

Staff Process for Determining if a Supplement to an Environmental Impact Statement is Required in Accordance with Title 10 of the *Code of Federal Regulations*, Part 51.92(a) or 51.72(a)

Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission), Office of New Reactors (NRO) has determined that a process is needed to assess whether a supplement to a final environmental impact statement (FEIS) is required in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 51.92(a) for cases where an FEIS has been issued but for which the proposed action has not been taken (decision on granting or denying the license/permit).¹ Accordingly, this guidance provides a process for use by the environmental project managers (EnvPMs) and subject matter experts (SMEs)² to determine if a supplement to the FEIS is required.³ The process consists of identifying new information that is potentially significant, and analyzing the information to determine if it meets the criteria provided in 10 CFR 51.92(a) for preparation of an FEIS supplement.

The reason for developing this process is to provide guidance for the staff in the event that there is an extended delay (e.g., more than a year) between issuance of the FEIS and the onset of the mandatory hearing, which is required before a final agency decision on the license application. The extended delay would increase the likelihood of new and significant information emerging, which would necessitate a supplement to the FEIS. This process will ensure that the FEIS can be relied upon by the decisionmaker (Commission) to make an informed decision after an extended delay. The time that has passed post-FEIS issuance has no bearing on whether new information is significant or not. For example, if new information is identified two weeks after the FEIS is issued, it must be evaluated to determine if it is significant.

Until the agency action is actually taken, if the NRC becomes aware of new information, it remains obligated to consider the significance of that information and determine if a supplement to the FEIS is required (see [10 CFR 51.92](#)). For the purposes of this process, from this point forward the term “new information” should be understood to include substantial changes to the proposed action and new and potentially significant changes in circumstances or information relevant to environmental concerns.

The process described in this guidance document does not alter this overarching obligation to determine the significance of any newly-identified information brought to the staff’s attention. Rather, the process defines more specifically how the staff will identify and evaluate new and

¹ While this process is written specifically for identifying and evaluating new information after an FEIS has been published, the approach to evaluating new information can also be applied to new information that is identified after a draft environmental impact statement (DEIS) is published, but before the FEIS is published. In such situations, the staff will use this process to evaluate the new information, but not to identify new information. Significant new information requires the staff to supplement the DEIS in accordance with 10 CFR 51.72(a). The two conditions in 10 CFR 51.72(a) that require a supplement to a DEIS are identical to the two conditions in 10 CFR 51.92(a).

² SMEs include both NRC technical staff and contractor staff when needed.

³ The process outlined in this document is not the process used by staff in determining new and significant information during the development of a draft or final EIS for a combined license referencing an early site permit. For details on that process the staff should review the “Introduction,” pages 12-16, of NUREG-1555, “Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Environmental Standard Review Plan,” issued in 2007 and 10 CFR 51.75(c)(1).

potentially significant information during an extended delay after the FEIS is issued and prior to the start of the mandatory hearing phase for a 10 CFR Part 52 licensing proceeding. There are three phases to this process when it is applied after an FEIS has been published: (1) identify new information, (2) evaluate and document the new information to determine if it is significant, and (3) determine whether supplementation is required. Table 1 at the end of this document shows the process step-by-step. The applicability of this more specific process ends (depending on the applicable presiding officer for the mandatory hearing) either by submittal of the staff's SECY paper to the Commission or the notification to a designated Licensing Board of the issuance of the staff's review documents.

Background

During the development of the FEIS, the NRC staff is expected to maintain awareness of new and potentially significant information that could change conclusions in the DEIS. For example, the EnvPM is engaged with stakeholders (e.g., applicant, public, State, Tribal, local governments, and other Federal agencies), to identify any new information that may be significant for the period after a DEIS has been published, but before the FEIS is published. NEPA and the NRC's regulations do not explicitly require the staff to actively gather new information once the FEIS is issued. However, there may be instances after the FEIS is issued in which the NRC staff becomes aware of new information that may or may not be significant. Courts have held that new information is significant when it presents a "seriously different picture of the environmental impact" of the Federal action or reveals previously unanalyzed impacts (See *Ark. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 431 F.3d 1096, 1102 (8th Cir.) 2005). In the event an agency's decision not to supplement is challenged, the agency is more likely to prevail when the agency documents its review, relies on established experts, directly responds to the new information, and thoroughly explains its rationale.⁴

