

FCC Adopts Standardized National Security and Law Enforcement Questions for Foreign Ownership Reviews

Applicants with reportable foreign ownership must be prepared to submit responses to standard national security and law enforcement questions before or at the time of filing with the FCC.

On September 30, 2021, the Federal Communications Commission (FCC) adopted a Second Report and Order (the Order) in its proceeding to establish a streamlined and transparent process for coordinating application reviews with the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee). The Order adopts a set of standardized national security and law enforcement questions (Standard Questions) that applicants with reportable foreign ownership will be required to answer and submit to the Committee prior to or at the time that they file their applications with the FCC.

Background

The Order follows the FCC's Executive Branch Review Order,¹ adopted in September 2020 in response to a directive in Executive Order 13913.² That order adopted formal procedures for Executive Branch national security and law enforcement agencies to coordinate their reviews with the FCC, and established firm time frames for such reviews. (For more information, see Latham's *Client Alert* [FCC Adopts Process Reforms for Foreign Ownership Reviews](#).) The Executive Branch Review Order specified that the FCC generally would refer applications for international Section 214 authorizations and submarine cable landing licenses, and applications to assign, transfer control, or modify such authorizations and licenses, where the applicant has reportable foreign ownership, and all petitions for foreign ownership rulings under Section 310(b) of the Communications Act of 1934, as amended (the Act).

The Executive Branch Review Order also required such applicants to provide specific information regarding ownership, network operations, and other matters directly to the Committee prior to or at the time they file their applications with the FCC (rather than waiting for the Committee to issue requests for such information after the FCC referral to the Committee). But this requirement would not take effect until after the specific questions were finalized. The Executive Branch Review Order directed the International Bureau (the Bureau) to develop and solicit comment on the specific questions that must be answered in those submissions.

The Bureau issued a public notice (Public Notice) on March 3, 2021, seeking comment on a set of proposed Standard Questions and a template for the provision of personally identifiable information (PII),³

which were based on the questions that the Committee has been issuing to applicants upon a referral from the FCC.

The Order adopts the Standard Questions proposed in the Public Notice with certain changes and clarifications. Once the Order becomes effective, the Standard Questions will be available on the FCC's website. The following is a list of the Standard Questions included as attachments to the Order, which vary based on the type of license and authorization, and the type of FCC application at issue:

- **Attachment A — Standard Questions for an International Section 214 Authorization Application.** Standard Questions for an international Section 214 authorization application filed pursuant to 47 CFR § 63.18, including a modification of an existing authorization
- **Attachment B — Standard Questions for an Application for Assignment or Transfer of Control of an International Section 214 Authorization.** Standard Questions for an assignment or transfer of control of an international Section 214 authorization application filed pursuant to 47 CFR § 63.24
- **Attachment C — Standard Questions for a Submarine Cable Landing License Application.** Standard Questions for a cable landing license application filed pursuant to 47 CFR § 1.767, including a modification of an existing license
- **Attachment D — Standard Questions for an Application for Assignment or Transfer of Control of a Submarine Cable Landing License.** Standard Questions for an assignment or transfer of control of a cable landing license application filed pursuant to 47 CFR § 1.767
- **Attachment E — Standard Questions for a Section 310(b) Petition for Declaratory Ruling Involving a Broadcast Licensee.** Standard Questions for a petition for declaratory ruling for foreign ownership in a broadcast licensee above the benchmarks in Section 310(b) of the Act filed pursuant to 47 CFR §§ 1.5000-1.5004
- **Attachment F — Standard Questions for a Section 310(b) Petition for Declaratory Ruling Involving a Common Carrier Wireless or Common Carrier Earth Station Licensee.** Standard Questions for a petition for declaratory ruling for foreign ownership in a common carrier wireless or common carrier earth station licensee above the benchmarks in Section 310(b) of the Act filed pursuant to 47 CFR §§ 1.5000-1.5004
- **Attachment G — Personally Identifiable Information (PII) Supplement.** Each set of Standard Questions references a supplement to assist the Committee in identifying PII

Substantive Clarifications and Changes

The Order makes the following clarifications and modifications to the Standard Questions as proposed in the Public Notice, to narrow the scope of certain questions and to reduce burdens on applicants:

Clarification and Improvement of Definitions. The Order corrects the use of inconsistent terms and uses uniform defined terms across each of the questionnaires. For instance, the Order modifies the definition of "Senior Officer" to include "any individual that has actual or apparent authority to act on behalf of the Entity. Depending upon the circumstances, such individuals could include the Chief Executive Officer, the President, Chief Financial Officer, Chief Information Officer, Senior Vice President, Chief Technical Officer, or Chief Operating Officer." (¶ 10) In addition, the term "Controlling Interest" previously was used

only in the questions issued to submarine cable applicants, but for clarity and consistency, the questions in the other attachments were modified to add the defined term. (¶ 12)

Five Percent Ownership Interest. The Order retains the five-percent threshold for ownership interests that applicants must report in responses to the Committee. (¶ 14)

Definition of Relevant Parties. The Order removes transferors and assignors (i.e., the sellers) from the definition of “Relevant Parties” to reduce the disclosures that were previously required from the sellers in a transaction. (¶ 19) The Standard Questions aim to collect information regarding the prospective owners, which are the focus of the Committee’s reviews.

