

**ACTION:** Notice of withdrawal and cancellation.

**SUMMARY:** The U.S. Department of Agriculture (USDA) Commodity Credit Corporation (CCC) has withdrawn support for the Farm-to-Fleet BPI Program, and is cancelling funding for the BPI payments to companies that are refining biofuel in the United States from certain domestically grown feedstocks converted to drop-in biofuel for delivery to supply biofuels to the Navy. USDA has reassessed how to best use limited available funds and has determined that the BPI is no longer a priority for CCC funding. The impact of this withdrawal is that suppliers of fuel containing a biofuel blend to the U.S. Navy are no longer eligible to receive a CCC incentive payment, through the Farm-to-Fleet BPI Program.

**DATES:** *Effective:* February 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kelly Novak, (202) 720-4053.

**SUPPLEMENTARY INFORMATION:** A notice of funds availability for the Farm-to-Fleet Feedstock BPI was published in the *Federal Register* on December 29, 2016, (81 FR 95956-95958). The BPI payments were intended to support a joint USDA and U.S. Navy Farm-to-Fleet Program that was announced in December 2013, which provided incentive funds to companies that are refining biofuel in the United States from certain domestically grown feedstocks converted to drop-in biofuel for delivery to supply biofuels to the Navy.

CCC funds, administered by the Farm Service Agency (FSA), were used for BPI payments to help increase the domestic consumption of agricultural commodities in the biofuel market. Up to \$50 million of CCC funds was announced as being available through FY 2018. This notice withdraws the availability of BPI payments for deliveries not yet solicited or procured by the U.S. Navy and Defense Logistics Agency (DLA) Energy office and cancels USDA support for biofuel blends solicited by the DLA Energy office and US Navy. Specifically, FSA will continue to make the BPI payments required under the existing commitments. BPI payments will continue to be made to the eligible claimant awarded a contract under DLA Energy's Rocky Mountain West solicitation (SPE600-17-R-0709) and BPI payments will be made on any awards resulting from the Rocky Mountain West and Inland East Gulf solicitations published prior to the publication of this withdrawal. No BPI payments will be made related to any

DLA Energy solicitations that are announced after this withdrawal is published.

**Steven J. Peterson,**

*Executive Vice President, Commodity Credit Corporation.*

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket Number: 131219999-7305-03]

RIN 0660-XC009

#### First Responder Network Authority; Revised National Environmental Policy Act Procedures and Categorical Exclusions

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

**ACTION:** Notice.

**SUMMARY:** The First Responder Network Authority ("FirstNet") publishes this notice of its final procedures for implementing the National Environmental Policy Act ("NEPA"). The final procedures include a revised list of, and replace, previously established categorical exclusions ("CEs") and extraordinary circumstances.

**DATES:** These procedures take effect as of February 1, 2018.

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

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401 *et seq.*) (the "Act") established the First Responder Network Authority ("FirstNet") as an independent authority within the National Telecommunications and Information Administration ("NTIA"). FirstNet's statutory mission is to take all actions necessary to ensure the establishment of a nationwide public safety broadband network ("NPSBN").<sup>1</sup> Moreover, the Act meets a long-standing and critical

national infrastructure need to create a single, nationwide interoperable network that will, for the first time, allow public safety entities such as police officers, fire fighters, emergency medical service professionals, and other public safety personnel to effectively communicate with each other across agencies and jurisdictions.

On April 28, 2014, FirstNet, as a newly created federal entity, published a notice in the *Federal Register* finalizing its NEPA implementing procedures.<sup>2</sup> These NEPA implementing procedures provided the framework for FirstNet's establishment of a NEPA compliance program and for applying the appropriate level of NEPA review for major federal actions related to the deployment of the NPSBN. More specifically, FirstNet's NEPA implementing procedures supplemented the Council on Environmental Quality ("CEQ") regulations and provided guidance to FirstNet employees and potential Applicants regarding the procedural requirements for the application of NEPA.<sup>3</sup>