If the mandatory hearing will be delayed more than a year after the FEIS is issued, it is the responsibility of the EnvPM, in consultation with management, to decide whether to implement the new information review process described below to identify and evaluate new and potentially significant information. This process is in addition to the ongoing awareness of the EnvPM regarding the project and the SMEs regarding their area of expertise. In this process the EnvPM, with the assistance of the SMEs as needed, would expend additional effort to review the sources identified in Enclosure 4 (ML13199A199) and contact other Federal and state agencies. If the process is not implemented, the EnvPM (with the assistance of appropriate technical staff, as needed) is still expected to maintain awareness of new issues that could be significant through interactions with stakeholders.

In making the decision whether to implement the process described below, the EnvPM and management may consider factors such as resource implications and the expected duration of the delay. For example, if the delay is expected to be a number of years, the EnvPM, in consultation with management could decide to defer the implementation of this process until a time closer to the start of the hearing (e.g., 1-2 years before the mandatory hearing).

⁴ See, e.g., Maxwell C. Smith and Catherine E. Kanatas, *Acting With No Regret: A Twenty-Five Year Retrospective of Marsh v. Oregon Natural Resources Defense Council*, 32 UCLA J. ENV'TL. L. & POL'Y 329 (2014). This article further observes that courts generally have agreed with an agency's conclusion that new information is not significant when that information is similar to information addressed in the previous analysis in the EIS; is vague or speculative; or does not undermine an important assumption in the EIS.

Management should ensure that the staff is prepared to explain at the hearing the actions it implemented to determine whether the FEIS needed to be supplemented.

During the period of time between publishing the DEIS and publishing the FEIS, the staff is already actively searching for new and potentially significant information. Therefore, the specific process to identify and document new information discussed below does not need to be implemented at that time. However, the staff must still determine whether any new information identified is significant and warrants a supplement to the DEIS pursuant to 10 CFR 51.72(a).

The NRC regulations require that an FEIS supplement be prepared when either of two conditions is met. These are set forth in 10 CFR 51.92(a) as follows:

- (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or
- (2) There are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The NRC also has discretion to supplement an FEIS or DEIS when the staff determines preparation of a supplement will further the purposes of the National Environmental Policy Act (NEPA) ([10 CFR 51.92\(c\)](#)). Depending on the complexity of the issue(s), supplementation of a DEIS or FEIS can take from several months to over a year.

Responsibilities

The EnvPM, in consultation with management, is responsible for deciding whether to implement the new information review process and is responsible for ensuring that new and potentially significant information of which the staff is aware is evaluated to determine if it is significant. The EnvPM meets this responsibility by managing the new information review process described in this document for his/her project. The EnvPM interacts with and receives information from the applicant, the SMEs and other stakeholders. The EnvPM is responsible for managing the process for their project and providing direction to the staff and any contractors performing the review.

The methods used for maintaining awareness of new and potentially significant information prior to issuing the FEIS can be used after the FEIS is issued. If there will be a significant delay between issuing the FEIS and the start of the mandatory hearing, the EnvPM will determine, after discussing with management, whether the new information review process in this document needs to be implemented and the timing for the information searches. If the new information review process is implemented, the EnvPM will do the following:

- Notify management, the SMEs, the Office of General Counsel (OGC) and document in the Agencywide Documents Access and Management System (ADAMS) that the process is being implemented. This initial documentation may include a statement on the frequency that the checks for new information will be conducted.
- Implement the process and maintain related documentation in ADAMS.
- Update management on the progress. This can be accomplished at Project Performance Meetings.

- Track new information issues to resolution using the Tracking Table Template⁵ (Enclosure 2, ML13199A178).
- Perform or have the appropriate SME perform the analysis of the new information. If the EnvPM performs the analysis the SME should be included in the concurrence chain.
- In conjunction with the appropriate SME, issue requests for additional information (RAIs) regarding new information, as needed.
- Engage management, OGC, and any cooperating agencies to make a decision to supplement the FEIS. If the decision is made to supplement the FEIS, notify management, OGC⁶, and any cooperating agencies.
- If a contested hearing is to be held, consult with OGC regarding the need to disclose new information that may be relevant to admitted contentions (see [LIC-201 Rev. 3, NRR Support to the Hearing Process](#)).

