

RATIONALE FOR PROPOSED TEXT CHANGE

The proposed zoning ordinance text change requests amendment of sections 17.14.020 and 17.14.030 to allow microcell cellular communications facilities as defined in section 17.04.483 on buildings greater than or equal to 45 feet or 5 stories in the HDR High Density Residential District as follows:

Add the following subsection D to the list of permitted uses in section 17.14.020:

D. Microcell cellular communications facilities as defined in section 17.04.483 on buildings greater than or equal to 45 feet or 5 stories.

Add the following subsection J to the list of conditional uses in section 17.14.030:

J. Microcell cellular communications facilities not meeting standards as defined in section 17.04.483 on buildings greater than or equal to 45 feet or 5 stories.

THIS PROPOSED TEXT CHANGE FOLLOWS THE MODEL OF EARLIER AMENDMENTS
This amendment adds the HDR High Density Residential District to the list of zoning districts allowing microcell cellular communications facilities. The model for this recommendation is Ordinance 3734. That ordinance added Section 17.04.483 defining microcell cellular communications facilities and amended Sections 17.16.20, 17.18.020, 17.34.020, 17.36.020, 17.46.020, 17.48.020 and 17.56.020 to add microcell cellular communications facilities meeting certain standards to the list of Uses Permitted and amended Sections 17.16.30, 17.18.030, 17.34.030, 17.36.030, 17.46.030, 17.48.030 and 17.56.030 to add microcell cellular communications facilities not meeting certain standards to the list of Uses Permitted on Review. Ordinance 3734 was passed 9-0 by the Planning Commission on August 23, 2001 and passed 8-2 by the City Council upon second reading on September 17, 2001.

THE HDR DISTRICT IS ADJACENT TO OTHER DISTRICTS WHICH ALLOW FOR MICROCELL COMMUNICATIONS FACILITIES

On the zoning map the HDR High Density Residential District is adjacent to districts, which currently allow for microcell communications facilities. Microcell cellular communications facilities as defined in Sec. 17.04.483 are currently allowed in the CB Central Business District, GC General Commercial District, GAD General Agricultural District, Hotel-Motel Zoning District, Public District, Civic Center District, and Business Park District. Given the proximity and similar character of these districts, allowing this use in the HDR district would not be out of character.

ALLOWING MICROCELL COMMUNICATIONS FACILITIES IN THE HDR DISTRICT WILL HELP PREVENT THE PROLIFERATION OF NEW TOWERS

Encouraging rooftop locations over the construction of towers in nearby districts is in accord with public sentiment and city preference. Allowing more microcell options makes it more likely that the minimal solution to a coverage problem is pursued and tower proliferation is reduced.

ANTENNAS CANNOT BE REGULATED BASED ON CONCERNS ABOUT THE EFFECTS OF RADIO FREQUENCY (RF) EMISSIONS

Because of the low intensity of RF emissions from cellular antennas concern over their effects is not a valid rationale for excluding microcell cellular communications facilities from the HDR district. Concerns about health and interference have been

expressed previously with respect to allowing rooftop installations in the HDR district. Unfortunately there is a lot of myth and no small amount of confusion with interference caused by cell phones themselves versus base station antennas with the much greater emissions from tv and radio antennas.

Cellular antennas radiate at a very low level and the beam is narrow and directed along a horizontal axis. There are many rooftop and even hospital rooftop installations around the country. An e-mail from St. Vincent's Hospital in Billings, Montana indicating no concerns or problems experienced with the Western Wireless antennas on the hospital rooftop has been submitted by way of example. The concern is so slight that the FCC has preempted local regulation on the basis of RF emissions where the site will comply with FCC guidelines.

The maximum Effective Radiated Power (ERP) per sector at the proposed Western Wireless site will be 512.861384 watts (a letter from RF Engineering Manager Howard Blair dated 5/27/03 has been provided). This level is well under the FCC threshold of 1000 watts per sector found in Table 1 of 47 CFR § 1.307 (a copy is attached). Consequently, this proposed site is categorically excluded by the FCC from environmental processing and exempt from local regulation on the basis of radio frequency emissions under 47 CFR § 1.307(e) and 47 USC § 332(c)(7)(B)(iv) of the Telecommunications Act of 1996 (a copy is attached).

