



Federal Communications Commission
Washington, D.C. 20554

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DA 19-408

SMALL ENTITY COMPLIANCE GUIDE

**Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment**

FCC 18-30

WT Docket No. 17-79

Released March 30, 2018

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

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I. OBJECTIVES OF THE PROCEEDING

In the *Second Report and Order (Order)* in FCC 18-30, WT Docket No. 17-79, the Commission continued its efforts to reduce regulatory impediments by reexamining the types of deployments that are subject to review pursuant to the National Historic Preservation Act (NHPA) and the National Environmental Policy Act of 1969 (NEPA). Specifically, the Commission amended its rules to clarify that the deployment of small wireless facilities by non-Federal entities does not constitute either a “federal undertaking” within the meaning of the NHPA or a “major federal action” under NEPA and thus do not require certain federal historic preservation and environmental reviews. The Commission excluded from these reviews only those facilities that meet the definition of small wireless facilities. That definition includes size limits on antennas, associated equipment, and pole height that best capture facilities that are least likely to implicate federal environmental and historic interests, while ensuring that larger facilities continue to be subject to historic and environmental federal reviews.

The Commission also modified and clarified its practices and expectations for notifying and consulting with Tribal Nations and Native Hawaiian Organizations (NHOs) in historic preservation review, pursuant to Section 106 of the NHPA, for construction projects that are not located on Tribal lands. Specifically, the Commission adjusted its practices associated with the time for Tribal Nations and NHOs to respond after being notified of proposed undertakings and put in place measures to ensure that Tribal Nations and NHOs are provided the information necessary to comment on these undertakings at the time of such notification if they choose to do so. The Commission also clarified that applicants have no legal obligation to pay up-front fees when providing Tribal Nations and NHOs with an opportunity to comment on proposed facilities deployments.

Lastly, the Commission examined its rules and procedures associated with NEPA compliance by (1) amending its rules to provide that applicants ordinarily will no longer be required to prepare an Environmental Assessment (EA) solely because a proposed project would be located in a floodplain, and (2) committed to specific timelines for Commission review of EAs.

II. COMPLIANCE REQUIREMENTS

A. *Small Wireless Facilities Exempt from Historic and Environmental Review (47 CFR § 1.1312(e))*

The *Second Report and Order* excluded small wireless facilities deployed on non-Tribal lands from NHPA and NEPA review. The exemption is set forth at 47 CFR § 1.1312(e).

- Small wireless facilities meeting the following criteria are exempt from historic and environmental review:
 - (i) The facilities are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d), or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - (ii) Each antenna associated with the deployment, excluding the associated equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;
 - (iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
 - (iv) The facilities do not require antenna structure registration under part 17 of this chapter; and
 - (v) The facilities are not located on tribal lands, as defined under 36 CFR § 800.16(x);

and

(vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

B. *Streamlined NHPA Review Procedures for Larger Wireless Facilities (47 CFR Part 1, Appendix B and C)*

The *Second Report and Order* streamlined the historic preservation review process that continues to apply to the deployment of larger wireless facilities by clarifying aspects of the Section 106 Tribal consultation process for construction projects that are not located on Tribal lands.

