factors in § 1.1307 as extraordinary circumstances and comports with the NEPA statute and CEQ guidance.

112. Section 1.1307(a)(3) of the Commission's existing rules provides, in part, that an EA is required for facilities that "[m]ay affect listed threatened or endangered species or designated critical habitats." The Commission designates its applicants as non-federal representatives responsible for conducting informal consultation with the FWS or NMFS, as appropriate, under section 7 of the ESA. In practice, the section 7 informal consultation process can result in one of three determinations: (i) no

effect; (ii) may affect, not likely to adversely affect; or (iii) may affect, likely to adversely affect. Consistent with NEPA, the Commission clarifies in this *Order* that an extraordinary circumstance requires preparation of an EA for an otherwise categorically excluded action where, in light of the extraordinary circumstance, an MFA "may have a reasonably foreseeable significant environmental effect." Accordingly, the Commission finds that where informal consultation results in a "no effect" or a "may affect, not likely to adversely affect" determination for an MFA, that action does not rise to the level of an extraordinary circumstance requiring preparation of an EA. The Commission therefore modifies what was formerly § 1.1307(a)(3), now § 1.1306(b)(3), to specify that an EA is required where facilities "may affect and are likely to adversely affect listed threatened or endangered species or designated critical habitats." Implementation of recommended conservation measures, such as avoidance times, could allow the determination of effects for an applicant's action to change from "may affect, likely to adversely affect" to "may affect, not likely to adversely affect." Applicants determining that no EA is required under this amended rule must comply with such measures, retain documentation of their compliance with them, and make such documentation available to the Commission upon request, in accordance with § 1.1306(g)(2)–(3) of the amended rules.

113. The Commission sought comment on whether to modify § 1.1307(a)(6) of the Commission's rules, regarding facilities to be located in floodplains, to clarify that in order to be categorically excluded, the facilities that must be elevated include antennas and associated equipment, including electrical equipment, but not the antenna structures. The comments demonstrate broad support for this proposal. No comments oppose this change. Accordingly, the Commission modifies what was formerly § 1.1307(a)(6), now § 1.1306(b)(4), as proposed.

114. While PEER supports the proposed clarifying language on facilities that must be elevated, it also suggests that the Commission requires "an alternatives analysis to avoid building in floodplains as required under EO 11988 and submission of a local permit if required." The Commission already requires an alternative sites analysis in all EAs. Moreover, building in a floodplain results in additional federal, state, and local compliance burdens on tower builders such that builders are unlikely to undertake a project if an alternative site is reasonably available. The Commission finds that its implementation of EO 11988 by requiring elevation of facilities—specifically, of antennas and associated

equipment, including electrical equipment—constructed in floodplains has proven to strike an appropriate and reasonable balance between consideration of the impacts of construction in floodplains and the need for infrastructure deployment.

115. Former § 1.1307(a)(7), now § 1.1306(b)(5), of the Commission's rules requires an EA for those MFAs which "involve significant change in surface features." This section provides examples of significant changes to surface features, including the use of "wetland fill, deforestation, or water diversion," but does not define "significant." The Commission sought comment on whether it should consider any changes to this extraordinary circumstance to provide greater clarity and some comments support the Commission taking action to do so. PEER suggests replacing the term "deforestation" in the list of examples with "ground disturbance and tree, vegetation, and desert crust removal." Dynamic Environmental agrees the term lacks clarity, and suggests the Commission institute a working group to determine what actions qualify as significant. The Commission finds that PEER's suggested replacement language would create ambiguity and burden, causing removal of even a single tree to require preparation of an EA. Dynamic Environmental asks a number of illustrative questions that highlight the complexity of the issue, and the Commission finds that the record before us is insufficient to support specific changes to this provision in the rules at this time. The Commission may revisit this issue in a future proceeding with the benefit of more record evidence.

116. PEER comments that the Commission should remove "wildlife preserve" from the list of extraordinary circumstances and replace it with "protected or preserved habitat or park land and sensitive ecosystems, whether terrestrial or marine, designated under federal, local, state, or tribal law or regulations including, for example, Wilderness and Wilderness Study Areas, marine sanctuaries, Byways, and Wild and Scenic rivers." The Commission declines to do so. PEER offers no rationale for its proposed change. The Commission notes that its longstanding rules, which the Commission keeps intact, include extraordinary circumstances addressing deployments in officially designated wilderness areas, wildlife preserves, wetlands, waterbodies, and facilities that may affect federally threatened or endangered species or designated critical habitats, and facilities.

117. PEER argues that "impacts to scenic sites, and recreational lands and landscapes should also be added" to the list of extraordinary circumstances on the basis that "[a]esthetic impacts are one of

the most common and significant environmental effects associated with infrastructure." Dynamic Environmental similarly recommends that because visual effects are "very often used at the local level as a primary means of judging the potential impacts from a proposed facility, the Commission may benefit the industry by adding specific visual effects language [to the list of extraordinary circumstances] that could be used as a tool to objectify the review of potential visual effects [on non-historic resources] as opposed to relying on varied levels of subjective local review." The Commission declines to implement this modification. No party has supplied administrable criteria for the Commission to determine *ex ante* when visual effects constitute extraordinary circumstances, and in the absence of record evidence, the Commission declines to adopt such aesthetic criteria given the inherent subjectivity and inscrutability of the exercise.

118. Except for the Commission's decoupling of NHPA review from NEPA review, by which extraordinary circumstances currently in § 1.1307(a)(4) and (a)(5) are removed from the Commission's NEPA rules, the record does not support removing any additional enumerated extraordinary circumstances. The remaining enumerated extraordinary circumstances are necessary to meet the Commission's obligations under NEPA, the ESA, and E.O. 11990, and no commenters support removing any of the other enumerated extraordinary circumstances formerly in § 1.1307(a), now in § 1.1306(b), but for the already discussed suggestions to clarify or expand them.

119. *Sections 1.1307(c) and (d).* Due to the broad nature of its CE, the Commission has historically included the provisions of § 1.1307(c) and (d) to capture the consideration of extraordinary circumstances not identified by applicants that are beyond the otherwise enumerated extraordinary circumstances in the Commission's rules. Section 1.1307(c) allows members of the public to raise NEPA complaints against Commission MFAs, while § 1.1307(d) allows Commission staff to initiate reviews on behalf of the Commission. The Commission now modifies § 1.1307(c) to address concerns raised by commenters and eliminates § 1.1307(d).

120. The Commission sought comment on whether, in light of the revisions in the amended NEPA statute, the Commission should retain these provisions. The Commission received numerous comments on this issue, the majority of which supported retaining them in some form. PEER objects to deleting these provisions and instead recommends the Commission shift the burden from the public onto

applicants by "convert[ing]" these provisions to an extraordinary circumstance, requiring "applicants, licensees, and registrants" to prepare an EA if "any other potentially significant environmental effect [is] identified during the initial environmental review," including, but not limited to, impacts to "designated scenic, pristine, or historic areas [and] recreational trails or sites." WIA submitted comments suggesting that the Commission delete § 1.1307(c), claiming it is abused to derail otherwise necessary projects, and that the Commission should retain § 1.1307(d), which WIA believes is adequate to satisfy the Commission's NEPA obligations.

121. PEER's suggestion would undermine the intended purpose of these provisions to capture circumstances in which a proposed action may have a significant environmental effect not identified by applicants or enumerated in the rules. A broad extraordinary circumstance reaching "any other potentially significant environmental effect" is ambiguous, inconsistent with the Commission's broad CE, and could provide an opportunity for abuse. Instead, the Commission continues to apply the clear standards enumerated in the Commission's list of extraordinary circumstances, coupled with § 1.1307(c), under which the Commission can independently evaluate the merit to a claim that a proposed MFA will have a significant environmental effect. If the Commission's continued experience with application of the NEPA rules supports adjustment to this approach, including through the addition of other extraordinary circumstances, the Commission will consider such issues in a future rulemaking.

122. While the Commission agrees with WIA's comments that § 1.1307(c) petitions may, on occasion, be used abusively, the Commission disagrees that it should do away with § 1.1307(c) altogether. The agency retains an independent obligation to ensure all of its MFAs comply with the NEPA statute, and the public plays an important and helpful role in identifying MFAs that fail to comply with the Commission's rules and applicable federal laws. Other commenters have requested that the Commission modifies its rules to incorporate a heightened threshold for third party petitions. The Commission agrees the correct course of action is not to strike § 1.1307(c) but to revise it.

123. The Commission revises its rules to require that all petitions submitted pursuant to § 1.1307(c) in response to an MFA must provide specific detailed evidence demonstrating that the proposed MFA is likely to have a reasonably foreseeable significant environmental effect. The Commission finds this approach consistent with the standard articulated in the NEPA statute, and with guidance provided by

CEQ in its April 9, 2026, guidance on Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act, which states that agencies should evaluate whether there are extraordinary circumstances that indicate a normally excluded action "is likely to have a reasonably foreseeable significant adverse effect." The Commission also finds this approach is supported by the requirement in § 1.1306(g) under the Commission's revised NEPA rules that applicants must certify that they have analyzed the extraordinary circumstances in § 1.1306(b) and that none are present. Because applicants must certify their application of those criteria, the Commission finds it appropriate to require petitioners to present specific evidence refuting the applicability of those criteria or otherwise identifying specific, reasonably foreseeable significant environmental effects not considered by the applicant. The Commission further amends § 1.1307(c) to clarify that, if the Bureau determines that an action is likely to have a reasonably foreseeable significant effect, the applicant may prepare an EA or otherwise modify the proposal to avoid such effects and avoid the need to prepare an EA. This is consistent with longstanding Commission practice.

124. In the Commission's experience, petitions under § 1.1307(c) sometimes include large volumes of information that distract from the Commission's consideration of such petitions and create unnecessary delays. Because of this, the Commission revises § 1.1307(c) to limit petitions to 5 pages with up to 15 pages of supplemental documents that provide evidentiary support. The Commission finds this limit appropriate and consistent with the spirit of the amended NEPA, which imposes new page limits on EAs and EISs. However, the reviewing Bureau may, in its discretion, and upon a showing of good cause in complex cases, permit a supplement to the petition and set page limits for any supplemental submissions. In the Commission's experience, most petitions do not exceed 2 pages or involve more than 5 pages of supplemental materials, so the Commission finds these new page limits reasonable, while providing a mechanism for the responsible Bureau to consider longer documents in more complex cases, where appropriate.

125. While WIA highlights the fact that Bureau staff are well equipped to determine when a proposed MFA requires additional environmental review, § 1.1307(d) of the Commission's rules has rarely been used to require preparation of EAs, and typically only in the context of the requirement in the Note to § 1.1307(d) for applicants to prepare EAs for proposed towers over 450 feet tall because they may

have a significant effect on protected avian species. Given that the Commission is moving the extraordinary circumstance described in the Note to § 1.1307(d) to § 1.1306(b)(7) and § 1.1307(d) would not play a meaningful role in ensuring the Commission meets its NEPA obligations going forward. Accordingly, the Commission eliminates it from the rules. The Commission notes that the Commission, which is ultimately responsible for its NEPA compliance, retains the authority to work with or direct applicants to ensure the Commission can meet its statutory obligations.

126. *Note to Section 1.1307(d).* In the *NEPA NPRM*, the Commission sought comment on whether it should revise § 1.1307(a) to incorporate the instructions contained in the Note into § 1.1307(d). The Note codifies the main provision of a 2010 Memorandum of Understanding between industry and conservation groups in which the parties agreed that an EA should be required for all towers over 450 tall AGL to evaluate potential significant effects to migratory birds. All comments received on this topic are supportive of this change, although both PEER and the ABC & MOS suggest additional changes.

127. PEER states "the cut off of 450 feet may be outdated and should be reconsidered based on current science," but offers no evidence to suggest why 450 feet is outdated. Therefore, the Commission finds no evidence in the record to warrant reevaluating the height threshold. Nor does the Commission see a gap in regulation that would justify a further change to its rules. In addition to expressing support for continued application of the EA requirement for towers over 450 feet, ABC & MOS recommend expanding the Commission's list of extraordinary circumstances to include additional factors potentially impacting migratory birds but did not provide support beyond suggesting that "[f]ederal land management agencies restrict the construction of tall structures within 4 miles of a Greater Sage-Grouse leks" because the towers can serve as perches for predators. The Commission notes that the Commission's existing extraordinary circumstances include consideration of endangered and threatened species, critical habitats, and wetlands, and satisfy the Commission's obligations under the ESA. The Commission finds that the Commission's current considerations satisfy ABC & MOS's concerns and there is insufficient support for adding to the Commission's list of extraordinary circumstances.

128. The Commission also sought comment on whether to amend the lighting changes on towers over 450 feet in height that require an EA. Currently, Note to § 1.1307(d) requires an EA for the addition of lighting or adoption of a less-preferred lighting style, as defined by § 17.4(c)(1)(iii), on towers

over 450 feet tall. Since 2015, the FAA's Advisory Circulars no longer recommend steady-burning red lights, which are the lights of primary concern for potential, significant environmental effects on birds, except for a small subset of towers 150 feet or less in height AGL. The Commission therefore finds it unnecessary going forward to require an EA for a change in lighting on a tower over 450 feet in height, except in the unlikely event that such a lighting change includes the addition of steady red lighting.

129. For these reasons and in light of supportive comments, the Commission removes Note 3 from existing § 1.1307(d) and incorporate its remaining provisions into § 1.1306(b)(7), and amend the lighting provision to require an EA for lighting changes to existing towers over 450 feet in height AGL only when they involve the addition of steady red lighting. The Commission finds this modification will provide more clarity regarding the extraordinary circumstances that require an EA by moving it to § 1.1306(b). The Commission also removes unnecessary and ambiguous language in the rule by deleting reference to "less-preferred" lighting styles.

130. Related to lighting styles, ABC & MOS encourages the Commission to create a pre-filled version of FCC Form 854 (Application for Antenna Structure Registration) to streamline and simplify the process for tower operators who wish to "switch from steady to flashing lights, or to turn off existing steady burning lights on pre-2016 towers over 350ft." ABC & MOS contend that bird mortality is greatest for towers over 350 feet, and that changing away from steady burning lights can save tower operators "as much as 70%" in energy and tower maintenance costs. The Commission supports the goal of simplifying and streamlining the process for tower operators to seek approval to change their lighting to a more preferred lighting style. However, the Commission finds it unnecessary to make changes to implement this suggestion because the Commission notes that the ASR system already pre-fills tower information in applications to modify ASR registrations. The Commission is unable to waive the requirement to obtain FAA approval for a lighting change and an updated no-hazard determination, as required by the Commission's rules.

131. *Other Legal Obligations.* In the *NEPA NPRM*, the Commission sought comment on the Commission's legal responsibilities under other environmental protection statutes for its actions that are not MFAs under NEPA. The Commission also asked commenters to identify other legal requirements that may be affected by the Commission's decisions here and whether the Commission should address

any collateral issues in a separate proceeding. While few commenters addressed this section, statutes such as the ESA, the Clean Water Act, the Outer Space Treaty, and the NHPA were mentioned. The Commission notes that it addresses the NHPA separately and requests additional comments related to NHPA in the *Further Notice* (91 FR 66062), and addresses space-based operations and the Outer Space Treaty elsewhere in the *Order*.

132. While recent amendments to NEPA have narrowed the pool of Commission actions that qualify as MFAs for which NEPA review is required, the range of actions subject to other federal environmental statutes has not narrowed. Applicants should be aware that compliance with other federal statutes, including the ESA, the MBTA, the Bald and Golden Eagle Protection Act, and the Clean Water Act, is a separate question from whether NEPA applies to a particular action.