On June 2, 2000, the FCC published "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance" on radio emissions from cellular and other towers (a copy has been provided). Page 7 of this guide states:

"With respect to personal wireless services, a cellular facility is categorically excluded if the total effective radiated power (ERP) of all channels operated by the licensee at a site is 1000 watts or less. If the facility uses sectorized antennas, only the total effective radiated power in each direction is considered."

This is but a summary of the regulations found in 47 CFR § 1.306 and 47 CFR § 1.307(b)(1). 47 CFR § 1.307(b)(1) provides that the criteria in Table 1 be applied on a per sector basis. 47 CFR § 1.307(e) contains the prohibition on local regulation. Furthermore, the Telecommunications Act of 1996, 47 USC § 332(c)(7)(B)(iv) states:

"(iv) 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 Commission's regulations concerning such emissions."

The rule that a local jurisdiction cannot deny or regulate cellular antennas due to environmental concerns about their radio emissions if the antennas comply with FCC rules on radio emissions was affirmed in Cellular Phone Taskforce v. FCC, 205 F.3d 82 (2d Cir. 2000), cert. denied, 531 US 1070 (2001). See also, Southwestern Bell Wireless v. Johnson County, 199 F.3d 1185 (10th Cir. 1999)(county zoning regulation involving radio frequency interference with public safety communications was impliedly preempted by federal law) and Freeman v. Burlington Broadcasters, 204 F.3d 311 (2d Cir. 2000)(a zoning permit condition requiring permittee to remedy any radio frequency interference with appliances or devices in local homes was preempted by federal law).

APPENDIX C

Text of 47 U.S.C. § 332(c)(7)

(7) PRESERVATION OF LOCAL ZONING AUTHORITY.

- (A) GENERAL AUTHORITY. Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.
- (B) LIMITATIONS.
- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by and State or local government or instrumentality thereof (I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
 - (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
 - (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
 - (iv) No State or local government or instrumentality thereof may regulate the placement, construction, or 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 Commission's regulations concerning such emissions.
 - (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.
- (C) DEFINITIONS. For purposes of this paragraph
- (i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
 - (ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and
 - (iii) the term "unlicensed wireless service" means the offering of telecommunications service using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).

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subpart, the provisions of this subpart shall govern.

[55 FR 20396, May 16, 1990]

§ 1.1304 Information and assistance.

For general information and assistance concerning the provisions of this subpart, the Office of General Counsel may be contacted, (202) 632-6990. For more specific information, the Bureau responsible for processing a specific application should be contacted.

§ 1.1305 Actions which normally will have a significant impact upon the environment, for which Environmental Impact Statements must be prepared.

Any Commission action deemed to have a significant effect upon the quality of the human environment requires the preparation of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) (collectively referred to as EISs) (see §§ 1.1314, 1.1315 and 1.1317). The Commission has reviewed representative actions and has found no common pattern which would enable it to specify actions that will thus automatically require EISs.

NOTE: Our current application forms refer applicants to § 1.1305 to determine if their proposals are such that the submission of environmental information is required (see § 1.1311). Until the application forms are revised to reflect our new environmental rules, applicants should refer to § 1.1307. Section 1.1307 now delineates those actions for which applicants must submit environmental information.

§ 1.1306 Actions which are categorically excluded from environmental processing.

(a) Except as provided in § 1.1307 (c) and (d), Commission actions not covered by § 1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.

(b) Specifically, any Commission action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:

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(1) Involve a site location specified under § 1.1307(a) (1)-(7), or

(2) Involve high intensity lighting under § 1.1307(a)(8).

(3) Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

NOTE 1: The provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) on an existing building or antenna tower unless § 1.1307(a)(4) of this part is applicable. Such antennas are subject to § 1.1307(b) of this part 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) of this part. The provisions of § 1.1307 (a) and (b) of this part do not encompass 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. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

NOTE 2: 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 §§ 1.1307 and 1.1308.

NOTE 3: 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 *one or more of the antennas to be mounted on the tower or structure are subject to the provisions of § 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).*

[51 FR 15000, Apr. 22, 1986, as amended at 51 FR 18889, May 23, 1986; 53 FR 28393, July 28, 1988; 56 FR 13414, Apr. 2, 1991; 64 FR 19061, Apr. 19, 1999]

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) Commission actions with respect to the following types of facilities may significantly affect the environment

and thus require the preparation of EAs by the applicant (see §§1.1308 and 1.1311) and may require further Commission environmental processing (see §§1.1314, 1.1315 and 1.1317):

(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 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: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places. (See 16 U.S.C. 470w(5); 36 CFR 60 and 800.)