SMEs are responsible for the following:

- As directed by the EnvPM, identifying new information.
- As directed by the EnvPM, performing the analysis of new information to determine its significance and documenting the analysis using the template in Enclosure 3 (ML13199A193).
- Alerting the EnvPM, if through the above analysis, new information is identified that is a substantial change to the proposed action or that may change any impact level in the FEIS.
- Informing the EnvPM of any (1) need for additional information (including potential RAIs), (2) meetings with other stakeholders, or (3) additional analysis that will be necessary to determine the significance of the new information.

Management is responsible for the following:

- Determining if the EnvPM's decision to implement the new information review process described in this document, and the planned schedule for associated activities, is appropriate.
- Overseeing the staff's progress implementing the process.
- Ensuring resources are available to implement the process.
- Concurring on any Analysis Memo (Enclosure 3) for new and potentially significant information.

⁵ As these tables are simply a tracking tool for the EnvPM, they should be entered into ADAMS and would generally remain non-public.

⁶ OGC will instruct the staff how to, through proper channels, notify the Atomic Safety and Licensing Board (Board) (reference Section 4.9 Board Notification in [LIC 201 Rev.3, NRR Support to the Hearing Process](#)), the Commission, any cooperating agencies, and the applicant.

- Making decisions regarding whether new and significant information warrants supplementing the EIS.

OGC is responsible for:

- Reviewing any Analysis Memo (Enclosure 3) for legal sufficiency.
- Advising the staff on appropriate notifications to the presiding officer, the Commission, cooperating agencies, and the applicant.

Process for Identification of New and Potentially Significant Information

If the EnvPM, in consultation with management, decides to implement this formal process for a particular review, the identification phase of new information starts after the FEIS is issued and continues until just prior to the mandatory hearing.⁷ While the process can be initiated at any time following FEIS issuance, it should generally begin at least one year prior to the mandatory hearing when feasible.

The staff may identify new information by checking a variety of sources (see Sample Checklist in Enclosure 4). SMEs are to coordinate with the EnvPM before starting a search for new information. Generally, searches should only take a few hours. The frequency of searches for new information should be determined by the EnvPM in consultation with management based on project circumstances.

While implementing this formal process, the EnvPM, with the support from an SME as necessary, should periodically engage the applicant, State, Tribal and local governments, and other Federal agencies. The applicant in particular would be aware of substantial changes to its proposed action that are relevant to environmental concerns. Information from other stakeholders and media reports can also trigger the staff to inquire about changes to the project.

In consultation with management based on project circumstances, the EnvPM should send a letter to the applicant requesting to be notified of changes to the proposed project or new information that is relevant to environmental concerns (Enclosure 5, ML13199A202) shortly after issuing the FEIS. The basis for this request is 10 CFR 51.41, which provides that the Commission may require an applicant to submit information that may be useful in aiding the Commission in complying with Section 102(2) of NEPA.

There may also be self-revealing information in media reports, such as the occurrence of severe natural events such as earthquakes, tsunamis, floods, hurricanes, etc. The EnvPM will likely be aware of this information even if the staff is not actively monitoring for new information and, like other new information, it would be evaluated as potentially significant information that may result in a supplement.

There are analyses in the FEIS that rely on information that may change over time. For example, if the mandatory hearing is delayed until several years after the FEIS is issued, then the time frame for the need for power analysis may have changed, new census data may have been issued, or there may be a change in the viability of energy alternatives. There may also

⁷ As described earlier, this process for identification of new and potentially significant information ends (depending on the applicable presiding officer for the mandatory hearing) either by submittal of the staff's SECY paper to the Commission or the notification to a designated Licensing Board of the issuance of the staff's review documents.

be changes in the occurrence of or potential impacts to Federally-listed or state-listed threatened, endangered, or special status species. New statutes or statutory amendments may require additional review or procedural requirements. By implementing the process described in this guidance, the EnvPM and SMEs will be able to maintain awareness of changes to these types of information. The EnvPM should engage OGC (with support from SMEs as appropriate) to determine if there are any new or modified regulations, or any new or modified environmental legislation that is relevant to the project.