As it has continued to mature as an organization, FirstNet has identified the need to modify its NEPA implementing procedures and revise its list of categorical exclusions and extraordinary circumstances (CEs) to ensure that such procedures better align with FirstNet's statutory mission and activities related to the deployment of the NPSBN, as well as better assist FirstNet in complying with NEPA as well as CEQ and Federal Communications Commission ("FCC") regulations. More specifically, FirstNet, as both an independent federal authority and a licensee of the FCC, must satisfy its own NEPA obligations as well as comply with FCC-promulgated NEPA procedures.<sup>4</sup>

Accordingly, on June 23, 2017, FirstNet published for comment proposed revisions to its NEPA implementing procedures and

<sup>2</sup> FirstNet, National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 79 FR 23,950 (April 29, 2014).

<sup>3</sup> The term "Applicant" means any person, entity, or federal, state, tribal, or territorial government body that seeks to take an action related to the Nationwide Public Safety Broadband Network (NPSBN) or an action that is otherwise under the direct control and responsibility of FirstNet, including, but not limited to, actions that occur under any type of agreement related to the use of the spectrum licensed to FirstNet under station license call sign WQQE234, or actions requiring the approval of or funding provided by FirstNet.

<sup>4</sup> See generally 40 CFR 1507.3 (stating federal agencies with overlapping NEPA requirements related to the same project are encouraged to streamline their NEPA implementing procedures to avoid duplicative NEPA review).

<sup>1</sup> 47 U.S.C. 1426(b).

categorical exclusions.<sup>5</sup> Publication of the notice began a 30-day comment period that ended on July 24, 2017. Comments were received from three (3) sources, consisting of the U.S. Department of the Interior (“DOI”) and two private citizens. A complete set of comments filed in response to the Revised First Responder Network Authority: National Environmental Policy Act Implementing Procedures and Categorical Exclusions may be viewed at <https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=FIRSTNET-2017-0001&refD=FIRSTNET-2017-0001-0001>. The final procedures are available for review at [www.firstnet.gov](http://www.firstnet.gov).

FirstNet consulted with the CEQ on the proposed and final revisions to its NEPA implementing procedures and CEs. The CEQ issued a letter stating that it has reviewed the revised procedures, including CEs, and found it to be in conformity with NEPA and CEQ regulations.<sup>6</sup>

## II. Comments and Agency Responses

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

### A. Use of Existing Infrastructure

*Comment:* One commenter recommended deploying network infrastructure on lands that have already been commercially developed to help mitigate the environmental impact of network deployment on public lands.

*Response:* FirstNet agrees with the comment, and, consistent with the recommendation and its mandate under the Act, has sought and entered into an agreement to utilize, to the maximum extent economically desirable, existing commercial or other communications infrastructure in the establishment of the NPSBN.<sup>7</sup>

### B. Use of Plain Language

*Comment:* One commenter expressed concern that the references in the proposed procedures to the FCC regulations are unclear, and that the

<sup>5</sup> FirstNet, Revised National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 82 FR 28,621 (June 23, 2017).

<sup>6</sup> See CEQ FirstNet Conformity Letter (January 29, 2018) available at [www.firstnet.gov](http://www.firstnet.gov).

<sup>7</sup> 47 U.S.C. 1426(b).

actual proposed changes and process are not written in “plain English” as required by law.

*Response:* FirstNet disagrees that its revised NEPA procedures do not conform to the plain language requirements established by the *Plain Writing Act of 2010* (5 U.S.C. 301 *et seq.*) (“PWA”) and reiterates that the references to the FCC regulations are necessary to support its compliance with both NEPA and FCC environmental rules.

The PWA defines the term “plain writing” to mean writing that is clear, concise, well-organized, and follows best practices appropriate to the subject or field and intended audience.<sup>8</sup> In drafting the revised NEPA procedures, FirstNet sought to follow established plain language guidelines, including those promulgated by the Department of Commerce and those developed by the Office of Management and Budget to provide the agency’s guidance for complying with the PWA.<sup>9</sup> In accordance with the PWA and relevant guidelines, FirstNet’s implementing procedures were drafted in a manner that sought to follow best practices appropriate to the subject or field and intended audience.