133. Section 7(a)(2) of the ESA requires each federal agency, in consultation with the Secretary of the Interior or the Secretary of Commerce, as appropriate, to ensure that any action it authorizes, funds, or carries out, in whole or in part, is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Commission's responsibilities under the ESA apply to actions that it "authorizes, funds, or carries out, in whole or in part," including, among other things, the granting of licenses, contracts, leases, easements, rights-of-way, and permits. The Commission designates its licensees, applicants, tower companies and their representatives, as non-federal representatives responsible for conducting informal consultation or preparing a biological assessment under the Commission's supervision and independent review. Under the ESA, the Commission retains responsibility for conducting formal consultation, when required. The Commission seeks comment in the accompanying *Further Notice* (91 FR 66062) on the scope of actions to which ESA applies. Pending consideration of the issues in the associated *Further Notice*, the Commission finds it appropriate to amend Note 1 to § 1.1306(b)(3), as moved from § 1.1307(a)(3), of the rules to add language clarifying that "[t]he Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., requires consultation with the U.S. Fish and Wildlife Service, Department of the Interior, or with the National Marine Fisheries Service, Department of Commerce, as appropriate for actions that meet the definition of 'action' in 50 CFR 402.02, regardless of whether they meet the definition of major Federal action in 47 CFR 1.1302." The Commission also clarifies that

collocations of antennas and associated equipment on existing buildings, antenna towers, or other man-made structures, do not trigger ESA review requirements, consistent with existing Note 1 to § 1.1306. The Commission delegates to the relevant Bureau to provide further guidance to Commission applicants, regarding compliance with the ESA in light of the decisions the Commission adopts today.

134. The MBTA prohibits a list of described actions, and federal courts have held that the MBTA applies to federal agencies. Specifically, the MBTA prohibits the "hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof" identified in one of four international conservation treaties described in the MBTA. Unlike the ESA, the MBTA does not require prior consultation with the FWS, but federal agencies retain an obligation to ensure their actions do not result in violations of the MBTA. Similarly, the Bald and Golden Eagle Protection Act prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" any bald or golden eagle, dead or alive, in whole or in part. The Commission notes that these broadly applicable statutes protecting migratory birds and bald and golden eagles continue to apply to actions beyond the pool of Commission MFAs, and, as a result, entities building infrastructure to support the use of services authorized by the Commission should continue to ensure their projects do not violate these statutes.

135. While recent legal decisions have narrowed the scope of the Clean Water Act by redefining what are considered to be the waters of the United States, the Commission retains responsibilities under the Clean Water Act, including ensuring that certifications and permits are obtained for its MFAs, when required. The Clean Water Act may still apply to actions that are not MFAs, and applicants or project proponents will need to evaluate whether and what permits and/or certifications they will need to obtain.

2. Part 17 Environmental Notification and Other Processes for ASR Applications

136. In the *NEPA NPRM*, the Commission sought comment on whether to make changes to the environmental notification process for ASR in light of its review of the environmental rules. Accordingly, to conform with changes to the Commission's part 1 NEPA rules and in response to comments, the Commission retains and revises its environmental notification and public participation processes for ASR applications found at part 17 of the Commission's rules. The Commission retains the national public notice period and 30-day period for interested persons to request further environmental review of ASR applications, delete the local public notice requirement, require third party petitions to conform to the updated criteria of § 1.1307(c) of the Commission's rules, and maintain national public notice of EAs while reducing the period for the submission of requests for further review of ASR applications with complete EAs to 20 days.

137. In 2012, in response to the D.C. Circuit's 2008 decision in *American Bird Conservancy v. FCC*, the Commission adopted its environmental notification process to provide public notice of pending ASR applications and to allow the public a meaningful opportunity to request further environmental review of pending ASR applications, as provided for by § 1.1307(c) of the Commission's rules. The Commission's existing part 17 environmental notification process requires both local and national public notice of pending ASR applications, provides a 30-day period for the public to submit requests for further environmental review beginning with the publication of national notice, and incorporates a pleading cycle for requests for further environmental review that mirrors the procedures in § 1.45 of the Commission's rules. ASR applications meeting the criteria of one or more exceptions listed in § 17.4(c)(1) of the Commission's rules, are not required to be placed on environmental public notice. The exceptions listed in § 17.4(c)(1) have been deemed by the Commission to be unlikely to have significant environmental effects. Separately, ASR applicants may also seek waivers of the notice process requirement, for example, due to emergency circumstances.

138. In the *NEPA NPRM*, the Commission asked whether the Commission is legally required to retain the environmental notification process and, even if the Commission is not, whether the Commission should retain it. The Commission also asked about a scenario in which the Commission chooses to delete § 1.1307(c), which the Commission has not opted to do, and whether and how the Commission could evaluate the potential, significant effects of towers requiring registration in the

Commission's ASR system on migratory birds in other ways. Finally, the Commission sought comment on whether and what changes the Commission should make to the environmental notification process, if it is retained, such as changes to the list of exceptions and whether the process should only be required for ASR applications that require EAs.

139. Overall, commenters support retaining some manner of environmental public notice for ASR applications and an opportunity for the public to comment on potential environmental effects of Commission MFAs. Many comments support amendments to the environmental notification process, but indicate an assumption that the Commission will retain the environmental notification process in some form. Some commenters argue that the environmental notification process is still legally required to comply with the 2008 D.C. Circuit decision and/or to fulfill NEPA's public participation goals and that any provision allowing for public comment would be meaningless without public notice. Some commenters argue that the Commission should strengthen its public notice provisions. Others note the importance of public participation in agency NEPA decision-making generally and particularly in the context of the Commission's NEPA process, which relies upon applicants to determine in the first instance whether their proposed projects are categorically excluded.

140. The Commission retains but revises the Commission's environmental notification process so that it provides certainty to applicants and promotes public participation in a manner that minimizes compliance burdens. The environmental notification process establishes a defined timeframe and structure for third party petitions, after which such requests may be dismissed as untimely. This process provides clarity to the industry on when it is permissible to proceed with deployment. Without a process specific to ASR, interested persons would rely instead on the Commission's part 1 rules to file informal or formal complaints, which would mean that complaints could be submitted at any time during the construction of projects. By retaining and revising the environmental notification process, the Commission preserves a meaningful opportunity for interested persons to request further review of proposed Commission MFAs while also providing applicants some protection from the potential for uncertainty or delay.

141. While there is general support for retaining some type of public notice and period for submitting requests for further review of ASR applications, many commenters support the elimination of

the local public notice requirement, by which applicants are required to provide public notice of their pending ASR applications in a newspaper local to the tower site or via the local zoning process. These commenters argue that the D.C. Circuit did not require the Commission to provide local public notice, and instead noted the petitioners' support for web-based notice. These commenters also argued that local public notice has outlived its usefulness, citing in part the decline in the number and availability of local newspapers in which local public notices can be published. WIA, the only commenter to recommend that the Commission eliminate both local and national public notice requirements for ASR applications, argues in part that community feedback is already received as part of the local zoning and planning process. In contrast, PEER opposes the elimination of local notice, arguing that its absence would undermine meaningful opportunity for the public to learn about and comment on a deployment. WISPA supports the retention of national notice but argues that the national notice period should be reduced from 30 days to 15 to 20 days in order to streamline timely deployment of services while still allowing for meaningful public participation.

142. The Commission disagrees with WIA that the Commission should eliminate national public notice because community feedback is already received as part of the local zoning and planning process. In addition to the reasons set forth above, the Commission notes that local review processes vary greatly: not all local review processes consider environmental effects, and of those that do, not all fully consider the Commission's list of extraordinary circumstances, the presence or absence of which determines in the first instance whether a proposed MFA is categorically excluded from further NEPA review. As such, the Commission cannot rely on local zoning and planning processes to detect the presence of extraordinary circumstances in the Commission's rules. Therefore, the Commission will continue to require ASR applications not subject to the exceptions in § 17.4(c)(1) to be placed on national notice for 30 days.

143. The Commission also agrees with commenters who argue that local notice has become difficult, in part due to the decreased number of local newspapers generally and the fact that some localities have no local print newspaper at all, and that its usefulness has decreased over time as more of the public obtain their news from online sources. The Commission therefore deletes the text of § 17.4(c)(3) of the Commission's rules referring to local public notice and other references to local public

notice requirements in § 17.4(c), which sets forth the environmental notification process. Going forward, as indicated in revised § 17.4(c)(3), environmental public notice required by the Commission will consist only of national public notice posted on the Commission's website. With regard to the requirement for new notice for certain amendments to pending ASR applications, the Commission also reduces the burden on applicants by limiting the types of lighting changes made, whether to a pending ASR application or by an application to modify an existing ASR system registration, that require additional notice and a new period for filing requests to the addition of red steady-burning lights.

144. The Commission received a number of comments regarding the content of requests for further environmental review, now referred to as third party petitions, under § 17.4(c)(5)(ii) of the Commission's rules. While PEER takes issue with the Commission's requirement that the public is required to establish that a proposed action may have a significant environmental effect, rather than being able merely to raise a potential effect, AT&T supports a modification of § 17.4(c)(5)(ii) regarding the content of requests for further environmental processing of the Commission's rules to allow Commission staff to dismiss any request that staff determines to be speculative, general, and unsupported or otherwise fail to meet standards in the Commission's rules. The Commission notes that requests for environmental review under § 17.4(c)(5)(ii) in the environmental notification process rules, are, by definition, petitions under § 1.1307(c) and will be subject to the same requirements.

145. CTIA argues against requiring additional public notice when an EA is added to a pending application that has already been placed on public notice, whether through the ASR system or ULS, because the public has already been provided with notice of the application. In contrast, Dinah Bear argues that EAs should continue to be placed on public notice for 30 days, given that EAs are the principal vehicle for Commission decision-making and public involvement regarding environmental impacts. ABC & MOS emphasize the importance of retaining both notice and comment requirements for EAs given the strong public interest in migratory bird conservation. Crown Castle Fiber LLC (Crown Castle) agrees that EAs should be put on public notice, but argues that only those ASR applications with EAs attached should be put on public notice.

146. The Commission disagrees with CTIA that there should be no additional national public notice when an EA is attached to an already pending ASR application, i.e., for which the national notice

period has already begun. As noted above, an EA is a vehicle for the agency's decision-making, and, indeed, NEPA describes an EA as a public document. The Commission's ASR system will be the primary receptacle for Commission EAs, and the listing of the ASR application on the Commission's Applications on Environmental Notice webpage will be the means by which the public can learn about and access these public environmental documents. The Commission's concerns about the absence of a defined public notice period for ASR applications, as described above, are heightened for ASR applications with EAs. If the notice period did not restart when an EA was uploaded, an applicant could wait until the end of the notice period, or even after its expiration, to submit its EA, which would create uncertainty about when the public's opportunity to request further review began and, importantly, ended. The Commission finds that providing temporal certainty for this process is beneficial for all parties involved. However, as discussed above, the Commission is abbreviating the notice period during which requests for further environmental review may be filed on complete EAs to 20 days, with requests related to EAs due 20 days after the EA is published on the Commission's website. This means that ASR applications initially submitted with EAs attached will have two overlapping notice periods—the 30-day national notice period and the 20-day EA request period. The Commission disagrees with Crown Castle's assertion that only ASR applications with EAs attached should require environmental notice. The purpose of the environmental notification process is different from the purpose of the public notice period for EAs, although the timeframes may overlap if an EA is filed when the ASR application is submitted.

147. While commenters generally did not address whether any changes should be made to the list of exceptions to the public notice requirement in § 17.4(c)(1), the Commission notes that the Commission has updated the exceptions in line with the Commission's decisions here. First, notice will only be required for a lighting change that involves the addition of steady red lights which, the Commission expects, will be exceedingly rare. Second, the Commission deletes the federal agency exception to notice and replace it with the similar lead agency exception, as discussed below.

148. CTIA contends it would be appropriate to clarify in the Commission's rules that voluntary registration in the Commission's ASR system is permitted and that voluntarily registered towers do not require marking or lighting and do not require a Determination of No Hazard from the FAA. The Commission agrees and amends its rules to clarify that the Commission continues to allow the

submission of ASR applications for towers and modifications that do not require ASR system registration under the Commission's rules, i.e., towers with a height not over 200 feet AGL or within the glide slope of an airport, and to clarify the obligations of owners of voluntarily registered ASR structures. First, the Commission amends its rules and directs the Wireless Telecommunications Bureau to make changes to the ASR system and FCC Form 854 so that voluntary applications for ASR system registration do not require a No Hazard Determination to be submitted and granted. Second, the Commission relieves applicants for voluntary ASR system registration from the responsibilities in the Commission's part 17 rules related to lighting and marking of towers, given that lighting will not be required for these towers. However, while notice will not be required for modifications to voluntarily registered towers (unless those modifications result in the requirement of ASR system registration), the Commission will continue to require tower owners to ensure that information in the ASR system is accurate and current, including any lighting the owner of a voluntarily registered tower decides to add and all changes in height. This will help maintain the accuracy of information in the ASR system. Third, applicants submitting voluntary ASR system registration applications will not be required to complete the environmental notification process, given that the Commission's decision to maintain that process only for towers requiring ASR system registration. To provide clarity on the transition of these new ASR rules and procedures, applicants with pending ASR applications that are in the process of completing the environmental notification process when the amendments to § 17.4(c) take effect will have the choice to either complete their applications under the prior rules or to withdraw and refile their applications under the new rules. In the case of voluntary ASR applications, for example, withdrawing and refiling the application will allow the applicant to proceed without a determination of no hazard from the FAA and to skip the environmental notification process.

3. Procedures for Determining Lead and Cooperating Agency

149. *Determining Lead and Cooperating Agencies.* With respect to a proposed action, the lead agency is ultimately responsible for completing the NEPA process. NEPA defines the lead agency as the agency that proposed the action or, if there are two or more federal agencies involved in the action, the agency designated as lead agency. When more than one federal agency is involved in the environmental review or authorization of an action, the revised NEPA statute provides for the designation

of a single lead federal agency upon consideration of the following five listed factors: (i) the magnitude of agency involvement; (ii) project approval or disapproval authority; (iii) expertise concerning the action's environmental effects; (iv) duration of agency involvement; and (vi) the sequence of agency involvement. The designation of a lead federal agency must be memorialized in a letter or memorandum. Additionally, participating federal agencies may appoint as joint lead agencies such state, Tribal, or local agencies as they determine appropriate, and the lead agency can designate as a cooperating agency any federal, state, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal.

150. In the *NEPA NPRM*, the Commission sought comment on whether and how the Commission should adopt rules implementing NEPA's lead and cooperating agency provisions and what would be sufficient as a letter or memorandum of such designation, as required by the statute. Commenters that addressed this issue are in favor of the adoption of lead agency provisions to clarify the NEPA process when multiple federal agencies are participating in the same action, but were not specific about how the Commission should do so.