The types of new information the staff is attempting to identify are those that may have a significant effect on the environment. Examples of new information that could warrant further evaluation include (but are not limited to) substantial changes⁸ in the following:

- the amount of land disturbed;
- water use;
- non-radiological effluents;
- radiological effluents;
- the individual, occupational, or public radiation exposure;
- census data compared to the projections used in the FEIS;
- more than minimal increase in the probability or consequences of an accident evaluated in the FEIS;
- changes to power level or any of the values analyzed in the FEIS to meet the requirements of [10 CFR 51.52](#), *Environmental effects of transportation of fuel and waste*;
- reduction in projected power demand below the power supplied by the proposed project;
- change in regulatory requirements;

The examples above are meant to provide the EnvPM with a starting point for assessing whether the changes could be significant. Simply identifying a change of this type does not automatically mean the information would be significant and would require supplementation. The EnvPM should remain aware of changes associated with the safety review of the license application and changes directed by the Commission (e.g., changes in policy regarding radiological monitoring or severe accidents, etc.) that could affect the environmental impacts of the project.

Changes in the proposed action or new information that would qualify for a categorical exclusion under [10 CFR 51.22](#) would not normally qualify as potentially significant information unless special circumstances apply as described in 10 CFR 51.22. In addition, according to 10 CFR 51.22(a), any action meeting the definition of a categorical exclusion would “not individually or cumulatively have a significant effect on the environment” and therefore would not normally meet the criteria for supplementing an EIS.

⁸ The context of the change must also be considered. A change that might be insignificant at one site might be significant at another site, depending on the circumstances.

After new information relevant to the environmental review has been identified, the EnvPM should document it in a tracking table (Enclosure 2). The tracking table should be maintained in ADAMS as non-publicly available.

New information is only taken to the next step of the process and analyzed if the EnvPM and/or SME decide that the information could affect the previously determined environmental impact or if the new information was not previously analyzed and is viewed as having potential environmental impact.

Evaluation and Documentation of New Information to Determine if it is Significant

As discussed earlier, new information is significant when it presents a “seriously different picture of the environmental impact” of the Federal action or reveals previously unanalyzed impacts. Much new information will not likely need a detailed analysis. However, there should be an explanation as to why the new information is or is not significant in the appropriate column in Enclosure 2. Some issues may affect multiple resource areas and the analysis should address those resource areas. The EnvPM should work with the SMEs, as appropriate, to document an explanation in Enclosure 2. If a significance determination cannot be made with a simple evaluation (i.e., clear cases), then the new information should be further analyzed. The EnvPM should contact the SME to perform the evaluation. The EnvPM can, if necessary to complete the evaluation, request additional information from the applicant (see NRO-REG-101, Processing Requests for Additional Information) or conduct a site audit (see NRO-REG-108, Regulatory Audits).

When new information is identified for a previously evaluated issue, reconsideration of conclusions regarding the impacts for that issue is limited in scope to assessment of the relevant new information. The scope of the assessment does not include review of other facets of the issue that are not affected by the new information.

As an example of a “clear case,” suppose an applicant modifies the design of the intake screens in response to a request from a State agency to further reduce the impacts of impingement, below what was evaluated in the FEIS, and the change does not increase impacts in any other resource area. In such a case, the new information does not have the potential to affect the findings or conclusions of the NRC staff’s evaluation of the issue because the design change is reducing the impacts below what was evaluated in the FEIS. Accordingly, it would not be “significant” new information and would not warrant supplementation of the FEIS. As another example, suppose an applicant completes a traffic study for the State that shows somewhat different numbers of vehicles on the road than those used for the FEIS, but no differences in the Level of Service (LOS)⁹ on the roads compared to the LOS that the staff used as the basis for its conclusion in the FEIS. In such a case, the new information would not be significant and would not require supplementation of the FEIS because there would be no potential for the new information to affect the findings or conclusions of the NRC staff’s evaluation of the issue.