In particular, FirstNet, as both a Federal entity and an FCC spectrum licensee, drafted the revised procedures to align its responsibility to comply with NEPA with the requirements placed upon it as an FCC licensee.<sup>10</sup> Consequently, FirstNet’s NEPA implementing procedures, including the references to the FCC regulations, are primarily intended to inform FirstNet’s personnel and applicants, as defined in its NEPA implementing procedures, of FirstNet’s process for complying with NEPA and CEQ regulations while also complying with FCC regulations. Accordingly, FirstNet’s use of, and references to, the FCC regulations in the revised implementing procedures are necessary to ensure that FirstNet’s implementing procedures align with the FCC environmental rules that are already applicable to FirstNet.

### C. Protections for Migratory Birds

*Comment:* Two commenters, consisting of the DOI and one private

<sup>8</sup> 5 U.S.C. 301.3.

<sup>9</sup> See Department of Commerce PLAIN Language, available at <https://www.commerce.gov/page/department-commerce-plain-language>; See also Federal Plain Language Guidelines, available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>.

<sup>10</sup> See 47 U.S.C. 1421(a) (consistent with this provision, the FCC granted an exclusive license to FirstNet for the use of the 700 MHz D block spectrum under Call Sign WQJE234 on November 15, 2012).

citizen, focused their comments on whether the revised procedures include sufficient environmental review requirements to protect migratory birds. In particular, the DOI requested that FirstNet’s procedures include a process for ensuring compliance with the Bald and Golden Eagle Protection Act (“BGEPA”), Migratory Bird Treaty Act (“MBTA”), and Executive Order (E.O.) 13186, Responsibilities of Federal Agencies to Protect Migratory Birds.

*Response:* FirstNet acknowledges the comments and asserts its revised NEPA implementing procedures sufficiently consider environmental resources, as well as support compliance with environmental statutes and regulations that are applicable to the deployment of the NPSBN, including those related to migratory birds. In particular, FirstNet’s revised NEPA implementing procedures include, among other statutory and regulatory references, specific language identifying the BGEPA, and MBTA as well as E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds as areas, that should be considered, as appropriate, as part of a NEPA review. For example, the section entitled “Environmental Review and Consultation Requirements for NEPA Review,” requires FirstNet to prepare NEPA documents concurrently and integrated with environmental analyses and related surveys and studies required by applicable environmental laws and E.O., including the BGEPA and MBTA.<sup>11</sup> Similarly, Appendix D specifies that during the development of a NEPA review, FirstNet should consider the applicability of BGEPA, MBTA, and E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds as part of a NEPA review.<sup>12</sup>

FirstNet originally added and has retained the references to these statutes based on previous comments from the DOI.<sup>13</sup> Accordingly, FirstNet’s NEPA review process, inclusive of the existing language related to MBTA and BGEPA, adequately accounts for the resources protected by these statutes and regulations when applicable to a

<sup>11</sup> FirstNet, National Environmental Policy Act Implementing Procedures (Revised June 2017) available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%200;28Updated%20June%202017%29.pdf>.

<sup>12</sup> See FirstNet, Procedures for Implementing the National Environmental Policy Act, Appendix A—List of Authorities, available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%2028Updated%20June%202017%29.pdf>.

<sup>13</sup> FirstNet, National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 79 FR 23,950, 23,953 (April 29, 2014).

FirstNet proposed action subject to NEPA review.

*Comment:* The DOI recommended that FirstNet's NEPA implementing procedures should be explicitly more protective of migratory birds than the FCC's procedures. The DOI states that the FCC does not "authorize or approve" the siting of towers, and therefore does not have as great a need for procedures for site-specific environmental review and compliance. DOI argues that in contrast to the FCC, FirstNet has a "greater degree of authority and responsibility for siting of communication towers and is conducting several related Environmental Impact Statements." Consequently, DOI argues that FirstNet's procedures should "be explicitly more protective" of migratory birds.