151. Consistent with the NEPA statute, the Commission adopts modifications to section 1.1302, which as revised set forth the procedures for the Commission, in conjunction with the other federal agency or agencies involved in a particular action subject to NEPA, to designate a lead federal agency or joint lead agencies. The Commission agrees with commenters that a rule that encompasses the procedures set forth in NEPA for designating lead and cooperating agencies provides clarity and efficiency to the NEPA process and, accordingly, incorporates consideration of the five factors required by NEPA into the Commission's rules. To ensure compliance with the NEPA statute, the Commission requires a letter or memorandum of lead agency designation within or attached to an email on which all participating agencies, and, if applicable, the project sponsor or applicant, are copied. Also consistent with the NEPA statute, the modifications in § 1.1302, describe the role of the Commission when designated as the lead agency or as a joint lead agency. Finally, the rule requires the Commission, when it is a participating agency in a proposed action, to submit to CEQ and all other participating agencies any written request for the designation of a lead agency that it receives from any federal, state, Tribal, or local agency or person that is substantially affected by the lack of designation. The Commission notes that the

lead and cooperating agency designations should be made early in the NEPA process and not after any participating agency has completed its review. The Commission believes this change will improve clarity and efficiency in addressing actions in which the Commission is among multiple agencies involved. These modifications are adopted in § 1.1302(e).

4. Federal Agency Exception

152. To reduce or eliminate duplication of effort among federal agencies in NEPA reviews, §§ 1.1311(e) and 17.4(c)(1)(vi) of the Commission's rules included what is known as the federal agency exception. Section 1.1311(e) provided that an EA need not be submitted to the Commission if another federal agency has assumed responsibility for determining whether the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the EIS process. In turn, § 17.4(c)(1)(vi) provided that the environmental notification process need not be completed for an ASR application for the construction, modification, or replacement of an antenna structure sited on federal land where another federal agency assumes responsibility for determining whether the facilities in question will have a significant effect on the quality of the human environment, and if so, for invoking the EIS process. Section 17.4(c)(1)(vi) also included a rarely used provision allowing for it to be applied to any ASR structure pursuant to a written agreement between the Commission and the federal agency that assumed responsibility for environmental review. In practice, Commission staff have typically reviewed the completed NEPA documentation from another federal agency submitted by an applicant or licensee seeking to apply the federal agency exception at § 1.1311(e) or 17.4(c)(1)(vi) and determined whether the exception to the EA requirement or the environmental notification requirement, as applicable, applied. In the *NEPA NPRM*, the Commission sought comment on whether the Commission should retain the federal agency exception in part 1 and/or part 17 of the Commission's rules, whether and how they should be amended, and whether these rules, as applied in practice, comply with the NEPA statute.

153. CTIA and WIA are both in favor of the Commission retaining its federal agency exception. In its comments, CTIA said that the federal agency exception is helpful and should be retained, but opined that the exception in both the part 1 and part 17 rules should be clarified to read that "environmental processing under the Commission's rules is not required" if another [f]ederal agency has assumed responsibility for determining if the facility will have a significant environmental effect."

Regarding acceptable documentation, CTIA said that applicants should retain the other agency's environmental review documentation, such as a FONSI, Record of Decision (RoD), or CE determination in their files. No other commenters argued for or against retaining the federal agency exception.

154. Given that the federal agency exception was designed to be consistent with the concept of a lead agency and the Commission is now adopting a rule requiring the designation of a lead agency consistent with the NEPA statute, the Commission finds that the best course of action is to replace the federal agency exception, as it has been applied by the Commission in the past, with a lead agency exception. Specifically, the Commission amends the Commission's federal agency exception, which was previously codified in § 1.1311(e), and now appears as the lead agency exception in § 1.1307(a)(4), to provide that an EA need not be submitted to the Commission if another federal agency has been designated as the lead agency. The Commission also amends the rule at § 17.4(c)(1)(vi) to include an exception from the environmental notice requirement in the ASR system "[f]or construction, modification, or replacement of an antenna structure for which a Federal agency other than the Commission has been designated as the lead agency and for which environmental review has concluded." This amended ASR provision omits the requirement that the facility be sited on federal land, since that is just one of multiple factors that may be considered in determining whether the FCC or another agency is the lead agency for a proposal. The Commission agrees with CTIA that simplifying the text of the federal agency exception, now the lead agency exception, and applying the same standard consistently in both parts 1 and 17 of the Commission's rules makes sense and will be beneficial to the Commission's applicants. However, to help ensure the Commission meets its NEPA obligations, the lead agency exception in the Commission's part 17 rules requires that the lead agency's environmental review be complete prior to excepting the proposed construction or modification of a tower requiring ASR from the environmental notice requirement. The Commission also finds these changes, and continued application of appropriate exceptions when another agency is the lead, to be consistent with NEPA's goals of promoting timely and unified federal reviews and the "one document" requirement.

155. In practice, because towers requiring registration in the Commission's ASR system remain subject to NEPA, and based on the Commission's long history and expertise with respect to communications facilities and their environmental impacts, the Commission anticipates that the

Commission is likely to serve as either the lead or a cooperating agency for actions involving the construction or modification of communications facilities that require ASR system registration. As a cooperating agency, the Commission will have the opportunity to submit comments, and may, for example, recommend that the lead agency consider the Commission's list of extraordinary circumstances, to the extent not already considered under the lead agency's own NEPA procedures, or recommend measures to mitigate adverse environmental effects when appropriate. In instances where another federal agency is the lead, that agency will be responsible for determining, consistent with the NEPA statute, whether a CE applies to the action or whether preparation of an environmental document is required. The Commission, therefore, finds it appropriate for the lead agency exceptions in the Commission's rules to apply both when the lead agency determines that an environmental document is required and in instances where a lead agency applies a CE to the action.

156. The ASR application will include a question about whether a federal agency other than the Commission has been designated as the lead agency for the antenna structure that is the subject of the ASR application. The Commission directs the Wireless Telecommunications Bureau to make appropriate changes to the ASR system and FCC Form 854 to implement the changes described in this section. Given that towers requiring registration in the Commission's ASR system are the Commission's MFAs, it is important for the Commission to ensure that these towers comply with NEPA before granting ASR applications. Therefore, applicants who answer yes will be prompted to upload documentation showing that the lead agency has completed its NEPA process for the tower. Upon confirmation, ASR applicants will be prompted to complete any further sections of the ASR application as applicable, including a certification that the facility will not result in human exposure in excess of the applicable guidelines cited in section 1.1307(b). For these applications, environmental notice will not be required.

5. Other Changes to NEPA Procedures

157. *Clarifying Definition of Antenna Structure Property.* In the *NEPA NPRM*, the Commission sought comment on whether to provide a universal definition of the term "antenna structure property" so as to remove any ambiguities within the Commission's rules that may cause confusion or delay. By way of example, the Commission explained that the Collocation NPA defines an antenna structure property as "the current boundaries of the leased or owned property surrounding the tower and

any access or utility easements currently related to the site," but § 1.1306 defines antenna site 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*." Because no comments were received in response to this proposal, the Commission does not find any basis, at this juncture, to modify its rules.

158. *Removing References to Rescinded Regulations.* The Commission sought comment on removing references to rescinded CEQ regulations from the Commission's rules consistent with guidance from CEQ and the D.C. Circuit's decision in *Marin Audubon Society* that CEQ rules are not binding on other agencies and that CEQ serves as an advisory agency. No comments in opposition were received. WIA expressed that the removal of these references was necessary, and although they did not comment directly on this proposal, the U.S. Small Business Administration Office of Advocacy noted that the removal of CEQ's implementing regulations would permit the Commission to develop its "own procedures for meeting NEPA's requirements while focusing on [its] own statutory mandates[,]" but cautions that it is "important when developing NEPA implementation regulations, the FCC maintains a degree of consistency with other agencies to avoid unnecessary project expenses and delays." Accordingly, the Commission modifies its rules to delete any reference to CEQ's regulations.

159. *Correcting Cross-References*. In this *Order*, the Commission reorganizes, amends, and deletes a number of Commission rules, many of which are referenced in other provisions of the rules. Accordingly, the Commission revises a number of cross-references to the Commission's NEPA and NHPA rules to reflect the new codifications of relevant provisions and delete cross-references to deleted rules.

C. Modernizing the Commission's EA and EIS Requirements

1. Updated EA Requirements

160. The Commission sought comment on whether, consistent with the requirements of NEPA, the Commission should make any changes to its rules requiring a project sponsor (i.e., the applicant) to prepare an EA where one is required by the Commission's rules to help expedite processing and reduce costs and burdens for project sponsors, including small entities. Below the Commission addresses amendments to the Commission's rules governing the preparation of EAs.

161. *Reasonable Range of Alternatives.* In its petition, CTIA states that, under the revised NEPA, "agencies need only consider a reasonable range of alternatives when making environmental determinations" and argues that the Commission should amend its rules to clarify that the Commission need only consider a "reasonable range of alternatives [ ] that are technically and economically feasible, and meet the purpose and need of the proposal." Dynamic Environmental indicates that it does not oppose a reasonableness standard, provided that the standard "is not construed to suggest that mitigation of environmental impacts is not needed and would be cost-prohibitive." Based on these comments, the Commission finds it appropriate to amend its rules governing EAs to require in § 1.1307(a)(1)(vi) that an EA include "[a] description of technically and economically feasible alternative sites or facilities considered." The Commission finds that further modification, regarding the inclusion of alternatives in EAs, to § 1.1307, where the Commission has consolidated the substance of its rules regarding EAs, is unnecessary, as nothing therein is inconsistent with the application of a reasonableness standard as described in the NEPA statute.

162. *EA Document Requirements.* As proposed in the *NEPA NPRM*, the Commission modifies its rules to require EAs to include "a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action" and a 75-page limit on EAs, excluding citations and appendices. This proposal is supported by CTIA, Verizon, and Dynamic Environmental. The Standing Rock Sioux Tribe and Flandreau Santee Sioux Tribe claim that a 75-page limit is insufficient, but assume that the EA will be used to address section 106 issues, which will be addressed outside of the NEPA context, consistent with decoupling the NHPA process from NEPA. The page limit is a statutory requirement.

163. CTIA argues that EAs required by the Commission's rules should only have to address the potential, significant environmental effects that triggered the EA requirement. PEER objects to this proposal, arguing in part that merely relying on the NEPA checklist with no documentation showing that full review was completed is insufficient. The Commission declines to adopt CTIA's proposal. Applicants must already evaluate the Commission's list of extraordinary circumstances and retain documentation thereof, and the Commission thinks it is neither unreasonable nor burdensome for applicants to include in their EAs information and analysis already in their possession.

164. *Public Requests for Further Review of EAs*. The Commission sought comment on whether to continue requiring EAs to be placed on public notice for 30-days during which requests for further review may be submitted prior to the issuance of a FONSI or a decision to require further environmental processing, as required for ASR applications with EAs by §§ 17.4(c)(5) and (7). The NEPA statute describes an EA as a "public document," but only requires a public comment period for a notice of intent for EISs. The Commission sought comment on the meaning of "public document" and did not receive any comments in response. Even though the amended NEPA statute does not require public notice, the Commission finds it is in the public interest to ensure a public participation process for EAs. To balance the goals of public participation and accelerating broadband deployment, the Commission is modifying § 17.4(c)(6) to shorten the EA public notice period from 30 days to 20 days.

165. While the Commission received no comments regarding the meaning of "public document" in the context of whether NEPA requires public notice of EAs, the Commission did receive comments encouraging us to retain and expand the period for filing requests for further review. Several Tribal nations claim that the 30-day period is too short, would limit Tribal participation due to Tribes' limited resources, is impractical, and does not respect the government-to-government relationship between the United States and Tribal Nations. They expressed that an increase in wireless infrastructure projects would risk overwhelming their THPO offices under a 30-day notice period. The Commission declines to adopt an extended period for filing requests for further review and note that the THPO is tasked, among other things, with reviewing the impact to sacred, historical, and cultural sites under section 106 of the NHPA, which the Commission is decoupling from the NEPA review process, as described above. The NPA governs the Commission's section 106 review process, including its own comment period, and is outside the scope of this proceeding. Changes to the period for filing requests for further review of EAs will not alter the timeframe afforded to THPOs to review and respond to applications under the section 106 process.

166. *One-Year EA Completion Deadline*. In the *NEPA NPRM*, the Commission proposed to modify section 1.1308 of the Commission's rules to require that the EA process be concluded within a one-year period, as required by the amended NEPA statute. The Commission adopts the proposed one-year deadline as § 1.1307(a)(9). In the *NEPA NPRM*, the Commission tentatively found that the scenarios

discussed in the statute for determining when the EA submission process has begun are not applicable to the Commission's NEPA process, which relies on applicants to make an initial determination of whether an EA is required, and the Commission sought comment on whether the one-year period should start on the date the Commission receives an applicant's completed EA. The Commission's rules require applicants to determine whether the Commission's rules require an EA for a particular project, and the Commission generally considers whether an EA is required after it receives information about the project. Therefore, the Commission believes that using the date the Commission receives information about a proposed infrastructure deployment, specifically, when an EA is received for review by the Commission (*see* new § 1.1307(a)(9)(i)), most closely aligns with § 4336a(g)(1)(B)(i) of the statute, which uses as a benchmark, "the date on which such agency determines that § 4336(b)(2) of this title requires the preparation of an environmental assessment with respect to such action." The Commission thus clarifies in its rules that the one-year period starts on the date the Commission receives an applicant's EA and ends when the Commission issues a FONSI or determines that a FONSI is not appropriate, subject to a provision that the Commission, in consultation with the applicant, may establish a new deadline that provides only as much additional time as needed for the applicant to amend its EA to submit any additional information. The industry supports this proposal. Elk Valley Rancheria also supports adoption of the one-year deadline, but argues that the Commission must "explicitly recogniz[e] that time reasonably necessary for government-to-government consultation is integral to the schedule," and that "[t]he rules should provide transparent pause/extension mechanics to ensure consultation quality rather than speed alone." The Commission agrees and notes that the statute provides a mechanism to establish a new deadline as necessary. Consistent with NEPA, the Commission adds a provision to its rules allowing the Commission or responsible Bureau, in consultation with the applicant, to extend the EA completion deadline by as much time as needed to complete the EA.

167. *Timeframes for Commission Actions on EAs and Third Party Petitions.* The Commission sought comment on what, if any, changes the Commission could make to its rules consistent with NEPA to "help expedite environmental processing time and reduce costs and burdens for project sponsors, including those that are small entities." The Commission also sought comment on whether to codify the timeframes described in the *Wireless Broadband Deployment Second R&O* in its environmental

processing rules. In the *Wireless Broadband Deployment Second R&O*, the Commission directed staff to review an EA for completeness and sufficiency within 20 days of its submission, notify the applicant of any deficiencies within 30 days of submission (within 10 days after completing review), and issue a FONSI within 60 days of an EA being deemed complete when the EA supports such a finding. The Commission asked whether doing so would create any issues with the amended NEPA's one-year deadline and whether the timeframes adequately balance the Commission's need to fulfill its NEPA obligations with the need to facilitate broadband deployment. Several commenters recommended that the Commission adopt a timeline for Commission staff to review and resolve third party petitions. After careful consideration, the Commission has decided to proceed with codifying the timelines provided in the *Wireless Broadband Deployment Second R&O*, with the exception of the requirement for staff to review the EA within 20 days of receipt, but to notify the applicant of deficiencies within 30 days. The requirement that staff complete review within 20 days is an internal business process, which confers no cognizable rights on the applicants, and thus the Commission finds no basis to codify it. Instead, the Commission requires staff to complete review *and* provides notice of deficiencies to the applicant within 30 days of receipt of the EA. As noted above, the Commission also codifies the one-year statutory deadline, which imposes certain reporting requirements on the Commission. The *Wireless Broadband Deployment Second R&O* timelines that the Commission codifies here provide applicants with a measure of predictability and help facilitate the rapid deployment of infrastructure.