Enclosure 3 contains the “Analysis Memo Template,” for the SME or EnvPM to use to document the analysis of the new information. If there is a change to the project then the staff can ask for information in an RAI to inform the analysis in Enclosure 3 in accordance with 10 CFR 51.41. In many cases, the staff should be able to evaluate the issue without issuing an RAI. The guidance used by the staff in evaluating the new information is the same as for the EIS, e.g.,

⁹ Level of service is a qualitative measure that describes a range of operating conditions for traffic from free flowing to stop and go conditions.

NUREG-1555. However, the level of analysis should be commensurate with the potential impact of the change on one or more resource areas.

It is recommended that the staff still document evaluations of any new information relevant to the environmental review in the New and Potentially Significant Information Tracking Table (Enclosure 2) and in an analysis memo (Enclosure 3) if appropriate, even if the formal identification process discussed in this document has not been implemented for the project.

For supplementation of a DEIS, the process of evaluating new information is similar to that for the FEIS, except that the use of the enclosures is not necessary. Between publication of a DEIS and FEIS, the review team is still in the process of conducting the “hard look” under NEPA. Therefore, new information will typically come to the attention of the staff through public comments and through ongoing interactions with agencies and other stakeholders, or the applicant. New information that has the potential to be significant, but is determined not to be significant should be addressed in the FEIS, either in the response to comments or in the staff’s evaluation of the impacts of the proposed action. If the new information is determined to be significant, then a supplement to the DEIS is necessary.

Determination on Supplementation

If the results of the analysis of new information demonstrate that it potentially meets either of the criteria in 10 CFR 51.92(a) (or 51.72(a) for a DEIS), the SME should notify the EnvPM. The EnvPM will brief management on the outcome of the analysis and management will make a decision on whether to supplement the EIS. The EnvPM will confer with management and OGC to develop the approach for informing any cooperating agencies and other stakeholders. The NRC staff and any agencies cooperating on the EIS will then determine if supplementation of the FEIS or DEIS is required. Issuing a supplemental EIS could take from several months to over a year, depending on the complexity of the issue(s) being addressed. If supplementation is required then the EnvPM should notify management and OGC. OGC will advise on how to notify the applicant and, depending on the status of any hearing, the Atomic Safety and Licensing Board, the Commission, and other parties to the adjudicatory proceeding.

The threshold for supplementing an EIS is fairly high. Only information that is both new and *significant* will result in supplementation of a DEIS or FEIS. The Commission has stated that the staff need not supplement an EIS “every time new information comes to light after the EIS has been finalized,”¹⁰ rather, to require a supplement, “[t]he new information must paint a ‘seriously different picture of the environmental landscape.’”¹¹ The staff can refer to the current Introduction to the [Environmental Standard Review Plan \(NUREG-1555\)](#) for further information. Other resources include [Regulatory Guide 4.2, Supplement 1, Revision 1, “Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications,”](#) and the preamble to the final update to Part 52 (including changes to Part 51) dated August 28, 2007, in particular [72 FR 49430 to 49431](#).

¹⁰ *Hydro Resources, Inc.* (Albuquerque, NM), CLI-99-22, 50 NRC 3 (1999) (quoting *Marsh v. Oregon*, 490 U.S. 360, 373 (1989)).

¹¹ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 28 (2006) (emphasis in original; internal citations omitted).

As an example of a decision to supplement, the ["Draft Environmental Impact Statement for an Early Site Permit \(ESP\) at the North Anna ESP Site," NUREG-1811](#), was supplemented based on Dominion (the applicant) making a major change to the cooling system after the DEIS was published (but before the FEIS was published). In this case, the information was self-revealing through the applicant notifying NRC of its proposed project changes. The basis for supplementing the draft EIS was documented in a *Federal Register* notice announcing the NRC staff's plans to prepare the supplement.

Process Close-Out

At the end of this process, the Director of the Division of New Reactor Licensing (or equivalent) will send a memorandum to the Director of the Office of New Reactors summarizing the results of the implementation of the process. Enclosure 6 (ML14325A561) contains the "Close-Out Memo Template," for the EnvPM to use to document the results of the process.