Relationships with Foreign Individuals and Entities. The Order clarifies the scope of the information requested regarding relationships with foreign individuals and entities. In particular, the Order removes the request for information regarding an applicant’s prior relationships from the questionnaire for common carrier wireless and common carrier earth station applicants, but retains the language in the questionnaire for broadcast licensees. In the context of broadcast petitions, a broadcaster’s prior relationships “may identify situations where past agency relationships with foreign principals, such as funding or employment arrangements, may be relevant to an assessment of continuing foreign influence over broadcast content.” (¶ 27) Moreover, each questionnaire is clarified by specifying that “planned relationships” are “current relationships or those reasonably anticipated by negotiations or that are identified under current business plans . . . [including] any situations in which contracts have been signed or where the parties are already in negotiations.” (¶ 29) The Order also clarifies that questions regarding foreign relationships do not require applicants to identify foreign subscribers to an applicant’s retail services or foreign employees, except to the extent such individuals are senior officers or directors, or non-US individuals with physical access to certain facilities, records, networks, or electronic interfaces. (¶ 30)

Background Information Regarding the Applicants. In order to clarify and reduce burdens on applicants, the Order limits the scope of the questions regarding prior FCC and Committee on Foreign Investment in the United States (CFIUS) filings to those in which an applicant previously was identified and reviewed as an applicant or owner. In addition, the FCC adopted a 10-year period for prior FCC filings that are required to be identified. There is no time limit for CFIUS filings to be reported. (¶ 35)

Scope of Individuals for Whom Broadcasters Must Provide PII. The Order clarifies the scope of the individuals for whom PII must be provided in response to the broadcast questionnaires. PII must be provided for non-US employees with access to facilities inside or outside the United States, that store, process, or provide access to US personal data (including data on current, past, and potential customers), or that are used to broadcast into the United States. (¶ 38)

Critical Infrastructure Sectors. Other than for the broadcast questionnaire, the Order updates the Standard Questions to align with the list of US critical infrastructure sectors identified under Presidential Policy Directive 21 (PPD-21).⁴ (¶ 42) In addition, the Order clarifies that applicants must indicate whether it “provides services to, has customers in, or participates in the market in certain sectors of U.S. critical infrastructure.” (¶ 43). If an applicant is unsure whether or to what extent it provides service to a critical infrastructure sector, it should provide an explanatory note in its response.

Proposed Services Checklist. The Standard Questions will continue to include a list of the types of telecommunications and other services that the applicant intends to provide and the relevant technologies they intend to offer. No substantive changes are being made to the list, but the name of the list is changed from “Proposed Services” to “Proposed Services/Technologies/Network Infrastructure.” (¶ 44)

Procedural Clarifications

The Order clarifies and improves certain administrative and procedural aspects of submitting information to the Committee. Most significantly, as noted above, applicants must submit the responses to the Standard Questions directly to the Committee prior to or at the time they file their applications with the FCC. Under the current process, applicants must wait for the FCC to refer the application to the Committee for review, and subsequently the Committee to issue requests for such information.

The Order modifies the instructions of each questionnaire to make clear that all of the submitted information will be treated as business confidential information and exempt from disclosure under the Freedom of Information Act and Section 8 of Executive Order 13913, and that applicants do not have to specifically identify information for such treatment. No changes were made to the treatment of PII, which is already subject to privacy protections under Executive Order 13913. (¶¶ 21-22)

The Order also clarifies and improves the instructions on how applicants can submit joint filings while protecting their confidential information from other parties to the filing, recognizing that “joint applicants have a legitimate interest in preventing the sharing of certain information and identifying which questions an applicant is responsible for answering.” (¶ 23) Specifically, “each applicant should (1) provide a clear statement as to how they have submitted their responses and (2) identify which applicants have filed jointly and which applicants can view each other’s business confidential information.” (¶ 24)

The FCC clarifies that in answering the Standard Questions, applicants should identify any questions that are inapplicable and provide an explanation. In addition, applicants should explain the scope and any limitations of particular responses, rather than consulting with Committee staff prior to submitting the responses. The Committee can elicit additional information as needed through subsequently issued questions tailored to the specific transaction. (¶ 52).

Finally, the Order makes several ministerial revisions and harmonizes the language across the Standard Questions, as well as other non-substantive drafting corrections. (¶ 53).

Implementation

The Standard Questions and the rules in the Executive Branch Review Order that are subject to approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act will become effective upon completion of OMB review. The Bureau will announce the effective date of these requirements through a public notice and will make the Standard Questions available on the FCC’s website at that time. Once the rules are effective, parties filing applications subject to referral to the Committee will be required to submit answers to the Standard Questions to the Committee prior to or at the time they file their applications with the FCC.

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Endnotes

¹ Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Report and Order, 35 FCC Rcd 10927 (2020) (Executive Branch Review Order); *Erratum* (Appendix B – Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020).

² Executive Order No. 13913 of April 4, 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643 (April. 8, 2020).

³ *International Bureau Seeks Comment on Standard Questions for Applicants Whose Applications Will Be Referred to the Executive Branch Review Due to Foreign Ownership*, IB Docket No. 16-155, Public Notice, 35 FCC Rcd 14906 (IB 2020) (Mar. 3, 2021).

⁴ Presidential Policy Directive 21: Critical Infrastructure Security and Resilience (PPD-21), <https://go.usa.gov/xMxNZ> (Feb. 12, 20130).