168. While Dynamic Environmental encourages the Commission to adopt "[w]ritten policy schedules of when staff must review submitted EAs, when an EA is deemed complete or, deemed incomplete and requests s for further review submitted to the sponsor, and when a FONSI must be issued following the comment period," it argues that codifying the *Wireless Broadband Deployment Second R&O* timelines "may not be necessary" and questions whether the Commission has sufficient staff to achieve these objectives. It further argues that granting applicants a right to seek judicial review if the proscribed timeframes are exceeded "is contrary to the goal of speeding broadband deployment as this would certainly add unwelcome delays to a project." As the Commission noted in the *Wireless Broadband Deployment Second R&O*, 75% of EAs are processed within 60 days and, with a handful of exceptions, those that take longer are due to missing or otherwise deficient information from the

applicant. From July 28, 2024 to January 28, 2025, the Commission issued 27 FONSIs, which took an average of 12 days following submission of a completed EA. For these reasons, the Commission does not anticipate that codifying this existing practice in its rules will significantly tax Commission resources. The Commission notes, however, that as outlined in the relevant rule section, these timeframes assume that the relevant Bureau has received an EA that is complete, adequate, and does not have a third party petition or petition to deny filed against it. Contrary to Dynamic Environmental's comment, codifying these timeframes does not create an automatic right of judicial review. EAs are reviewed by the Bureaus on delegated authority, and the Commission's rules establish that it is a condition precedent for seeking judicial review that any party aggrieved by an action, or in this case inaction, taken by a Bureau on delegated authority must first file an application requesting review by the Commission.

169. The Commission further amends its rules, as some commenters recommend, to adopt a timeline for Commission staff to review and resolve third party petitions. CTIA and T-Mobile propose that the Commission adopt a rule requiring Commission staff to resolve third party petitions within 90 days of the close of the pleading cycle set forth in § 17.4(c)(5)(i). In the context of third party petitions addressing ASR applications with EAs, the Commission notes that timelines for completing EAs already apply, including NEPA's one-year deadline and the deadlines the Commission imposed upon itself in the *Wireless Broadband Deployment Second R&O*. Given that most third party petitions are resolved by staff promptly, the Commission believes the proposed time period of 90 days from the close of the pleading cycle is reasonable and amends its rules to incorporate it. In cases where there is a third party petition with no pleading cycle established, staff will complete review within 90 days of receipt of the third party petition. However, the Commission agrees with PEER that, occasionally, applicants have taken extended time periods to provide complete information staff need to make a determination. This could be for any number of reasons, including an applicant's business priorities. Applicants have, and should have, the discretion to prioritize projects and staff or contractor work as they see fit, but the Commission believes that the applicant's decisions in this regard should not impact the ability of Commission staff to meet a codified deadline. Therefore, the Commission also incorporates in the amended rule a provision that tolls the 90-day clock from the time Commission staff request information or clarification from an applicant to the time the applicant provides it to the requesting Commission staff.

2. Updated EIS Requirements

170. In the *NEPA NPRM*, the Commission sought comment on whether the Commission should revise its EIS rules to align them with the changes in the amended NEPA statute, and, if the Commission decided to require applicants to prepare an EIS when one is required, which the Commission does herein, what other changes to its EIS procedures may be needed. These revisions to the statute include: (1) a requirement that agencies prescribe procedures to allow a project sponsor to prepare an EIS under the supervision of the agency; (2) public notice of intent to prepare an EIS and request for comments on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action; (3) a 150-page limit except for complex issues, which are limited to 300 pages; and (4) a two-year deadline for completion, with the ability to extend the deadline only so long as necessary to complete the EIS, and a requirement that missed deadlines be reported to Congress. The Commission received general statements of support from the industry. The Standing Rock Sioux Tribe and Flandreau Santee Sioux Tribe object to the 150-page limit on EISs. However, the page limit is a statutory requirement. Additionally, the Commission has combined its EIS requirements in revised § 1.1312 and aligned that section with the requirements of the revised NEPA statute in the manner described below. Consistent with the Commission's *Delete, Delete, Delete* initiative, the Commission also removes §§ 1.1305 and 1.1314 through 1.1319 and consolidate the relevant language in § 1.1312, as well as removing extraneous text to streamline and clarify § 1.1312.

171. *Project Sponsor Preparation of an EIS.* The Commission modifies its rules to require the project sponsor (i.e., applicant) to prepare the EIS, as permitted by the amended NEPA. No comments opposing this proposal were received.

172. *Content of an EIS.* Revised § 1.1312(c) reflects the statutory requirements and limits for EIS documents, including incorporating the statutory page limit of 150 pages, or 300 pages for a proposed action of extraordinary complexity.

173. *Public Notice and Related Requirements.* As proposed, revised § 1.1312(b)(1) incorporates the statutory requirement that "[e]ach notice of intent to prepare an environmental impact statement . . . shall include a request for public comment on alternatives or impacts and on relevant

information, studies, or analyses with respect to the proposed agency action." No commenter opposed this proposal.

174. *Supplements to Statements*. Revised § 1.1312 eliminates from the Commission's EIS procedures the need to prepare draft and final EISs, as draft and final versions of an EIS are not required by the NEPA statute. However, revised § 1.1312(e) permits the Bureau responsible for processing an application to coordinate with the applicant to prepare supplements to EISs where substantial changes to the proposal or new circumstances or information arise that would result in significant environmental impacts not already evaluated in the EIS.

175. *Completion*. As proposed and consistent with the amended NEPA statute, revised § 1.1312(g), establishes that the two-year completion period for an EIS starts on the date the Commission determines that an EIS is required or the date Commission publishes a Notice of intent to prepare an EIS. While the statute provides a third trigger—notification to an applicant that an application to establish a right-of-way is complete—this third trigger is not applicable to the Commission's actions and processes. The Commission also notes that its process involves extensive communication with applicants to try to eliminate or mitigate adverse environmental impacts, so the Commission expects that the date that the Commission determines an EIS is necessary and the date the Commission publishes the notice of intent to prepare an EIS are likely to be concurrent.

176. Elk Valley Rancheria, California supports the two-year deadline but requests that the Commission "explicitly recogniz[e] that time reasonably necessary for government-to-government consultation is integral to the schedule." The Commission concurs that Tribal consultation as well as the possibility of unanticipated events warrant incorporating a degree of flexibility into the two-year deadline. Consistent with section 4336a(g)(2) of the revised NEPA statute, the Commission includes a provision in its rules at § 1.1312(g) to allow the responsible Bureau, in consultation with the applicant, to extend the completion deadline by only as much time as needed to complete the EIS, and delegate to the responsible Bureau the authority to extend the EIS deadline in accordance with § 1.1312(g).

D. Commission's Emergency Procedures for Environmental Review

177. Consistent with CEQ's NEPA implementation guidance and recommendations, the Commission adopts new emergency NEPA procedures to provide greater clarity and predictability for applicants and licensees, while simultaneously prioritizing efficiency and certainty.

178. Currently, the Commission's NEPA rules do not contain emergency procedures. Instead, the Commission has provided ad hoc assistance to licensees and applicants, generally by extending filing and regulatory deadlines, expediting review of Special Temporary Authority (STA) requests, prioritizing review of waiver requests, and reminding applicants and licensees of existing rule provisions that may be of assistance in emergency circumstances. When emergency circumstances do not allow sufficient time for applicants to complete the environmental notification process (when required), the responsible Bureau may waive or postpone the requirement at the applicant's request and upon an appropriate showing.

179. CEQ recommends that an agency's NEPA procedures include processes for emergency situations when there is insufficient time to follow its standard NEPA procedures and emphasizes that agencies should not delay taking action when an emergency poses an imminent threat to life, property, or important natural, cultural, or historic resources. In those situations, CEQ recommends agencies "take into account the probable environmental consequences of the emergency action and consider taking steps to mitigate reasonably foreseeable adverse environmental effects to the extent possible and consistent with agency authority."

180. CEQ advises agencies first to determine whether NEPA applies and then to determine the appropriate level of NEPA review for the emergency action. Once the appropriate level of review is determined, CEQ advises that agencies "must consider whether there is sufficient time to follow the requirements for environmental review established by the agency's NEPA procedures, or whether the situation warrants alternative arrangements for NEPA compliance." Agencies may pursue alternative arrangements to the EA process without first consulting with CEQ, but, if the agency determines the emergency MFA will have a reasonably foreseeable significant effect, CEQ advises agencies to consult with CEQ about alternative arrangements and provides template language agencies may include in their procedures regarding the consultation process for alternative arrangements. Finally, CEQ emphasizes that alternative arrangements do not waive the requirement to comply with NEPA, but instead establish an alternative means for NEPA compliance.

181. In the *NEPA NPRM*, the Commission sought comment on whether it should adopt NEPA procedures applicable in emergency situations and, if so, what the procedures should be. The Commission sought comment on whether it would be sufficient to adopt a rule requiring consultation with CEQ about alternative arrangements for compliance with section 4332(2)(C) of NEPA when emergency circumstances make it necessary to take action with reasonably foreseeable significant environmental effects and whether the Commission should adopt rules for additional procedures for applicants to follow in emergency situations. The Commission also sought comment on whether the Commission should delegate the authority to issue emergency guidance to the responsible Bureau on an ad hoc basis, whether the Commission should adopt criteria defining when emergency circumstances apply, whether the Commission should adopt unique criteria for EAs completed in emergency circumstances, and whether the Commission should delegate to the responsible Bureau the authority to consult with CEQ when emergency circumstances apply. Finally, the Commission sought comment on whether the Commission could reduce the time it takes applicants to complete the NEPA checklist under emergency circumstances or whether it would be appropriate and in the public interest to eliminate or shorten any period for the public to submit requests for further review in the context of emergency circumstances.

182. Commenters generally support adoption of emergency NEPA procedures. CCA urges the Commission to adopt emergency procedures that are broad enough to cover efforts to replace insecure equipment with secure alternatives, such as efforts to add secure equipment pursuant to the Secure and Trusted Communications Networks Reimbursement Program. PEER supports adopting emergency procedures that include consultation with CEQ. CTIA supports the Commission's adoption of emergency procedures and says that applicants would benefit from knowing what emergency procedures to follow in advance rather than the Commission's typical ad hoc approach, and further proposes that the Commission should adopt a rule allowing a facility owner to quickly rebuild or fortify an existing facility damaged by a disaster or emergency without undertaking a new NEPA review. CTIA suggests excluding from NEPA reviews, whether by excluding from the MFA definition or adopting a new CE, projects located within an area for which the President, a governor, or Tribal leader has declared a major disaster or emergency that will be carried out within five years of the declaration and that will replace or improve a communications facility damaged by such disaster or emergency or that mitigates any future disaster or emergency.

Crown Castle requests that the Commission clarify that NEPA review is not necessary if a review was performed for the original structure or if the current regulatory scheme does not require such review. CPAC Foundation Center advocates for explicit CEs "for rapid restoration to pre-event conditions" with a simple post-hoc report and for clarification that "footprint-neutral resiliency improvements" qualify for CE treatment. Wired Broadband does not believe that emergency procedures are necessary, but in the event that such procedures are adopted, urges the Commission to ensure emergency authorizations are time-limited and expire promptly upon the cessation of the emergency to prevent abuse.

183. The Commission agrees with commenters that support its adoption of emergency NEPA procedures, which the Commission finds will provide more clarity and consistency for providers, maintain the flexibility to adapt to unique situations, and allow the Commission to meet its NEPA responsibilities. The procedures the Commission now adopts are applicable in emergency situations where it is necessary to take immediate federal action to address imminent threats to life, property, or important natural, cultural, or historic resources. Applicants availing themselves of these procedures must include with any application a certification that the application is for an action necessitated by a specified emergency. At this time, the Commission declines to enumerate specific scenarios which may or may not qualify as an emergency.

184. While Wired Broadband argues that such procedures should only remain applicable for the duration of a declared emergency, the Commission notes that emergency circumstances may exist in the absence of a formal declaration of emergency. Additionally, the duration of an emergency may be brief in comparison to required recovery time and may not provide adequate time for applicants to assess impacts and initiate the emergency procedures the Commission adopts today. For example, a tower owner may not have access to a site damaged by a natural disaster until after the emergency has ended, whether due to safety concerns or other restrictions. For this reason, the Commission finds it appropriate not to tie emergency procedures to the duration of an emergency declaration, but instead require a showing by the applicant that the proposed action is necessitated by emergency circumstances.

185. The Commission's emergency NEPA procedures follow CEQ's recommendations. Specifically, where emergency circumstances make it necessary to take a major Federal action with reasonably foreseeable significant environmental effects and for which there is no existing NEPA analysis

to apply, the Commission or responsible Bureau will consult with CEQ about alternative arrangements for compliance with section 4332(2)(C) of the NEPA statute. In circumstances where the proposed emergency action is not likely to have significant environmental effects, or where the significance of the environmental effects is unknown, and to which no CE applies, the Commission adopts a further streamlined process by which applicants may complete an EA for an action necessitated by emergency circumstances that includes only the purpose and need for the proposed action; the reasonably foreseeable effects of the proposed agency action; any mitigation measures that the applicant will implement; and the alternatives considered. The Commission finds that these shortened EA requirements will streamline the emergency NEPA process in line with its direction to prioritize efficiency and, in the case of emergencies, expediency. Though the *NEPA NPRM* sought comment on whether to eliminate or shorten any public comment period during emergency circumstances, we decline to do so in our rules given the shortened comment period for all circumstances adopted herein. *See supra* Section III.C.1 (adopting a 20-day comment period for EA publication). In the event of exigent circumstances, however, the Commission or appropriate Bureau will consider requests to shorten or waive the comment period for EAs on a case-by-case basis.

186. Lastly, the Commission declines to adopt emergency procedures specifically permitting the replacement of damaged facilities. The Commission's part 17 rules exclude certain replacement towers from the environmental notification process, and applicants should otherwise apply the new emergency procedures. Further, the Commission maintains authority to issue further emergency guidance on an ad hoc basis and delegate to the responsible Bureau the authority to issue such guidance and adopt rules as necessary for a particular emergency situation.

IV. FINAL REGULATORY FLEX ANALYSIS

187. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Modernizing the Commission's National Environmental Policy Act Rules Notice of Proposed Rulemaking* released in August 2025 (*NEPA NPRM*). The Commission sought written public comment on the proposals in the *NEPA NPRM*, including comment on the IRFA. The comments

received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, and it is summarized below.

A. Need for, and Objectives of, the Proposed Rules

188. In the *Report and Order (Order)*, the Commission updates its environmental rules to align them with the requirements of the amended NEPA statute and with guidance from the White House and the Supreme Court. The NEPA regulatory regime has long been one of the biggest obstacles to new infrastructure builds. In 2023, Congress recognized the need for reform and amended the NEPA statute to eliminate unnecessary reviews and accelerate others. At the beginning of his term in 2025, President Trump took action and directed federal agencies to streamline their procedures for environmental review. The Supreme Court also addressed NEPA last year, providing guidance on the statute's requirements.