*Response:* FirstNet disagrees with both the DOI's: (1) Assertion that FirstNet has greater degree of authority for siting of communications towers than the FCC and (2) recommendation that FirstNet's NEPA implementing procedures should be explicitly more protective of migratory birds than those of the FCC.

First, in regard to the siting of communication towers, the DOI appears to be confused about the statutory roles of both FirstNet and the FCC and the nature of the relationship between the agencies. The FCC, not FirstNet, is the federal agency primarily responsible for implementing and enforcing the nation's communications law and regulations, including the management and licensing of the electromagnetic spectrum for commercial use.<sup>14</sup> As part of its responsibilities, the FCC requires its licensees and registrants conducting tower or antenna siting activities (e.g., building a new tower or collocating on an existing structure) to comply with FCC rules for environmental review.<sup>15</sup> These rules ensure that licensees and registrants take appropriate measures to protect environmental and historic resources, support FCC compliance with its obligations under NEPA and other applicable environmental laws and regulations, and consider the potential environmental impact of their actions.<sup>16</sup>

FirstNet, as a point of fact, is a licensee of the FCC and is subject to FCC environmental rules, including those related to tower and antenna siting.<sup>17</sup> FirstNet's authority is, therefore, limited to its express statutory

mission to ensure the establishment of the NPSBN which is not greater than, but, rather, subject to, applicable FCC rules and regulations, including those environmental rules applicable to tower and antenna siting. Accordingly, the DOI's comments that FirstNet has a greater degree of authority for siting communications towers than the FCC is incorrect.

Furthermore, as mentioned above, FirstNet asserts that its revised NEPA implementing procedures sufficiently consider environmental resources under NEPA and support compliance with environmental statutes and regulations applicable to the deployment of the NPSBN. FirstNet disagrees with DOI that it must have environmental review standards explicitly more protective of migratory birds than those of the FCC as such requirements would jeopardize FirstNet's ability to fulfill its statutory mission.

FirstNet's statutory mission, as previously stated, is to ensure the establishment of the NPSBN, and in doing so, make efforts to speed the deployment of the network in order to make services available for public safety entities.<sup>18</sup> In addition, FirstNet is required to be a permanent self-funding entity that supports its operations and network deployment primarily through the assessment of various fees.<sup>19</sup> Consequently, to help ensure successful network deployment and ongoing operations, FirstNet, in accordance with its enabling legislation, entered into a public-private arrangement to build, operate, and maintain the NPSBN.<sup>20</sup> As a result, the NPSBN will be built, owned, and operated by a private company as a commercial wireless telecommunications network and must compete in the open market for public safety entity customers.

To that end, additional environmental requirements above and beyond those legally required of all FCC licensees would likely disadvantage FirstNet in its efforts to provide timely and competitively priced services to public safety entities due to the addition of unnecessary costs and subsequent delays in network deployment stemming from these requirements. As a result, FirstNet's ability to meet its statutory mandate and establish and ensure the on-going viability of an interoperable, nationwide broadband network for public safety would be put at significant risk. Accordingly, because the revisions to FirstNet's NEPA implementing procedures comply with

NEPA and CEQ regulations, as well as existing FCC environmental rules applicable to other licensees, the revised NEPA implementing procedures are sufficient to account for environmental resources, such as migratory birds, that may be impacted by network deployment.

#### D. Scope of Term "Wildlife Preserve"

*Comment:* The DOI stated that "wildlife preserve" is not a term defined or used for lands managed by DOI. The DOI argued that FirstNet's use of this term in its procedures creates ambiguity regarding whether "wildlife preserve" includes National Park Systems units, many of which protect wildlife species. In particular, the DOI recommended FirstNet not remove the original language that identifies the scope of environmentally sensitive areas, and suggested that FirstNet continue to include explicit language accounting for Fish and Wildlife Refuge lands.