NOTE: The National Register is updated and re-published in the FEDERAL REGISTER each year in February. To ascertain whether a proposal affects a historical property of national significance, inquiries also may be made to the appropriate State Historic Preservation Officer, see 16 U.S.C. 470a(b); 36 CFR parts 63 and 800.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in a flood Plain (See Executive Order 11988.)

(7) 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.)

(8) 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.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) The appropriate exposure limits in §§1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in §2.1 of this chapter. For the case of

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the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the

criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
Experimental Radio Services (part 5) Multipoint Distribution Service (subpart K of part 21).	<p>Power > 100 W ERP (164 W EIRP)</p> <p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP</p> <p><i>Building-mounted antennas:</i> power > 1640 W EIRP</p> <p>MDS licensees are required to attach a label to subscriber transceiver or transverter antennas that:</p> <p>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and</p> <p>(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.</p>
Paging and Radiotelephone Service (subpart E of part 22).	<p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP)</p> <p><i>Building-mounted antennas:</i> power > 1000 W ERP (1640 W EIRP)</p>
Cellular Radiotelephone Service (subpart H of part 22).	<p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP)</p> <p><i>Building-mounted antennas:</i> total power of all channels > 1000 W ERP (1640 W EIRP)</p>
Personal Communications Services (part 24) ...	<p>(1) Narrowband PCS (subpart D): <i>non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP)</p> <p><i>Building-mounted antennas:</i> total power of all channels > 1000 W ERP (1640 W EIRP)</p> <p>(2) Broadband PCS (subpart E): <i>non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP)</p> <p><i>Building-mounted antennas:</i> total power of all channels > 2000 W ERP (3280 W EIRP)</p>
Satellite Communications (part 25)	<p>All included. In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that:</p> <p>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and</p> <p>(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.</p>
General Wireless Communications Service (part 26).	<p>Total power of all channels > 1640 W EIRP</p>
Wireless Communications Service (Part 27)	<p>(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz 1670–1675 MHz and 2385–2390 MHz bands:</p> <p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10m and total power of all channels > 2000 W ERP (3280 W EIRP).</p> <p><i>Building-mounted antennas:</i> total power of all channels > 2000 W ERP (3280 W EIRP).</p> <p>(2) For the 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands.</p> <p>Total power of all channels > 1000 W ERP (1640 W EIRP).</p>
Radio Broadcast Services (part 73)	<p>All included</p>
Experimental, auxiliary, and special broadcast and other program distributional services (part 74).	<p>Subparts A, G, L: power > 100 W ERP</p> <p>Subpart I: <i>non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and power > 1640 W EIRP</p> <p><i>Building-mounted antennas:</i> power > 1640 W EIRP</p> <p>ITFS licensees are required to attach a label to subscriber transceiver or transverter antennas that:</p> <p>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and</p> <p>(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.</p>
Stations in the Maritime Services (part 80)	<p>Ship earth stations only</p>
Private Land Mobile Radio Services Paging Operations (part 90).	<p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP)</p> <p><i>Building-mounted antennas:</i> power > 1000 W ERP (1640 W EIRP)</p>
Private Land Mobile Radio Services Specialized Mobile Radio (part 90).	<p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and total power of all channels > 1000 W ERP (1640 W EIRP)</p> <p><i>Building-mounted antennas:</i></p>
Amateur Radio Service (part 97)	<p>Total power of all channels > 1000 W ERP (1640 W EIRP)</p> <p>Transmitter output power > levels specified in § 97.13(c)(1) of this chapter</p>

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101).	<p><i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna <10 m and power>1640 W EIRP</p> <p><i>Building-mounted antennas:</i> power >1640 W EIRP</p> <p>LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:</p> <p>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and</p> <p>(2) references the applicable FCC-adopted limits for radio-frequency exposure specified in § 1.1310</p>

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services (ship earth stations only) and the Specialized Mobile Radio Service authorized under Subpart H of parts 22, 24, 25, 26, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environmental evaluation as specified in §§ 2.1093 and 95.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to Subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting

devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in § 1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in § 1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field

strength limit applicable to that transmitter or facility.