- *Required Information.*
 - Applicants must provide all potentially affected Tribal Nations and Native Hawaiian Organizations (NHOs) with an accurate and complete Form 620 (new towers) or Form 621 (collocations) submission packet in cases where the applicable form is prepared for the SHPO following the requirements established in the Wireless Facilities NPA.
 - In instances where no Form 620/621 submission packet is required or otherwise prepared because the project is excluded from SHPO review, applicants must provide Tribal Nations and NHOs with an alternative submission packet with information adequate to fully explain the project and its location.
 - At minimum, this alternative submission must include contact information for the applicant, a map of the proposed location of the facility, coordinates of the proposed facility, a description of the facility to be constructed including all proposed elements (such as, for example, access roads), and a description of the proposed site, including both aerial and site photographs.
- *Timeframe for Responses.*
 - A Tribal Nation or NHO must provide a response to an applicant's request for comment on a proposal for a construction project in 30 days. The 30-day period for a Tribal response provided in the Wireless Facilities NPA will begin to run on the date that the Tribal Nation or NHO can be shown to have received or may reasonably be expected to have received the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared).
 - A Tribal Nation or NHO receiving a notification of proposed construction through TCNS is under no obligation to respond until it receives a Form 620/621 submission packet (or alternative submission). Tribes that elect to use TCNS to receive communications are rebuttably presumed to have received the Form 620/621 submission packet on the day it is uploaded to TCNS, and the project may be allowed to proceed after 30 days have passed if the Tribe does not respond. Tribes that elect a communication preference other than TCNS, however, must receive the Form 620/621 submission packet through their communication preference in order for the 30 days to begin, regardless of whether the Form 620/621 is uploaded to TCNS.
 - Consistent with the requirements in Section IV of the Wireless Facilities NPA, applicants shall make contact and communications in accordance with the preferences expressed by the Tribal Nation or NHO. Communications not made in accordance with the preferences expressed by the Tribal Nation or NHO will not begin the period for Tribal response unless and until they are actually received.
 - There is a process to move forward with construction in cases in which Tribal

Nations or NHOs do not respond after having been given the opportunity to review a Form 620/621 submission packet or alternative submission.

- If an applicant does not receive a response within 30 calendar days of the date the Tribal Nation or NHO can be shown or may reasonably be expected to have received the Form 620/621 submission packet (or alternative submission), the applicant can refer the matter to the Commission for follow-up. To facilitate prompt processing of its request, the applicant may submit its referral via TCNS. If a referral is not possible through TCNS, an applicant can also make a manual referral through the Commission's website at <https://www.fcc.gov/tcns-manual-referral>.
 - Upon receiving a referral, the Commission will contact promptly (and, in any case, within five business days) the Tribal Nation's or NHO's designated cultural resource representative by letter and/or email to request that the Tribal Nation or NHO inform the Commission and applicant within 15 calendar days of the date of the letter and/or email of its interest or lack of interest in participating in the Section 106 review. The Commission also will inform the applicant when this letter and/or email has been sent, either by copying it on the correspondence or by other effective means.
 - If the Tribal Nation or NHO does not respond within 15 calendar days, the applicant's pre-construction obligations are discharged with respect to that Tribal Nation or NHO.
 - The information in the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared) will be considered sufficient for Tribal Nations and NHOs to comment on proposed projects.
- *Upfront Fees.*
 - Consistent with longstanding ACHP guidance, Applicants have no legal obligation to pay up-front fees when providing Tribal Nations and NHOs with an opportunity to comment on proposed facility deployments.
 - *Other Fees.*
 - When additional consultant services are needed in order to satisfy an applicant's obligations, an applicant may negotiate and contract with a Tribe for such services but is not obligated to hire a Tribe to perform such consultant services or to accede to Tribal requests for fees in the absence of an agreement. The applicant may generally hire any properly qualified consultant or contractor when expert services are required.

C. *Environmental Assessments of Facilities in Floodplains (47 CFR § 1.1307(a)(6))*

The *Second Report and Order* amended rule 1.1307(a)(6) to remove the requirement for applicants to file an Environmental Assessments (EA) solely because the location of a proposed facility is in a floodplain.

- When a NEPA review is otherwise required, Environmental Assessments *are* still required if the proposed facility will be located in a floodplain, and the proposed structure and associated equipment will *not* be placed at least one foot above the base flood elevation of the floodplain.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Second Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Second Report and Order* became effective July 2, 2018, 60 days after publication in the Federal Register of a summary of the *Second Report and Order* (which contained the full text of the rules).

V. INTERNET LINKS

A copy of the *Second Report and Order* is available at:
<https://docs.fcc.gov/public/attachments/FCC-18-30A1.pdf>.

A copy of the Federal Register Summary of the *Second Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2018-05-03/pdf/2018-08886.pdf>.

A Public Notice describing changes to the Tower Construction Notification System is available at: <https://docs.fcc.gov/public/attachments/DA-18-675A1.pdf>.

A summary of the changes in the *Second Report and Order* and answers to some FAQs is available at: <https://www.fcc.gov/file/14322/download>.