Hearings

If management determines that the EIS should be supplemented, then the EnvPM would notify OGC. OGC would advise the staff on proper notification of the presiding officer and all parties for either a mandatory hearing or an adjudicatory hearing on an environmental contention.

The Commission paper that is submitted at the start of the mandatory hearing should describe this process and how it was implemented. The Commission paper may include a brief description of selected issues for which an evaluation was performed under this process, using input from the technical staff and OGC. However, this description (if included) should only discuss any non-routine issues that the staff concludes may be useful to the presiding officer in rendering its decision. Examples would include issues of high public interest and selected issues for which a detailed evaluation was required to determine that the issue was not significant. Any decisions concerning dissemination of the tracking table (Enclosure 2) to the presiding officer should be made using input from OGC. Once the project is in the mandatory hearing phase, the staff does not need to actively seek out new and potentially significant information, but should remain aware of any recent new information or events that may come to light after the Commission paper has been issued that might be discussed during the mandatory hearing.

Table 1 – Summary of Process to Identify New and Significant Information

<p>(1) Once an FEIS or SEIS is published, EnvPMs and SMEs monitor for new and potentially significant information that could affect the findings or conclusions of the NRC staff's evaluations in the FEIS or SEIS. This includes the following:</p> <ul style="list-style-type: none">• EnvPMs listen for potential new information during discussions with the applicant (during drop-ins, for example) or the safety PM and be alert to changes in regulations that could affect the evaluations in the EIS.• SMEs pay attention to changes in their areas of expertise that could affect decisions made and inform the EnvPM of such changes.
<p>(2) Once the FEIS or SEIS is complete, the EnvPM sends a letter to the applicant requesting that it inform the EnvPM about new and significant information it identifies and to copy the EnvPM on correspondence with other State and Federal agencies. (See enclosure 5 for a template).</p>
<p>(3) If the mandatory hearing will be delayed more than a year after the FEIS is issued (or as determined appropriate by the EnvPM), the EnvPM should determine if the formal process for new and significant information should be implemented, identify a frequency for checking for information, have management approve the decision, and communicate the decision to implement the process to stakeholders.</p>
<p>(4) The EnvPM checks for new and potentially significant information at the identified frequency. Generally, searches should only take a few hours. Enclosure 4 lists potential areas to check. The EnvPM's normal monitoring of media reports is likely to be a sufficient check for many resource areas, but for resource areas where media reports may be insufficient (or where there is some other specific reason to expect changes to have occurred), the EnvPM should consider other applicable information sources for that resource area or assign an SME to do so.</p>
<p>(5) The EnvPM, with assistance from the SME as necessary, should determine whether any new information that is identified could affect the evaluations in the EIS. If the new information clearly would not affect the evaluations in the EIS, document the new information and finding in a table to track new information (template in Enclosure 2). Most new information is expected to fall into this category.</p>
<p>(6) If the EnvPM or SME cannot initially determine if the information affects the evaluations in the EIS, the EnvPM or SME should perform additional analyses to make this determination. The EnvPM can, if necessary, request additional information from the applicant (see NRO-REG-101 Processing Requests for Additional Information) or conduct a site audit (see NRO-REG-108 Regulatory Audits). Once the analyses are complete, the EnvPM should ensure they are documented (using the template in Enclosure 3) and saved in ADAMS. Additionally, the EnvPM</p>

should document the new information, finding, and action in the table to track new information (template in Enclosure 2).

(7) If the results of the analysis of new information demonstrate that it potentially meets either of the criteria in 10 CFR 51.92(a) (or 51.72(a) for a DEIS), the EnvPM will confer with management and OGC to develop the approach for informing any cooperating agencies and other stakeholders. NRC management and any cooperating agencies will then determine if supplementation of the FEIS or DEIS is required. OGC will advise on how to notify (1) the applicant and, (2) depending on the status of any hearing, the Atomic Safety and Licensing Board (ASLB), the Commission, and other parties to the adjudicatory proceeding

(8) The EnvPM will continue to check for new information until submittal of the staff's SECY paper to the Commission or the notification to a designated ASLB of the issuance of the staff's review documents.