189. In the *Order*, the Commission takes action to streamline its environmental review in order to promote efficiency and encourage deployment of infrastructure that results in more competition and technological innovation. The *Order* adopts the statutory definition of Major Federal Action (MFA), as provided in the amended NEPA, and its exclusions, and clarifies how the definition of MFA will apply in the context of the Commission's rules. Then, the *Order* adopts reforms to streamline other aspects of the Commission's NEPA rules, including: revising the FCC's rules describing its categorical exclusion (CE) and extraordinary circumstances; decoupling the Commission's NEPA rules from its NHPA rules; modifying the environmental notification and public participation processes for ASR applications; adopting procedures for the Commission, in conjunction with the other federal agency or agencies involved in a particular action subject to NEPA, to designate a lead federal agency or joint lead agencies; removing and replacing the federal agency exception; removing references to rescinded NEPA regulations; and correcting cross-references to other NEPA regulations. The *Order* also adopts amendments to modernize its rules regarding environmental assessments (EAs) and environmental impact statements (EISs) and codifies procedures addressing NEPA review during emergency situations. By taking these actions, the *Order* helps expedite and simplify the Commission's environmental review processes and clears the way for more and faster infrastructure builds across the country.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

190. Comments regarding the impact of the rule on small entities were submitted by several parties. The Commission summarizes these comments here and analyzes the impact of the Commission's adopted rules in section E, *infra*.

191. The Communications Infrastructure Contractors Association (NATE) urges the Commission to redefine MFA, expand categorical exclusions, establish firm timelines for review, allow programmatic review and batch processing, and increase inter-agency staffing and coordination. It asserts that these changes would impact small businesses by "reduc[ing] compliance costs, compress[ing] timelines, and bring[ing] certainty to project planning—while preserving environmental stewardship . . . ." The Nebraska State Historic Preservation Office comments that National Historic Preservation Act (NHPA) compliance "continues to be required for categories of Commission actions regardless of the MFA definition" and that the NHPA definition of undertaking should be followed. Power & Communication Contractors Association (PCCA), an association whose members consist of a number of small businesses, urges adherence to the Fiscal Responsibility Act of 2023's (FRA's) statutory deadlines and page limits for environmental reviews, as well as the clarifications on the scope of NEPA review provided by the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, and advocates for agencies focusing on assessing only the reasonable foreseeable environmental effects of proposed actions as defined by the RFA to prevent unnecessary litigation and delays.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

192. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel filed comments regarding the proposed rules in this proceeding, which the Commission summarizes and responds to below.

193. In its comments, the SBA expresses feedback it received during a roundtable with small entity stakeholders on concerns with the proposals in the *NEPA NPRM*, which consisted of ensuring coordination among federal agencies, enforcing reasonable and firm review timelines, narrowing the

definition of MFA, and establishing additional categorical exclusions. First, SBA recommends that the FCC be the lead agency on communications infrastructure projects involving multiple federal agencies, and that the FCC ensure that its NEPA regulations are as consistent as possible with those of other agencies. The SBA next recommends the FCC should adopt NEPA procedures that align closer to the goals of the FRA, specifically by not adding additional regulatory requirements or by implementing requirements in a manner that will increase the time necessary to complete an EA or EIS. SBA identified small business stakeholders' support for the adoption of the definition of MFA proposed in the *NEPA NPRM*, and recommends that the FCC should only require NEPA review for projects where the FCC has a substantial part in the construction process. Finally, SBA raises several additional categorical exclusions requested by small entity stakeholders, consisting of small cell sites, tower collocations, and fiber installations in an existing right of way that has previously undergone a NEPA review.

194. As discussed below, the Commission takes several actions consistent with SBA recommendations.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

195. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

196. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes three broad groups of small entities that could be directly affected by its actions. In general, a small business is an independent business having

fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While the Commission does not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, the Commission estimates that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

197. The rules adopted in the *Order* will apply to small entities the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. The size standards in this chart are set forth in 13 CFR 121.201, by six-digit NAICS code. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, the Commission concludes that the adopted rules will impact a substantial number of small entities. Where available, the Commission also provides additional information regarding the number of potentially affected entities in the identified industries below.

Table 1. 2022 U.S. Census Bureau Data by NAICS Code

Regulated Industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	**NAICS Code**	**SBA Size Standard**	**Total Firms**	**Total Small Firms**	**% Small Firms**
Wireless Telecommunications Carriers (except Satellite)	517112	1,500 employees	1,184	1,081	91.30%
Satellite Telecommunications	517410	$44 million	332	195	58.73%
All Other Telecommunications	517810	$40 million	1,673	1,007	60.19%

Table 2. Telecommunications Service Provider Data

2024 Universal Service Monitoring Report Telecommunications Service Provider Data (Data as of December 2023)	**SBA Size Standard (1500 Employees)**		
Affected Entity	**Total # FCC Form 499A Filers**	**Small Firms**	**% Small Entities**
Wireless Telecommunications Carriers (except Satellite)	585	498	85.13

E. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

198. The RFA directs agencies to describe the economic impact of adopted rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

199. The rule changes the Commission adopts in the *Order* will help provide certainty for all applicants, including small entities. These changes are expected to reduce the number of applications that require NEPA review and streamline the environmental review process, prioritizing efficiency and certainty and expediting the process for all applicants seeking environmental approval of pending construction projects. While these types of changes will reduce economic impact and regulatory burden for all applicants, small entity applicants, who typically lack both the financial and staffing resources of their larger counterparts, will particularly benefit from the rule changes in the *Order*. The Commission expects that the reporting, recordkeeping, and other requirements associated with these revised rules will be the same for small and other entities.

200. First, the *Order* codifies the statutory definition of MFA as provided in the amended NEPA, and its exclusions; and clarifies how the definition of MFA will apply in the context of the Commission's rules, including several determinations as to whether certain specific deployments qualify as MFAs. The codified definition and its applicability to Commission rules are expected to reduce economic burden to small entities and other applicants alike by clarifying when certain deployments will

require an environmental review, thereby eliminating costs associated with entities having to make such determinations themselves.

201. The *Order* also adopts other changes to the Commission's environmental review procedures that will reduce economic burdens on small and other entities. These include substantive revisions to the Commission's CE and extraordinary circumstances rules; the environmental notification and public participation processes for ASR applications under part 17; the procedures for determining lead and cooperating agencies for the NEPA review process and the federal agency exception; as well as the revision and elimination of vague, ambiguous, or nonfunctional terms and language. The Commission finds the adopted amendments to the NEPA review process further harmonize the Commission's NEPA regulations with the revised NEPA statute, and will reduce the economic impact and regulatory burden on all applicants by making the process clearer and simpler. In addition, the *Order* decouples the NEPA and NHPA rules to distinguish their separate requirements and to reduce confusion. Although this change separates the two reviews, it is anticipated that this will still result in a net reduction in costs for applicants. Even when NEPA and NHPA review were combined, NHPA review included its own timelines and review standards negotiated under the NPAs. Though applicants will still need to conduct section 106 NHPA review for federal undertakings, they will not need to incur the costs of NEPA review if the undertaking is not also an MFA. These changes apply to large and small businesses, and the cost savings are expected to be significant.

202. Further, the *Order* harmonizes the Commission's regulations pertaining to environmental assessments (EA) and environmental impact statements (EIS) with the requirements of the amended NEPA statute, effectively reducing delay and confusion for all applicants. These modifications include, among others, imposing page limits of EAs and EISs, making clarifications on the public notice comment requirements for both EAs and EISs, and codifying time limits for Commission review of EAs and completion of the EA and EIS processes. These changes will ensure timely NEPA review of Commission MFAs and reduce costs associated with uncertainty and construction delays, allowing applicants to anticipate the extent of NEPA review and better prepare for expected expenses.

203. Finally, the *Order* codifies emergency procedures informed by CEQ guidelines that will provide clarity on what entities may expect for environmental reviews of deployments during emergency

circumstances. The emergency procedures include a shortened EA approach for qualifying actions. The Commission anticipates that these procedures will reduce the economic burden on all applicants and allow them to make necessary deployments in a timely fashion.

204. As the changes made in this *Order* do not modify the classes of entities that will be required to comply with the NEPA rules, the Commission expects the same classes of entities will be subject to these requirements as before and will require the same professional skills to complete NEPA's reporting or recordkeeping requirements.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

205. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

206. As discussed above, the *Order* provides a clearer definition of what constitutes an MFA by codifying the statutory definition of MFA and its exclusions, as well as clarifying how the adopted definition will be applied to particular categories of actions. The adopted changes will help minimize economic impacts on small entities by clarifying when NEPA review will be triggered, thereby reducing the potential for confusion. The adoption of the definition and exclusions, as well as its application to the Commission's rules, are supported by several commenters, including SBA, NATE, and other parties who represent the interests of small entities.

207. In addition, the *Order*'s numerous streamlining revisions to the NEPA review process aim to relieve significant economic burdens on small entities by providing clear and predictable rules for compliance, thereby ensuring NEPA serves as a tool for informed decision-making, rather than as a barrier to investment, innovation, and connectivity. These include revisions to the CE and extraordinary circumstances rules, decoupling NEPA and NHPA, revisions to the environmental notification and public participation processes for ASR applications, adopting procedures for determining lead and cooperating agencies and replacing the federal agency exception, as well as removing references to rescinded CEQ

regulations. The Commission considered comments provided by a wide range of commenters in evaluating what revisions to make to its environmental rules.

208. As explained in the O*rder*, the Commission elects to maintain its broad categorical CE, because it is cost-efficient and sufficient to meet the Commission's obligations under NEPA, and is generally supported by commenters. In reaching its conclusions in the *Order*, the Commission considered a broad range of alternative proposed revisions to its CE rules, including whether to adopt a set of individualized CEs, whether to modify its rules to allow for adopting another agency's CE, whether to revise the existing list of extraordinary circumstances, and whether to retain the catchall provisions for extraordinary circumstances. For example, several commenters including NATE and SBA suggested expanding CEs for particular individualized actions, such as collocations and small cell deployments. In the *Order*, the Commission elects to maintain its broad CE because of its recognized clarity and efficiency, and because of a lack of support for finding that individualized CEs were superior. In the *Order*, the Commission also considers removing the provision found in § 1.1307(c) that allows members of the public to raise NEPA complaints against Commission MFAs, as suggested by WIA, but declines to do so, noting that it would remove the public's ability to identify potential significant environmental effects not identified by applicants or enumerated in the rules. The Commission also considers but declines to implement PEER's suggestion that § 1.1307(c) and § 1.1307(d) not be deleted but instead be converted to an extraordinary circumstance.

209. The Commission received comments expressing concerns that streamlining NEPA review may weaken NHPA review. In addition, one commenter opposed decoupling NEPA and NHPA review. The *Order* finds, however, that these concerns are based on an assumption that the proposal to decouple NEPA from NHPA would weaken NHPA review. In the *Order,* the Commission explains that decoupling NHPA from NEPA does not alter the Commission's section 106 obligations or reduce the rigor of its historic preservation review.

210. The modernizing updates to the requirements for EAs and EISs will reduce economic burdens on small entities by setting clear deadlines and timelines for the environmental review process, and by reducing unnecessary delay. Though the adopted page limits, time limits, and other changes were generally supported by commenters—including PCCA, NATE, and SBA—the Commission received and

considered other alternatives. For example, Dynamic Environmental expressed concern with adopting timelines for EA review, arguing that the timelines were unnecessary and could require the Commission to ensure sufficient resources existed to meet them, and would grant applicants a right to seek judicial review if the proscribed timeframes were not met. The Commission finds, however, that a majority of EAs are processed within sixty (60) days and does not anticipate that meeting the codified timelines would significantly tax Commission resources. The delineated timelines will impact the economic burden on applicants—including small entities—by creating consistency and efficiency that applicants may expect when preparing for the review process.

211. The Commission considered other comments responding to proposed changes to the Commission's environmental rules pertaining to EA and EIS requirements. For example, CTIA argued that the Commission should amend § 1.1308 of its rules to clarify that a reasonableness standard applies throughout the environmental review process and that the Commission need only consider a "reasonable range of alternatives [ ] that are technically and economically feasible, and meet the purpose and need of the proposal." The Commission declined to adopt that suggested change, however, as nothing in § 1.1308 is inconsistent with the application of a reasonableness standard as described in the NEPA statute.

212. Finally, the *Order* codifies emergency procedures to address NEPA review of projects requiring urgent and immediate action during emergency circumstances, providing clarity to small entities on what may be expected for an environmental impact review during such circumstances. Codifying these procedures will reduce confusion and expense for small businesses during a period when expedited action is needed. In reaching its conclusion, the Commission considered alternatives such as adopting a new CE or a new exclusion to the definition of MFA for emergency situations. However, the codified emergency procedures better serve the purpose of the NEPA statute and requirements, are more consistent with recommendations and guidance from CEQ, and do not significantly increase economic burdens on small entities.

V. ORDERING CLAUSES

213. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i)–(j), 201, 214, 301, 302a, 303, 307, 309, 319, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i)–(j), 201, 214, 301, 302a, 303, 307, 309, 319, and 332, section 704(b) of the Telecommunications

Act of 1996, Pub. L. No. 104-104, section 102 of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332, section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, and the Endangered Species Act of 1973, as amended, 16 U.S.C. 1536, this *Report and Order* IS ADOPTED.

214. IT IS FURTHER ORDERED that the *Report and Order* SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*, including revised rule §§ 1.1301 and 1.1302 of the Commission's rules as set forth in Appendix A, 47 CFR 1.1301 and 1.1302. All other revisions to the Commission's rules set forth in Appendix A shall become effective after the Office of Management and Budget (OMB) under the Paperwork Reduction Act approves of any new, modified, or non-substantive information collections that these rules may contain and the Wireless Telecommunications Bureau publishes a notice in *the Federal Register* announcing the completion of such review and relevant effective date.

215. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy.

216. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Historic preservation, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Television.

47 CFR Part 2

Administrative practice and procedure, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Television, Satellites, Telecommunications.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 17

Aviation safety, Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 22

Communications, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone.

47 CFR Part 27

Administrative practice and procedure, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Television.

47 CFR Part 30

Administrative practice and procedure, Communications common carriers, Communications equipment Reporting and recordkeeping requirements.

47 CFR Part 63

Cable Television, Communications, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 73

Television.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Telecommunications Television.

47 CFR Part 78

Cable television, Television, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 80

Communications equipment, Reporting and recordkeeping requirements, Telephone, Vessels.

47 CFR Part 90

Administrative practice and procedure, Common carriers, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 97

Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 101

Administrative practice and procedure, Communications, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene Dortch,
Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 5, 17, 22, 27, 30, 63, 73, 74, 78, 80, 90, 97, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. chs. 1, 2, 3, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754; sec. 704(b), Pub. L. 104-104, 110 Stat. 56, unless otherwise noted.

Subpart A—General Rules of Practice and Procedure

2. Delayed indefinitely, amend § 1.61 by:

a. Revising paragraph (a)(2); and

b. Revising the last sentence of paragraph (a)(4).

The revisions read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) * * *

(2) In accordance with § 1.1306(b) and § 17.4 of this chapter, the Bureau will address any environmental concerns prior to processing the registration.

* * * * *

(4) * * * The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) and (h) of this chapter.

* * * * *

Subpart F—Wireless Radio Services Applications and Proceedings

3. Delayed indefinitely, amend § 1.923 by revising paragraphs (d)(2) and (e)(2) to read as follows:

§ 1.923 Content of applications.

* * * * *

(d) * * *

(2) The Commission has posted notification of the proposed construction on its website pursuant to § 17.4(c)(3) of this chapter; and

* * * * *

(e) * * *

(2) For applications that propose any facilities that are not subject to the process set forth in § 17.4(c) of this chapter, the applicant is required to indicate at the time its application is filed whether or not the application requires preparation of an Environmental Assessment under § 1.1307(b). If the applicant answers affirmatively, an Environmental Assessment must be filed with the application and environmental review by the Commission must be completed prior to construction.