*Response:* FirstNet acknowledges the comment, but believes the use of the term "wildlife preserve" in concert with the other newly established extraordinary circumstances in its NEPA procedures sufficiently encompasses a proposed action that would fall within the jurisdiction of another federal agency, including National Park Systems units.<sup>21</sup>

More specifically, FirstNet's full list of extraordinary circumstances encompasses resources beyond "wildlife preserves," and includes both "wilderness areas" and "areas that may affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531) ("ESA")."<sup>22</sup>

Furthermore, as a general matter, NEPA requires federal agencies to coordinate environmental reviews with agencies with jurisdiction over specific resources.<sup>23</sup> Thus, FirstNet, when applicable to a proposed action, would be required to coordinate with DOI in

<sup>21</sup> In response to DOI's comment the term "environmental sensitive areas" as used in its implementing procedures was not based on any express statutory definition promulgated by DOI or any other agency.

<sup>22</sup> See FirstNet, Procedures for Implementing the National Environmental Policy Act, Appendix C-List of Extraordinary Circumstances, available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%20%28Updated%20June%202017%29.pdf>.

<sup>23</sup> See 40 CFR 1502.25.

<sup>14</sup> See generally Communication Act of 1934 (47 U.S.C. 151 *et. seq.*); see generally also FCC website available at <https://www.fcc.gov/about-fcc/what-we-do>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See 47 U.S.C. 1421(a).

<sup>18</sup> See generally 47 U.S.C. 1426(b).

<sup>19</sup> See 47 U.S.C. 1428(b).

<sup>20</sup> See generally 47 U.S.C. 1426(b), 1428(a)(2).

order to comply with NEPA. For instance, FirstNet's obligation to account for threatened or endangered species or designated critical habitats under the ESA, is not absolved under the revised NEPA implementing procedures.<sup>24</sup>

Moreover, NPSBN deployment on federal lands or impacting resources under another agency's jurisdiction, including the DOI, will be identified and considered by FirstNet under NEPA, at a minimum, if not directly, through other applicable processes (e.g., permits, licenses) necessary to deploy the network. For example, construction of a new or replacement of an old tower on land managed by the National Park Services (NPS) would likely require FirstNet, or its Applicant, to apply for a Right-of-Way permit, which would trigger a NEPA review by both FirstNet and NPS. In such cases, FirstNet, consistent with CEQ regulations, would coordinate with the NPS to provide the environmental analysis necessary to support both its own and the NPS NEPA review and determination, which would presumably cover resources under the jurisdiction of NPS.<sup>25</sup> Similarly, where NPSBN deployment occurs on non-federal lands, FirstNet, as mentioned above, must still comply with existing environmental laws (e.g., ESA, MBTA, and BGEPA) that may apply to the proposed action. Thus, to the extent these laws apply and require additional consultation or additional environmental analysis prior to undertaking the proposed action, FirstNet, in addition to complying with the specific laws and consistent with its revised implementing procedures, would consider this information as part of any NEPA review.

Furthermore, FirstNet, in accordance with its implementing procedures, upon reviewing a proposed action that would otherwise be categorically excluded, including those installations described by DOI, could determine that the proposed action may potentially have a significant impact and on its own motion require the development of an environmental assessment.<sup>26</sup>

Accordingly, as previously stated, the revised NEPA implementing procedures adequately account for environmental

resources, including those under the jurisdiction of DOI, that may be impacted by network deployment and comply with the requirements established by NEPA and CEQ regulations.

*Comment:* The DOI requested FirstNet address why it is proposing to modify the extraordinary circumstance in Appendix D related to "environmentally sensitive" resources, especially in light of the previous inclusion of language to this CE that was added in the response to DOI comments on FirstNet's originally proposed FirstNet NEPA procedures.

*Response:* FirstNet, as it has continued to mature as an organization, has identified a need to modify its NEPA implementing procedures, CEs, and related extraordinary circumstances to ensure that the standards and process related to NEPA review better aligned with FirstNet's statutory mission and activities related to the deployment of the NPSBN, as well as better assist FirstNet in complying with NEPA as well as CEQ and FCC regulations. Specifically, when FirstNet finalized its original NEPA implementing procedures, the network architecture and operational model for the NPSBN had not yet been finalized. However, since the original NEPA implementing procedures were finalized, FirstNet has identified and approved a network architecture and operation model. Moreover, FirstNet has completed the statutorily mandated request for proposal process, and has entered into a public-private partnership to build, operate, improve, and maintain the NPSBN.<sup>27</sup> These changes required FirstNet to review its NEPA implementing procedures and current CEs to ensure they reflected current agency policies, procedures, program, and mission.<sup>28</sup>