(i) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in §1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(4) *Transition Provisions.* Applications filed with the Commission prior to October 15, 1997 (or January 1, 1998, for the Amateur Radio Service only), for construction permits, licenses to transmit or renewals thereof, modifications in existing facilities or other authorizations or renewals thereof require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radio-frequency radiation that are in excess of the requirements contained in paragraphs (b)(4)(i) through (b)(4)(iii) of this section. In accordance with §1.1312, if no new application or Commission action is required for a licensee to construct a new facility or physically modify an existing facility, e.g., geographic area licensees, and construction begins on or after October 15, 1997, the licensee will be required to prepare an Environmental Assessment if construction or modification of the facility would not comply with the provisions of paragraph (b)(1) of this section. These transition provisions do not apply to applications for equipment authorization or use for mobile, portable and unlicensed devices as specified in paragraph (b)(2) of this section.

(1) For facilities and operations licensed or authorized under parts 5, 21 (subpart K), 25, 73, 74 (subparts A, G, I, and L), and 80 of this chapter, the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with Respect to Human Exposure to Radio Fre-

quency Electromagnetic Fields, 300 kHz to 100 GHz", (ANSI C95.1-1982), issued by the American National Standards Institute (ANSI) and copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York shall apply. With respect to subpart K of part 21 and subpart I of part 74 of this chapter, these requirements apply only to multipoint distribution service and instructional television fixed service stations transmitting with an equivalent isotropically radiated power (EIRP) in excess of 200 watts. With respect to subpart L of part 74 of this chapter, these requirements apply only to FM booster and translator stations transmitting with an effective radiated power (ERP) in excess of 100 watts. With respect to part 80 of this chapter, these requirements apply only to ship earth stations.

(ii) For facilities and operations licensed or authorized under part 24 of this chapter, licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1-1991 (ANSI/IEEE C95.1-1992), "Safety Levels With Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3-1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331. Telephone: 1-800-678-4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1-1991, will apply to all PCS base and mobile stations, as appropriate.

(iii) Applications for all other types of facilities and operations are categorically excluded from routine RF radiation evaluation except as provided in paragraphs (c) and (d) of this section.

(5) *Existing transmitting facilities, devices and operations:* All existing transmitting facilities, operations and devices regulated by the Commission must be in compliance with the requirements of paragraphs (b)(1)

through (b)(3) of this section by September 1, 2000, or, if not in compliance, file an Environmental Assessment as specified in § 1.1311.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (See § 1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (see §§ 1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

(e) 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:

(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.

[51 FR 15000, Apr. 22, 1986, as amended at 52 FR 13241, Apr. 22, 1987; 53 FR 28224, July 27, 1988; 53 FR 28393, July 28, 1988; 54 FR 30548, July 21, 1989; 55 FR 2381, Jan. 24, 1990; 55 FR 50692, Dec. 10, 1990; 61 FR 41014, Aug. 7, 1996; 62 FR 3240, Jan. 22, 1997; 62 FR 9654, Mar. 3, 1997; 62 FR 23162, Apr. 29, 1997; 62 FR 47965, Sept. 12, 1997; 62 FR 61448, Nov. 18, 1997; 63 FR 65099, Nov. 25, 1998; 65 FR 44001, July 17, 2000; 65 FR 59354, Oct. 5, 2000; 66 FR 10613, Feb. 16, 2001; 67 FR 41853, June 20, 2002]

§ 1.1308 Consideration of environmental assessments (EAs); findings of no significant impact.

(a) Applicants shall prepare EAs for actions that may have a significant environmental impact (see § 1.1307). An EA is described in detail in § 1.1311 of this part of the Commission rules.

(b) The EA is a document which 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.

NOTE: With respect to actions specified under § 1.1307 (a)(3) and (a)(4), the Commission shall solicit and consider the comments of the Department of Interior, and the State Historic Preservation Officer and the Advisory Council on Historic Preservation, respectively, in accordance with their established procedures. See Interagency Cooperation—Endangered Species Act of 1973, as amended, 50 CFR part 402; Protection of Historic and Cultural Properties, 36 CFR part 800. In addition, when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe. See § 1.1307(a)(5).