* * * * *

4. Delayed indefinitely, amend § 1.929 by revising paragraph (a)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(a) * * *

(4) Application or amendment requesting authorization for a facility that requires an Environmental Assessment as set forth in § 1.1307(b), unless the facility has been determined not to have a significant environmental effect through the process set forth in § 17.4(c) of this chapter.

* * * * *

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

5. Revise and republish §§ 1.1301 and 1.1302 to read as follows:

§ 1.1301 Basis and purpose.

The provisions of this subpart implement subchapter I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4336f), and specifically describe the process by which the Commission determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review. The provisions of this subpart also impose limits on human exposure to RF pursuant to the Commission's authority under the Communications Act and the Telecommunications Act of 1996.

§ 1.1302 Scope.

The provisions of this subpart shall apply to all Commission major Federal actions as defined by 42 U.S.C. 4336e(10) and this section. To the extent that other provisions of the Commission's rules and regulations are inconsistent with the subpart, the provisions of this subpart shall govern.

(a) *Commission major Federal action.* A Commission major Federal action is an action that the Commission determines is subject to substantial Commission control and responsibility.

(b) *Exclusions.* The following are not Commission major Federal actions:

(1) A non-Federal action with no or minimal Commission funding;

(2) A non-Federal action with no or minimal Commission involvement where the Commission cannot control the outcome of the project;

(3) Funding assistance solely in the form of general revenue sharing funds which do not provide Commission compliance or enforcement responsibility over the subsequent use of such funds;

(4) Loans, loan guarantees, or other forms of financial assistance where the Commission does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

(5) Bringing judicial or administration civil or criminal enforcement actions;

(6) Extraterritorial activities or decisions, which means Commission activities or decisions with effects located entirely outside of the jurisdiction of the United States; or

(7) Activities or decisions that are non-discretionary and made in accordance with the Commission's statutory authority.

(c) *Actions the Commission has determined do not constitute Commission major Federal actions.* The Commission has determined that the following non-exhaustive list of actions do not constitute major Federal actions by the Commission pursuant to paragraph (a) and paragraphs (b)(1) through (7) of this section:

(1) The deployment of non-Federal facilities in connection with geographic area spectrum licenses, to the extent the deployments do not require antenna structure registration;

(2) The deployment of non-Federal facilities in connection with site-based spectrum licenses, to the extent the deployments do not require antenna structure registration;

(3) The deployment of non-Federal facilities in connection with the provision of unlicensed or licensed-by-rule wireless services, to the extent the deployments do not require antenna structure registration;

(4) The deployment of non-Federal satellite earth stations to the extent the deployments do not require antenna structure registration; and

(5) Actions associated with space-based operations, including the launch, deployment, and operation of space stations.

(d) *Application of radiofrequency emissions exposure limits.* Notwithstanding paragraphs (a) through (c) of this section, the Commission maintains responsibility for the certification of equipment and for operations on facilities pursuant to §§ 1.1307(b) and 1.1310 and administers the Commission's radiofrequency radiation exposure limits through this subpart.

(e) *Designation of lead agency.* (1) When the Commission is one of multiple Federal agencies participating in an environmental review or authorization of a major Federal action, a lead Federal agency shall be designated by the participating agencies upon consideration of the factors set forth at 42 U.S.C. 4336a(a)(1)(A) and documented in a letter or memorandum, which may be attached to or contained within an email including representatives of each of the participating Federal agencies and, if applicable, the project sponsor or applicant.

(2) When the Commission is designated as a lead agency, it will, jointly with any State, Tribal, or local agency or agencies appointed as joint lead agencies by the participating Federal agencies, fulfill the role set forth in 42 U.S.C. 4336a(a)(2).

§ 1.1303 [Removed]

6. Delayed indefinitely, remove § 1.1303.

7. Delayed indefinitely, revise and republish § 1.1304 to read as follows:

§ 1.1304 Information, assistance, and waiver of electronic filing and service requirements.

All submissions relating to this subpart shall be made electronically. An interested party may submit its filing on paper to the appropriate address for the Commission Secretary and serve the filing on the other parties by mail if it includes a request to waive the electronic filing requirement that explains

that the requester is unable to file electronically or that filing electronically would be unduly burdensome. Either showing will be sufficient to obtain a waiver under this section.

§ 1.1305 [Removed]

8. Delayed indefinitely, remove § 1.1305.

9. Delayed indefinitely, revise and republish § 1.1306 to read as follows:

§ 1.1306 Categorical exclusions and extraordinary circumstances.

(a) *General categorical exclusion.* Except as provided in § 1.1307(c), the Commission has determined that a Commission major Federal action not covered by paragraphs (b) and (c) of this section normally does not significantly affect the quality of the human environment and is categorically excluded from further environmental processing.

(b) *Categorical exclusion and extraordinary circumstances.* Specifically, any Commission major Federal action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, except where one of the following extraordinary circumstances apply, indicating that a normally-excluded major Federal action may have a reasonably foreseeable significant environmental effect:

(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 and are likely to adversely 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.

Note 1 to paragraph (b)(3): The lists of endangered and threatened species are contained in 50 CFR 17.11, 17.12, 223.102, 224.101. The lists of designated critical habitats are contained in 50 CFR 17.95, 17.96, 17.99, and 226.201 through 226.232. To ascertain the status of proposed species and habitats, consult the U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) website for terrestrial and freshwater species, and the National Oceanic and Atmospheric Administration Fisheries

Species and Habitat app and/or the National Endangered Species Act Critical Habitat Mapper for marine and anadromous species. The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., requires consultation with the U.S. Fish and Wildlife Service, Department of the Interior, or with the National Marine Fisheries Service, Department of Commerce, as appropriate for actions that meet the definition of "action" in 50 CFR 402.02, regardless of whether they meet the definition of major Federal action in § 1.1302.

(4) Facilities to be located in floodplains, if the antennas and associated equipment, including any electrical equipment, will not be placed at least one foot above the base flood elevation of the floodplain.

(5) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation, or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(6) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(7) Antenna structures that will be over 450 feet in height above ground level (AGL) and involve either:

(i) Construction of a new antenna structure;

(ii) Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to this part; or

(iii) The addition of red steady lighting.

(8) Facilities that would result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §§ 1.1307(b) and 1.1310.

(c) *Categorical exclusion for wireless facilities to be located in a right-of-way.* The construction of wireless facilities, including deployments on new or replacement poles, is categorically excluded if:

(1) 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;

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

(3) The facilities would not:

(i) Increase the height of the tower or non-tower structure by more than 10% 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;

(ii) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(iii) 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

(iv) Involve excavation outside the current site, defined as the area that is within the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

(4) Such wireless facilities are subject to paragraph (b)(8) of this section 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 § 1.1307(b). The extraordinary circumstances in paragraphs (b)(1) through (7) of this section do not apply.

(d) *Categorical exclusions pertaining to certain equipment.* (1) 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 is categorically excluded unless it would result in human exposure to radiofrequency radiation in excess of the applicable guidelines cited in § 1.1307(b). The extraordinary circumstances in paragraphs (b)(1) through (7) of this section do not apply.

(2) 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 is categorically excluded and is not subject to the extraordinary circumstances in paragraphs (b)(1) through (8) of this section or to § 1.1307(b).

(3) The construction of new submarine cable systems is categorically excluded and is not subject to the extraordinary circumstances in paragraphs (b)(1) through (8) of this section or to § 1.1307(b).

(e) *Categorical exclusion for construction in an antenna farm.* (1) 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:

(i) The tower will be over 450 feet tall; or

(ii) One or more of the antennas to be mounted on the tower or structure are subject to § 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 § 1.1307(b).

(2) The extraordinary circumstances in paragraphs (b)(1) through (6) of this section do not apply.

(f) *Adopting categorical exclusions from other Federal agencies*. Consistent with 42 U.S.C. 4336c, the Commission may adopt a categorical exclusion listed in another agency's NEPA procedures. Any Commission major Federal action that meets the criteria of a categorical exclusion listed in another agency's NEPA procedures and adopted by the Commission shall be categorically excluded. When adopting a categorical exclusion from another agency, the Commission shall follow the procedures set forth in 42 U.S.C. 4336c and publish the adopted categorical exclusion on its website. The Commission will continue to apply § 1.1307(b) and (c) when adopting another agency's categorical exclusion.

(g) *Documentation of categorical exclusion determinations*. The applicant will document the evaluation of the applicability of a categorical exclusion in a certification indicating that the major Federal action does not trigger any of the extraordinary circumstances in paragraphs (b)(1) through (8) of this section for any application of a categorical exclusion to any major Federal action requiring registration in the Antenna Structure Registration system under § 17.4 of this chapter.

(1) The responsible Bureau will determine the format and method for the applicant to submit this certification.

(2) The applicant must retain supporting documentation in its records showing that the major Federal action is categorically excluded pursuant to this section, for a period of 6 years from the date

the ASR registration application is granted, except that documentation showing compliance with the Commission's radiofrequency safety standards must be retained throughout the duration of operation.

(3) The applicant will provide the documentation to the Commission within five business days of receiving a request from the Commission for such documentation.

Note 1 to § 1.1306: Except where paragraph (b)(7) of this section applies, 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* paragraphs (a) through (c) of this section.

10. Delayed indefinitely, amend § 1.1307 by:

a. Revising the section heading and paragraph (a);

b. Adding introductory text to paragraph (b);

c. Revising the first sentence of paragraph (b)(5)(i);

d. Revising paragraphs (c) and (d); and

e. Removing paragraph (e).

The revisions read as follows:

§ 1.1307 Environmental assessments (EAs).

(a) *Environmental processing and requirements for EAs.* Applicants shall prepare EAs for actions that may have a reasonably foreseeable significant environmental effect (*see* § 1.1306(b)) and when otherwise required by paragraph (b) of this section.

(1) *Elements of EAs.* The EA shall explain the environmental consequences of the proposal and set forth sufficient analysis for the Bureau or the Commission to reach a determination that the proposal will or will not have a significant environmental effect. To assist in making that determination, the Bureau or the Commission may request further information from the applicant, interested persons, and agencies and authorities which have jurisdiction by law or which have relevant expertise. Each EA shall contain the following information:

(i) A statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed action.

(ii) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(iii) A statement as to the zoning classification of the site and communications with, or proceedings before and determinations (if any) made by, zoning, planning, environmental, or other local, State, or Federal authorities on matters relating to environmental effect. The EA shall also be accompanied with evidence of site approval, which has been obtained from local or Federal land use authorities.

(iv) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(v) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility and the nature and extent of any unavoidable adverse environmental effects.

(vi) A description of technically and economically feasible alternative sites or facilities considered.

(vii) Any other information that may be requested by the Bureau or Commission.

(viii) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available (*see* 50 CFR 402.14(c)).

(2) *Scope of analysis.* In preparing the EA, the focus of the analysis shall be on whether the environmental effects of the action or project at hand are significant. The document must identify where and how reasonable and manageable lines are drawn relating to the consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time. EAs shall:

(i) Contain information that is factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination of whether the proposal will have a reasonably foreseeable significant environmental impact, if any;

(ii) Specifically address any feature of the site which has special environmental significance (e.g., wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife);

(iii) Include details of any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features); and

(iv) Shall discuss the effect of any continuing pattern of human intrusion (e.g., necessitated by the operation and maintenance of the facilities) on wildlife areas, wildlife preserves, or other like areas, if present.

(3) *Non-duplication.* To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(4) *Lead agency exception.* An EA need not be submitted to the Commission if another Federal agency has been designated as the lead agency for a major Federal action.

(5) *Data sources.* An EA may make use of any reliable data source; new scientific or technical research is not required unless it is essential to a reasoned choice among alternatives and the overall costs and timeframe of obtaining it are not unreasonable.

(6) *Page limit.* No EA shall exceed 75 pages, exclusive of citations and appendices.

(7) *Determination of significant environmental effect.* If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon Federal agencies, that the proposal will have a reasonably foreseeable significant effect on the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application in accordance with § 1.1309. If the significant environmental effect is not eliminated, the Bureau will publish a Notice of Intent (*see* § 1.1312(c)) that an Environmental Impact Statement will be prepared (*see* § 1.1312).

(8) *Findings of no significant impact.* If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon Federal agencies, that the proposal would not have a significant impact, it will make a Finding of No Significant Impact. The Finding of No Significant Impact shall include a statement that the EA that was submitted represents the Commission's good faith effort to fulfill NEPA's requirements within the congressional

timeline, and that such efforts are now complete; that, in the Commission's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Commission's judgment, the analysis contained therein is adequate to inform and reasonably explain the Commission's final decision regarding the proposed action. Thereafter, the application will be processed without further documentation of environmental effect.

(9) *Deadlines.* Processing of EAs shall be completed within one year of the date the EA is received for review and shall be deemed completed when the Commission or Bureau issues either a Finding of No Significant Impact or informs the applicant that the proposed major Federal action will have a reasonably foreseeable significant effect on the quality of the human environment. The Commission or Bureau, in consultation with the applicant, may establish a new deadline that provides only as much additional time as needed for the applicant to amend its EA to submit any additional information.

(i) An EA shall be considered received for review by the Bureau after it has been both electronically submitted to the Bureau and placed on public notice (*see* § 17.4(d)(6) of this chapter). The EA will remain on public notice for 20 days.

(ii) Within 30 days of the EA being placed on public notice, the reviewing Bureau shall review the EA for completeness and adequacy. If the EA is found to be complete and adequate, and in the absence of a third party petition (*see* paragraph (c) of this section) or Petition to Deny, the reviewing Bureau shall issue a Finding of No Significant Impact or advise the applicant that the proposal will have a significant environmental effect, within 60 days from placement on public notice.

(iii) If, however, the EA is missing necessary information or the reviewing Bureau determines that it needs to consider additional information to make an informed determination, the reviewing Bureau will notify the applicant of the additional information needed within 30 days after the EA is placed on notice. Where the missing information is of a nature that is likely to affect the public's ability to request further review of environmental impacts, the application will again be placed on notice after receipt of this missing information. In such cases, and absent the reviewing Bureau determining additional information is required, the Bureau will complete the review and issue a Finding of No Significant

Impact, or advise the applicant that the proposal will have a significant environmental effect, within 30 days after the missing information is provided or 60 days after the initial notice, whichever is later.

(iv) In the event the Commission receives a third party petition (*see* paragraph (c) of this section) or Petition to Deny in response to the public notice, the reviewing Bureau will resolve the third party petition or Petition to Deny within 90 days of the end of the pleading cycle on such petition. The 90-day period is paused when the reviewing Bureau requests additional information from the applicant, and the time period is resumed once the applicant provides the requested information to the Bureau. The Bureau will then complete its review and issue a Finding of No Significant Impact, or advise the applicant that the proposal will have a significant environmental effect, within 30 days after completing adjudication of the request or Petition.

(b) *Requirements regarding human exposure to RF.* In addition to imposing limits on human exposure to RF for Commission major Federal actions (*see* § 1.1306(b)(8)), the Commission maintains independent legal authority to impose limits on human exposure to RF for actions that are not major Federal actions (*see* § 1.1302(d)). The procedures in this paragraph (b) apply to both major Federal actions and actions that are not major Federal actions.