During this review, FirstNet identified that as both an independent federal authority and a licensee of the FCC, it must comply with potentially duplicative regulations, such as those imposed under NEPA, CEQ regulations, and FCC regulations. In particular, FirstNet determined that all NPSBN proposed activities undertaken would be subject to both FirstNet NEPA procedure and FCC rules and regulations. Consequently, FirstNet conducted a review comparing its existing implementing procedures, CEs, and extraordinary circumstances with

the FCC environmental rules and determined that aligning the FirstNet and FCC NEPA processes, including CEs and extraordinary circumstances, was necessary in order to avoid duplicating analysis and documentation resulting in additional costs or delays in network deployment. A key part of aligning these processes was ensuring that the FirstNet processes and standard of review, including CEs and extraordinary circumstances, were consistent with the FCC environmental rules, which necessitated removing and replacing previously established extraordinary circumstances. Accordingly, as the FCC has well established and applied environmental rules for complying with NEPA, specifically applicable to tower construction and siting, FirstNet, among other modifications, removed its previously established categorical exclusion referencing "environmentally sensitive" resources and replaced it with multiple other extraordinary circumstances, which, as discussed above, FirstNet considers both sufficient to account for resources previously identified as "environmentally sensitive," while ensuring a consistent and streamlined NEPA review process as contemplated by CEQ regulations and guidance.

#### *E. General Requirements for Environmental Assessments*

*Comment:* The DOI expressed concerns that all towers lower than 450 feet may be pre-determined as CE eligible and recommended FirstNet prepare an environmental assessment for all new installations that are above 199 feet above ground level (AGL), not co-located with existing facilities or are guyed. Moreover, DOI recommended adherence to FWS Recommend Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning.

*Response:* FirstNet disagrees with the recommendation that new installations that are above 199 feet AGL, not co-located with existing facilities, or are guyed require: (1) An environmental assessment and (2) adherence to the FWS Recommended Best Practices for Communications Tower Design, Siting, Construction, Operation and Decommissioning.<sup>29</sup>

First, as a point of clarity and contrary to DOI's concern, FirstNet will not pre-determine any proposed action, including towers lower than 450, are

<sup>24</sup> See e.g., Endangered Species Act, 16 U.S.C. 1531 *et seq.*; See also e.g., 16 U.S.C. 1531 *et seq.* (which, similar other statutes and regulations, apply to actions separate and independent from NEPA).

<sup>25</sup> See generally 40 C.F.R. 1502.25.

<sup>26</sup> See FirstNet, Procedures for Implementing the National Environmental Policy Act, Appendix C—List of Extraordinary Circumstances, available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%20%28Updated%20June%202017%29.pdf>.

<sup>27</sup> Award Notice, FirstNet Nationwide Public Safety Broadband Network available at <https://www.fbo.gov/notices/6d45e0f8f3f4911f44f9f5b77d614952>.

<sup>28</sup> See 40 CFR 1506.3.

<sup>29</sup> See FWS, Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning (August 2016), <https://www.fws.gov/migratorybirds/pdf/management/usfwscmmtowerguidance.pdf>.

eligible for a CE as such a determination would be inconsistent with NEPA or CEQ regulations. Specifically, NEPA and CEQ regulations require that an agency consider and make a determination related to the environmental impacts of a proposed action.<sup>30</sup> FirstNet, consistent with CEQ regulations and its revised implementing procedures, will conduct site-specific reviews for each new tower to determine the appropriate level of NEPA review.