* * * * *

(5) * * *

(i) In general, when the exposure limits specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed RF sources, actions necessary to bring the area into compliance or preparation of an EA as specified in paragraph (a) of this section are the shared responsibility of all licensees whose RF sources produce, at the area in question, levels that exceed 5% of the applicable exposure limit proportional to power. * * *

* * * * *

(c) *Third party petitions.* An interested person alleging that a particular major Federal action, otherwise categorically excluded, will have a significant environmental effect may petition the Bureau responsible for processing that action to require further environmental processing of the application. Except as provided for in § 1.1304, such petitions shall be submitted electronically and shall set forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-

making process. The Bureau shall review the petition and supporting materials and consider the environmental concerns that have been raised. In cases in which a pleading cycle has been established, the Bureau shall resolve the petition within 90 days of the close of the pleading cycle on such petition. In cases without a pleading cycle, the petition shall be resolved within 90 days of receipt of the petition. The 90-day period is paused when the Bureau requests additional information from the applicant and is resumed once the applicant provides the requested information to the Bureau. If the Bureau determines that the action is likely to have a reasonably foreseeable significant environmental effect, the Bureau will require the applicant to either prepare an EA, which will serve as the basis for the determination to proceed with or terminate environmental processing, or otherwise modify the proposal to avoid these effects.

(1) All such petitions must provide specific, detailed evidence demonstrating that the proposed major Federal action is likely to have a reasonably foreseeable significant environmental effect.

(2) All such petitions shall be supported by a written submission which can include photographic evidence supporting the facts alleged in the petition. The petition shall be limited to five pages in length with 15 pages of supporting evidentiary documents. The Bureau may in its discretion permit a supplement to the petition and may set page limits on the supplemental submissions.

(d) *Preemption.* No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph (d):

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

§ 1.1308 [Removed]

11. Delayed indefinitely, remove § 1.1308.

12. Delayed indefinitely, revise and republish § 1.1309 to read as follows:

§ 1.1309 Application amendments.

Applicants are permitted to amend their applications to reduce, minimize, or eliminate reasonably foreseeable significant environmental effects. Amendments shall be made electronically. As a routine matter, an applicant will be permitted to amend its application within 30 days after the Commission or the Bureau informs the applicant that the proposal will have a reasonably foreseeable significant effect on the quality of the human environment. The period of 30 days may be extended upon a showing of good cause.

13. Delayed indefinitely, revise and republish §§ 1.1311 through 1.1313 to read as follows:

§ 1.1311 Objections.

(a) In the case of an application to which section 309(b) of the Communications Act applies, objections based on environmental considerations shall be filed electronically as petitions to deny. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the petition by mail, with a request for waiver under § 1.1304.

(b) Informal objections which are based on environmental considerations must be filed electronically prior to grant of the application. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the objection by mail, with a request for waiver under § 1.1304.

§ 1.1312 Environmental impact statements (EISs).

(a) *Applicant preparation of EISs.* The applicant for any proposed Commission major Federal action requiring an environmental document that the Commission determines has a reasonably foreseeable significant effect on the quality of the human environment shall prepare an Environmental Impact Statement (EIS).

(b) *Notices of intent (NOI).* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an Environmental Impact Statement, the Bureau will publish a Notice of Intent to prepare an EIS.

(1) *Contents*. The NOI will identify the proposal, concisely describe the environmental issues and concerns presented by the subject application, and request public comment from affected or involved agencies, authorities and other interested persons on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed major Federal action.

(2) *Comments and reply comments.* Any person or agency may comment on the NOI and the environmental effect of the proposal described therein within 45 days of the publication of the NOI. A copy of those comments shall be filed electronically with the Commission, subject to the waiver provisions of § 1.1304. If a person submitting comments is especially qualified in any way to comment on the environmental impact of the facilities, a statement of his or her qualifications shall be set out in the comments. In addition, comments submitted by an agency shall identify the person(s) who prepared them. Reply comments may be filed within 15 days after the time for filing comments has expired.

(c) *Content of EISs.* (1) An EIS for a proposed Commission major Federal action shall contain:

(i) A concise description of the proposed major Federal action and the nature of the area affected, its uses, and any specific feature that has special environmental significance;

(ii) A statement briefly summarizing the underlying purpose and need for the proposed action;

(iii) A detailed statement, with support, of each element listed at 42 U.S.C. 4332(2)(C);

(iv) For any proposal that involves unresolved conflicts concerning alternative uses of available resources, include a description of the appropriate alternatives to the recommended major Federal action in the proposal; and

(v) A summary of the comments, a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (*see* §§ 1.101 through 1.117). Copies of the comments and reply comments, or summaries thereof where the record is voluminous, shall be attached to the EIS.

(2) An EIS shall not exceed 150 pages, exclusive of citations or appendices, except in the case of a major Federal action of extraordinary complexity, for which the Bureau, in consultation with the applicant, may permit or require an EIS not to exceed 300 pages, exclusive of citations or appendices.

(d) *Limitations on challenges to the application during EIS initiation*. The publication of an NOI, including a request for comments, and the preparation of an EIS and the request for comments shall not open the application to attack on other grounds.

(e) *Supplementation of EISs.* Where substantial changes are made to the proposed action that are relevant to environmental concerns, or substantial new circumstances occur or information arises about the significance of the adverse effects that bear upon the proposed action or its effects, the Bureau responsible for processing the particular application shall coordinate with the applicant to draft supplements addressing the changes or new circumstances or information.

(f) *Consideration of environmental impact statements.* (1) If the major Federal action is designated for hearing:

(i) In rendering an initial decision, the presiding officer (other than the Commission) shall use the EIS in considering the environmental issues.

(ii) When the Commission serves as the presiding officer or upon its review of an initial decision, the Commission will consider and assess all aspects of the EIS and will render its decision, giving due consideration to the environmental and nonenvironmental issues.

(2) In all non-hearing matters, the Commission, as part of its decision-making process, will review the EIS, along with other relevant issues, to ensure that the environmental effects are specifically assessed and given comprehensive consideration.

(g) *Completion.* EISs shall be completed within two years of the date on which the Commission or relevant Bureau determines that 42 U.S.C. 4332(2)(C) requires the issuance of an environmental impact statement or the date on which the Commission issues a notice of intent to prepare the environmental impact statement, unless the Commission or Bureau, in consultation with the applicant, establishes a new deadline that provides only so much additional time as is necessary to complete the EIS. When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents the Commission's good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in the Commission's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Commission's judgment, the analysis contained therein is adequate to inform and reasonably explain the Commission's final decision regarding the proposed Federal action.

§ 1.1313 Emergency procedures

(a) These emergency procedures are applicable in emergency situations where it is necessary to take immediate Federal action to address imminent threats to life, property, or important natural, cultural, or historic resources, as determined by the Bureau responsible for processing the action. Applicants seeking to apply these procedures to a proposed major Federal action must include a description of the specific emergency circumstances and a certification that the action is necessitated by those emergency circumstances.

(b) Where emergency circumstances make it necessary to take a major Federal action with reasonably foreseeable significant environmental effects, the Commission or responsible Bureau will consult with the Council on Environmental Quality about alternative arrangements for compliance with 42 U.S.C. 4332(2)(C).

(c) Where the Commission or responsible Bureau expects that the proposed emergency major Federal action is not likely to have significant environmental effects, or if the significance of the environmental effects is unknown, applicants may prepare a shortened Environmental Assessment, consisting of:

(1) The purpose and need for the proposed action;

(2) The reasonably foreseeable effects of the proposed agency action;

(3) Any mitigation measures that the applicant will implement; and

(4) The alternatives considered.

(d) The Commission or responsible Bureau may issue further guidance as necessary for emergency circumstances, including waiving rules for good cause pursuant to § 1.3 or alleviating any additional burden in accordance with other sections of the Commission's rules.

§§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320 [Removed]

14. Delayed indefinitely, remove §§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320.

Subpart M—Cable Operations and Licensing Systems (COALS)

15. Delayed indefinitely, amend § 1.1706 by revising paragraph (d) as follows:

§ 1.1706 Content of filings.

* * * * *

(d) *Environmental concerns.* Each applicant is required to indicate at the time its application is filed whether a Commission grant of the application requires preparation of an Environmental Assessment under § 1.1307(b). If yes, an Environmental Assessment, as required by § 1.1307, must be filed with the application and environmental review by the Commission must be completed prior to construction.

* * * * *

Subpart Q—Competitive Bidding Proceedings

16. Delayed indefinitely, amend § 1.2113 by revising paragraph (d)(3) to read as follows:

§ 1.2113 Construction prior to grant of application.

* * * * *

(d) * * *

(3) The applicant has indicated in the application that the proposed facility would not require preparation of an Environmental Assessment under § 1.1307(b);

* * * * *

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

17. Delayed indefinitely, amend § 1.6002 by:

a. Revising the first sentence of paragraph (b);

b. Revising paragraph (c);

c. Revising the introductory text of paragraph (g); and

d. Revising paragraphs (l)(1)(i) and (l)(2).

The revisions read as follows:

§ 1.6002 Definitions.

* * * * *

(b) *Antenna*, consistent with § 1.90000(a), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. * * *

(c) *Antenna equipment*, consistent with § 1.90000(a), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

* * * * *

(g) *Collocation*, consistent with § 1.90000(a) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B to this part, section I.B, means—

* * * * *

(l) * * *

(1) * * *

(i) Are mounted on structures fifty 50 feet or less in height including their antennas as defined in § 1.90000(a); or

* * * * *

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.90000(a)), is no more than three cubic feet in volume;

* * * * *

Subpart X—Spectrum Leasing

18. Delayed indefinitely, amend § 1.9010 by revising the second sentence of paragraph (b)(1)(ii) to read as follows:

§ 1.9010 *De facto* control standard for spectrum leasing arrangements.

* * * * *

(b) * * *

(1) * * *

(ii) * * * These responsibilities include: Coordinating operations and modifications of the spectrum lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual spectrum lessee stations (e.g., those that require frequency coordination, those that require international or Interdepartment Radio Advisory Committee (IRAC) coordination, those that affect radio frequency quiet zones described in § 1.924, or those that require notification to the Federal Aviation Administration under part 17 of this chapter); and, ensuring that the spectrum lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation, including submission of an Environmental Assessment where required, pursuant to § 1.1307(b) and related rules of subpart I of this part. * * *

* * * * *

Subpart FF—Cable Landing Licenses

19. Delayed indefinitely, amend § 1.70007 by revising paragraph (i) to read as follows:

§ 1.70007 Routine conditions.

* * * * *

(i) The Commission reserves the right to require the licensee to file an Environmental Assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations are subject to environmental review under § 1.1302 and may significantly affect the environment within the meaning of § 1.1306 implementing the National Environmental Policy Act of 1969. The cable landing license is subject to modification by the Commission under its review of any

Environmental Assessment or Environmental Impact Statement that it may require pursuant to its rules. *See also* §§ 1.1306(d) and 1.1307(c).

* * * * *

20. Delayed indefinitely, add subpart HH, consisting of §§ 1.90000 through 1.90002, to read as follows:

Subpart HH—Procedures Implementing the National Historic Preservation Act of 1966

Sec.
1.90000 Definitions.
1.90001 Responsibilities of applicants.
1.90002 Review of Commission undertakings that may affect historic properties.

§ 1.90000 Definitions.

(a) *Antenna* means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

(b) *Applicant* means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

(c) *Collocation* means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

(d) *Tower* means any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling,

power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined in this section.

(e) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section.

§ 1.90001 Responsibilities of applicants.

Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in appendix C to this part, sections III through X, or any other applicable program alternative.

§ 1.90002 Review of Commission undertakings that may affect historic properties.

(a) *Review of Commission undertakings.* Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3 through 800.13; or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, 800.16, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, appendix B to this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, appendix C to this part.

(iii) The Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles

and Infrastructure, 79 FR 30861 (May 29, 2014) (an Advisory Council on Historic Preservation program comment).

(b) *Exclusions.* The following categories of undertakings are excluded from review under this section:

(1) *Projects reviewed by other agencies.* Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) *Projects subject to program alternatives.* Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) *Replacement utility poles.* Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission's spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; *provided* that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph (b)(3)(ii)(A), "ground disturbance" means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than five feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

(4) *Collocations on buildings and other non-tower structures.* 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:

(A) *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;

(B) *Visible replacement antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that:

(*1*) It is a replacement for a pre-existing antenna;

(*2*) The new antenna will be located in the same vicinity as the pre-existing antenna;

(*3*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;

(*4*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna; and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(C) *Other visible antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that:

(*1*) It is located in the same vicinity as a pre-existing antenna;

(*2*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;

(*3*) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph (b)(4)(ii)(C);

(*4*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna; and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(iii) 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; and

(iv) The deployment of the new antenna involves no new ground disturbance. (Note: A non-visible new antenna is in the "same vicinity" as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the "same vicinity" as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within 10 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.)

(5) *Aerial corridors and existing underground corridors.* 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.

(6) *Submarine cable systems.* The construction of new submarine cable systems.

(c) *Responsibilities of applicants.* Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in appendix C to this part, sections III through X, or any other applicable program alternative.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

21. The authority citation for part 2 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 332, and 336, unless otherwise noted.

Subpart J—Equipment Authorization Procedures

22. Delayed indefinitely, amend § 2.1091 by revising paragraphs (a) and (c)(3) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the Telecommunications Act of 1996. See subpart I of part 1 of this chapter, in particular § 1.1307(b) of this chapter.

* * * * *

(c) * * *

(3) Unless otherwise specified in this chapter, any other single mobile or multiple mobile and portable RF source(s) associated with a device is exempt from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in § 1.1307(c) of this chapter.

* * * * *

23. Delayed indefinitely, amend § 2.1093 by revising paragraphs (a) and (c)(3) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the Telecommunications Act of 1996. *See* subpart I of part 1 of this chapter, in particular § 1.1307(b) of this chapter.

* * * * *

(c) * * *

(3) Unless otherwise specified in this chapter, any other single mobile or multiple mobile and portable RF source(s) associated with a device is exempt from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in § 1.1307(c) of this chapter.

* * * * *

PART 5—EXPERIMENTAL RADIO SERVICE

24. The authority citation for part 5 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 332, 336.

Subpart B—Applications and Licenses

25. Delayed indefinitely, amend § 5.63 by revising paragraph (a) to read as follows:

§ 5.63 Supplemental statements required.

* * * * *

(a) If installation and/or operation of the equipment requires preparation of an Environmental Assessment under § 1.1307(b) of this chapter, an Environmental Assessment as defined in § 1.1307 of this chapter must be submitted with the application.

* * * * *

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURERS

26. The authority citation for part 17 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 303, 309.

Subpart A—General Information

27. Delayed indefinitely, revise and republish § 17.4 to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction must register the structure with the Commission (*see* § 17.7 for FAA notification requirements). This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from the requirement that it register with the Commission (*see* § 17.7(e) for exemptions to FAA notification requirements).

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner of an antenna structure described in paragraph (a) of this section must electronically file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will be the highest point of the structure including any obstruction lighting or lightning arrester. If an antenna structure is not required to be registered under paragraph (a) of this section and it is voluntarily registered with the Commission after October 24, 2014, the registrant must note on FCC Form 854 that the registration is voluntary. Voluntarily registered

antenna structures are not subject to the lighting and marking requirements contained in this part and do not require a determination of "no hazard" from the FAA for processing in the ASR system.

(c) Each prospective applicant must complete the environmental notification process described in this paragraph (c) except as specified in paragraph (l) of this section.