Second, FirstNet asserts that compliance with its revised NEPA implementing procedures will provide sufficient information for FirstNet to review and make a determination as to the appropriate level of NEPA review for any site-specific action, including new installations that are above 199 feet AGL, not co-located with existing facilities or are guyed. In particular, as discussed above, FirstNet's revised NEPA implementing procedures include, among other statutory and regulatory references, specific language identifying the BGEPA, MBTA, and E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds as areas, that should be considered, as appropriate, as part of a NEPA review.<sup>31</sup>

Furthermore, as previously stated, FirstNet, in accordance with its implementing procedures, upon reviewing a proposed action that would otherwise be categorically excluded, including those installations described by DOI, could, as previously mentioned, determine that the proposed action may potentially have a significant impact and on its own motion require the

development of an environmental assessment.<sup>32</sup>

Accordingly, FirstNet's NEPA review process, inclusive of the existing language related to MBTA and BGEPA and in addition to its various other extraordinary circumstances, adequately accounts for the resources and potential environmental impacts necessary for FirstNet to make a NEPA determination related to the proposed action, including whether the development of an EA is necessary to determine the environmental impacts.

Finally, FirstNet recognizes, as noted by the DOI, that the FWS has formulated best practices for tower siting to address the potential effects of tower and antenna structures on migratory birds. FirstNet has taken steps that will align the deployment of the NPSBN with these best practices, particularly by adopting a strategy that will facilitate tower co-locations. Consistent with the DOI's tower siting guidance, FirstNet has sought and entered into an agreement to utilize, to the maximum extent economically desirable, existing commercial or other communications infrastructure in the establishment of the NPSBN.<sup>33</sup> As a result, the vast majority of antenna structures currently planned for deployment on the NPSBN will be co-locations on existing communication towers or other structures. Thus, FirstNet, in accordance with the DOI voluntary guidelines, has already undertaken efforts to reduce the potential impacts of NPSBN deployment on migratory birds through the design of its program.

Nevertheless, FirstNet, consistent with the FCC's recommendation to its licensees, will consider implementing these voluntary guidelines, as practicable and feasible, in the deployment of the NPSBN, but will not make them a mandatory requirement of NPSBN deployment.

#### F. Other Agency Jurisdiction

*Comment:* DOI recommended that when FirstNet applies categorical exclusions for the placement of antennas in another agency's

jurisdiction, FirstNet should provide that agency with some level of documentation regarding the environmental effects to assist the permitting agency in its review of the proposed action.

*Response:* FirstNet agrees, and, consistent with CEQ regulations, intends to coordinate and provide environmental documents, as appropriate, to other federal agencies having jurisdiction over all or part of a FirstNet proposed action, including those that may have permitting authority applicable to NPSBN deployment.<sup>34</sup>

Dated: January 29, 2018.

**Elijah Veenendaal,**

*Attorney-Advisor, First Responder Network Authority.*

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**BILLING CODE 3510-TL-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

#### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

#### Upcoming Sunset Reviews for March 2018

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in March 2018 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Reviews).

<sup>34</sup> See generally 40 CFR 1502.25.

<sup>30</sup> See FirstNet, Procedures for Implementing the National Environmental Policy Act—E0, Environmental Review and Consultation Requirements for NEPA Review, available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%20%28Updated%20June%202017%29.pdf>.

<sup>31</sup> FirstNet also notes that, in general, the FCC rules require new tower construction to (1) receive approval from the state or local governing authority for the proposed site; (2) comply with FCC rules implementing NEPA; (3) comply with *ESA* and *NHPA* (including Section 106). Moreover, depending on the tower's height and location (generally towers more than 200 feet above ground level or located near an airport), construction may also require Federal Aviation Administration (FAA) notification and clearance and Antenna Structure Registration (ASR) with the FCC. Thus, in addition to FirstNet's implementing procedures, there are other regulatory requirements applicable to FirstNet, as an FCC licensee, which may provide information related to environmental resources and be considered as part of a NEPA and ensure compliance with other applicable laws.

<sup>32</sup> See FirstNet, Procedures for Implementing the National Environmental Policy Act, Appendix C-List of Extraordinary Circumstances, available at <https://www.firstnet.gov/sites/default/files/FirstNet%20Revised%20Implementing%20Procedures%20%28Updated%20June%202017%29.pdf>.

<sup>33</sup> See Award Notice, *supra* note 27.