(1) *Exceptions from the environmental notification process.* Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

(i) For notification only, such as to report a change in ownership or contact information, or the dismantlement of an antenna structure;

(ii) For a reduction in height of an antenna structure or an increase in height that does not constitute a substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to part 1 of this chapter, provided that there is no construction or excavation more than 30 feet beyond the existing antenna structure property;

(iii) Any lighting change or modification that does not involve the addition of steady red lights;

(iv) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under §§ 1.1306(b) and 1.1307(b) through (d) of this chapter, provided the new structure will not involve red steady-burning lighting, there will be no substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to part 1 of this chapter, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property;

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure for which a Federal agency other than the Commission has been designated as the lead agency and for which environmental review has concluded; or

(vii) For the construction or deployment of an antenna structure that will:

(A) Be in place for no more than 60 days;

(B) Requires notice of construction to the FAA;

(C) Does not require marking or lighting under FAA regulations;

(D) Will be less than 200 feet in height above ground level; and

(E) Will either involve no excavation or involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. An applicant that relies on this exception must wait 30 days after removal of the antenna structure before relying on this exception to deploy another antenna structure covering substantially the same service area.

(2) *Commencement of the environmental notification process.* The prospective applicant shall commence the environmental notification process by filing information about the proposed antenna structure with the Commission. This information shall include, at a minimum, all of the information required on FCC Form 854 regarding ownership and contact information, geographic location, and height, as well as the type of structure and anticipated lighting. Prospective applicants who have determined that the proposed antenna structure is categorically excluded from further environmental processing under § 1.1306 of this chapter shall be required to certify that none of the Commission's list of extraordinary circumstances in § 1.1306(b) of this chapter are present. The Wireless Telecommunications Bureau may utilize a partially completed FCC Form 854 to collect this information.

(3) *National notice.* The Commission shall post notification of the proposed construction on its website. This posting shall include the information contained in the initial filing with the Commission or a link to such information. The posting shall remain on the Commission's website for a period of 30 days.

(4) *Requests for environmental processing.* Any request filed by an interested person pursuant to § 1.1307(c) of this chapter must be received by the Commission no later than 30 days after the proposed antenna structure goes on notice pursuant to paragraph (c)(3) of this section. The Wireless Telecommunications Bureau shall establish by public notice the process for filing requests for environmental processing and responsive pleadings consistent with the following provisions:

(i) *Service and pleading cycle.* The interested person or entity shall serve a copy of its request on the prospective ASR applicant pursuant to § 1.47 of this chapter. Oppositions may be filed no later than 10 days after the time for filing requests has expired. Replies to oppositions may be filed no later than five days after the time for filing oppositions has expired. Oppositions shall be served upon the requester, and replies shall be served upon the prospective applicant.

(ii) *Content.* An environmental request that does not meet the requirements of § 1.1307(c) of this chapter may be dismissed. The request must be submitted as a written petition filed electronically, setting forth in detail the reasons supporting requester's contentions. If the filer is unable to submit electronically, or if filing electronically would be unreasonably burdensome, the request may be submitted by mail, with a request for waiver under § 1.1304 of this chapter.

(5) *Amendments.* The prospective applicant must file an amendment to report any substantial change in the information provided to the Commission. An amendment will not require further notice if the only reported change is a reduction in the height of the proposed new or modified antenna structure; if no addition of red steady-burning lighting is proposed; or if the amendment reports only administrative changes that are not subject to the requirements specified in this paragraph (c)(5). All other changes to the physical structure or geographic location data for and the addition of red steady-burning lighting to proposed registered antenna structure require additional notice and a new period for filing requests pursuant to paragraphs (c)(3) and (4) of this section.

(6) *Environmental Assessments.* If an EA is required under § 1.1306 or § 1.1307 of this chapter, the antenna structure registration applicant shall attach the EA to its environmental submission, regardless of any requirement that the EA also be attached to an associated service-specific license or construction permit application. The contents of an EA are described in § 1.1307 of this chapter. The EA may be provided either with the initial environmental submission or as an amendment. If the EA is submitted as an amendment, the Commission shall post notification on its website for an additional 20 days and consider additional requests pursuant to paragraph (c)(4) of this section within 20 days after a completed EA is submitted.

(7) *Disposition.* The processing Bureau shall resolve all environmental issues, in accordance with the environmental regulations in §§ 1.1301 through 1.1313 of this chapter, before the tower

owner, or the first tenant licensee acting on behalf of the owner, may complete the antenna structure registration application. Requests for environmental review submitted under paragraph (c)(4) of this section shall be resolved within 90 days of the end of the pleading cycle set forth in paragraph (c)(4)(i) of this section, not including the time between a request from staff to the applicant for additional information is made and the applicant's provision of the requested information to staff. In a case where no EA is submitted, the Bureau shall notify the applicant whether an EA is required under § 1.1307(c) of this chapter. In a case where an EA is submitted, the Bureau shall either grant a Finding of No Significant Impact (FONSI) or notify the applicant that further environmental processing is required pursuant to § 1.1307 of this chapter. Upon filing the completed antenna structure registration application, the applicant shall certify that the construction will not have a significant environmental impact, unless an Environmental Impact Statement is prepared pursuant to § 1.1312 of this chapter.

(d) In accordance with § 1.1306(g) of this chapter and excepting applications for antenna structures that are not required to be registered under paragraph (a) of this section, all prospective applicants are required to support their initial determinations that a proposed new antenna structure or modification of an existing antenna structure is categorically excluded from further environmental processing under § 1.1306 of this chapter by indicating whether any extraordinary circumstances listed in § 1.1306(b) of this chapter are present.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure electronically using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (f) of this section, and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue to the registrant FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The antenna structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has

been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure website: https://wireless.fcc.gov/antenna/. This notification must be done electronically.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the Antenna Structure Registration Number must be posted so that it is visible at the publicly accessible area nearest each such point of access. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen where posted.

(h) The owner is not required to post the Antenna Structure Registration Number in cases where a Federal, State, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

(i) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (*see* § 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(j) Any change or correction in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of a registered antenna structure requires prior approval from the FAA and modification of the existing registration with the Commission.

(k) Any change in the marking and lighting that varies from the specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

(l) The owner of any proposed or existing antenna structure that does not require notice of proposed construction to the FAA due to physical obstruction may register the structure with the Commission on a voluntary basis. Voluntary registrations shall not be subject to the requirements of paragraphs (b), (c), (g), and (i) of this section, § 17.6, and subparts B and C of this part. Modifications of voluntarily registered antenna structures shall not require prior approval (*see* paragraphs (i), (j), and (k) of this section) unless those modifications result in the requirement of antenna structure registration; however, antenna structure owners shall ensure at all times that information in ASR, including structure height and lighting, is current and accurate.

28. Delayed indefinitely, amend § 17.6 by revising the last sentence of paragraph (c) to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *

(c) * * * The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with § 17.4(g), and for posting the registration number as required by § 17.4(h).

PART 22—PUBLIC MOBILE SERVICES

29. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

Subpart B—Licensing Requirements and Procedures

30. Delayed indefinitely, amend § 22.143 by revising paragraph (d)(5) to read as follows:

§ 22.143 Construction prior to grant of application.

* * * * *

(d) * * *

(5) The applicant has indicated in the application that the proposed facility would not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter; and

* * * * *

31. Delayed indefinitely, amend § 22.165 by revising paragraph (c) to read as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(c) *Environmental.* The additional transmitters must not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

Subpart E—Paging and Radiotelephone Service

32. Delayed indefinitely, amend § 22.503 by revising paragraph (g)(1) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(g) * * *

(1) FCC grant of an application authorizing the construction of the facility requires preparation of an Environmental Assessment under § 1.1307(b) of this chapter. *See* § 1.923(e) of this chapter.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

33. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Subpart B—Applications and Licenses

34. Delayed indefinitely, amend § 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Initial authorization.

(a) *Initial authorization*. An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 27.5. Applications for individual sites are not required and will not be accepted, except where required for Environmental Assessments, in accordance with § 1.1307(b) of this chapter.

* * * * *

Subpart I—1.4 GHZ Band

35. Delayed indefinitely, amend § 27.803 by revising paragraph (b)(1) to read as follows:

§ 27.803 Coordination requirements.

* * * * *

(b) * * *

(1) That requires submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart J—1670–1675 MHz Band

36. Delayed indefinitely, amend § 27.903 by revising paragraph (b)(1) to read as follows:

§ 27.903 Coordination requirements.

* * * * *

(b) * * *

(1) That requires submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart M—Broadband Radio Service and Educational Broadband Service

37. Delayed indefinitely, amend § 27.1208 by revising paragraph (a)(2) to read as follows:

§ 27.1208 Geographic area licensing.

(a) * * *

(2) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter; and

* * * * *

PART 30—UPPER MICROWARE FLEXIBLE USE SERVICE

38. The authority citation for part 30 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302, unless otherwise noted.

Subpart B—Applications and Licenses

39. Delayed indefinitely, revise § 30.101 to read as follows:

§ 30.101 Initial authorizations.

Except with respect to in the 37–37.6 GHz band, an applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 30.4. Applications for individual sites are not required and will not be accepted, except where required for Environmental Assessments, in accordance with § 1.1307(b) of this chapter.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

40. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

41. Delayed indefinitely, amend § 63.01 by revising paragraph (b) to read as follows:

§ 63.01 Authority for all domestic common carriers.

* * * * *

(b) Domestic common carriers subject to this section shall not engage in any line construction that requires environmental review under § 1.1302 of this chapter and that may have a significant effect on the environment as defined in § 1.1306 of this chapter without prior compliance with the Commission's environmental rules.

42. Delayed indefinitely, amend § 63.18 by revising paragraph (g) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section that requires environmental review under § 1.1302 of this chapter, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an Environmental Assessment as described in § 1.1307 of this chapter need not be filed with the application.

* * * * *

PART 73—RADIO BROADCAST STATIONS

43. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

Subpart C—Digital Audio Broadcasting

44. Delayed indefinitely, amend § 73.406 by revising paragraph (b)(4) to read as follows:

§ 73.406 Notification.

* * * * *

(b) * * *

(4) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and therefore excluded from environmental processing pursuant to § 1.1307(b) of this chapter. Any station that cannot certify compliance must submit an Environmental Assessment (EA) pursuant to § 1.1307 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

* * * * *

Subpart H—Rules Applicable to All Broadcast Stations

45. Delayed indefinitely, amend § 73.1010 by revising paragraph (a)(6) to read as follows:

§ 73.1010 Cross reference to rules in other parts.

* * * * *

(a) * * *

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969" (*see* §§ 1.1301 through 1.1313 of this chapter).

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

46. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

Subpart—General; Rules Applicable to All Services in Part 74

47. Delayed indefinitely, amend § 74.5 by revising paragraph (a)(7) to read as follows:

§ 74.5 Cross reference to rules in other parts.

* * * * *

(a) * * *

(7) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969" (*see* §§ 1.1301 through 1.1313 of this chapter).

* * * * *

48. Delayed indefinitely, amend § 74.25 by revising paragraph (a)(4) to read as follows:

§ 74.25 Temporary conditional operating authority.

* * * * *

(a) * * *

(4) The applicant has determined that the facility(ies) does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

49. The authority citation for part 78 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

Subpart B—Applications and Licenses

50. Delayed indefinitely, amend § 78.15 by revising paragraph (c) to read as follows:

§ 78.15 Contents of applications.

* * * * *

(c) CARS applicants must follow the procedures prescribed in § 1.1307(b) of this chapter regarding the filing of Environmental Assessments.

Subpart D—Technical Regulations

51. Delayed indefinitely, amend § 78.109 by revising paragraph (b)(9) to read as follows:

§ 78.109 Major and minor modifications to stations.

* * * * *

(b) * * *

(9) Any modification or amendment requiring an Environmental Assessment (as governed by §§ 1.1301 through 1.1313 of this chapter);

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

52. The authority citation for part 80 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Subpart H—Frequencies

53. Delayed indefinitely, amend § 80.371 by:

a. Redesignating paragraph (e) immediately following paragraph (c)(2) as paragraph (c)(2)(i);

b. Adding reserved paragraphs (c)(2)(ii) and (c)(3); and

c. Revising paragraph (c)(4)(iv).

The revision reads as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(4) * * *

(iv) The transmitters must not require preparation of an Environment Assessment under § 1.1307(b) of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

54. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Subpart G—Applications and Authorizations

55. Delayed indefinitely, amend § 90.129 by revising paragraph (g) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(g) The Environmental Assessment required by § 1.1307 of this chapter, if applicable. If an application filed under this part proposes the use of one or more new or existing antenna structures that require registration under part 17 of this chapter, any required Environmental Assessment should be submitted pursuant to the process set forth in § 17.4(c) of this chapter rather than with the application filed under this part.

* * * * *

56. Delayed indefinitely, amend § 90.159 by revising paragraph (b)(4) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) * * *

(4) The applicant has determined that the proposed facility does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

57. Delayed indefinitely, amend § 90.169 by revising paragraph (d)(5) to read as follows:

§ 90.169 Construction prior to grant of application.

* * * * *

(d) * * *

(5) The applicant has indicated in the application that the proposed facility does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter; and,

* * * * *

Subpart S—Regulations Governing the Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

58. Delayed indefinitely, revise § 90.655 to read as follows:

§ 90.655 Special licensing requirements for Specialized Mobile Radio systems.

End users of conventional or trunked Specialized Mobile Radio systems that have control stations that require FAA clearance, as specified in §§ 17.7 through 17.17 of this chapter, or that require preparation of an Environmental Assessment under § 1.1307(b) of this chapter, or that are located in a "quiet zone," as defined by § 1.924 of this chapter must be individually licensed for such control stations prior to construction or operation. All other end users' operations will be within the scope of the base station licensee. All end users, however, continue to be responsible to comply with part 90 of this chapter and other Federal laws.

59. Delayed indefinitely, amend § 90.683 by revising paragraph (a)(6) to read as follows:

§ 90.683 EA-based SMR system operations.

(a) * * *

(6) Any additional transmitters placed in operation must comply with § 1.1307(b) of this chapter.

* * * * *

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

60. Delayed indefinitely, amend § 90.733 by revising paragraph (i)(3) to read as follows:

§ 90.733 Permissible operations.

* * * * *

(i) * * *

(3) Comply with the provisions of § 1.1307(b) of this chapter.

Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

61. Delayed indefinitely, amend § 90.1207 by revising paragraph (b)(1)(ii) to read as follows:

§ 90.1207 Licensing.

* * * * *

(b) * * *

(1) * * *

(ii) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter; or

* * * * *

PART 97—AMATEUR RADIO SERVICE

62. The authority citation for part 97 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

Subpart A—General Provisions

63. Delayed indefinitely, amend § 97.13 by revising paragraph (a) to read as follows:

§ 97.13 Restrictions on station location.

(a) An amateur station must comply with §§ 1.1307(b) and 1.90002 of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

64. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Subpart B—Applications and Licenses

65. Delayed indefinitely, amend § 101.31 by revising paragraph (b)(1)(iv) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(iv) The applicant has determined that the facility(ies) does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart L—Local Multipoint Distribution Service

66. Delayed indefinitely, amend § 101.1009 by revising paragraph (a)(1)(ii) to read as follows:

§ 101.1009 System operations.

(a) * * *

(1) * * *

(ii) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter.

* * * * *

Subpart O—Multiple Address Systems

67. Delayed indefinitely, amend § 101.1329 by revising paragraph (a) to read as follows:

§ 101.1329 EA Station license, location, modifications.

* * * * *

(a) Requires the submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart Q—Service and Technical Rules for the 70/80/90 GHz Bands

68. Delayed indefinitely, amend § 101.1523 by revising paragraph (c)(1) to read as follows:

§ 101.1523 Sharing and coordination among non-government licensees and between non-government and government services.

* * * * *

(c) * * *

(1) Facilities requiring the submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

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