



POLICY ISSUE

(Notation Vote)

March 31, 2021

SECY-21-0036

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: EVIDENCE-BUILDING AND EVALUATION POLICY STATEMENT

PURPOSE:

The purpose of this paper is to seek Commission approval to publish the enclosed final policy statement, "Evidence-Building and Evaluation" in the *Federal Register* (Enclosure 1). The policy statement was developed in accordance with the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115-435) ("Evidence Act") and implementing guidance from the Office of Management and Budget (OMB). The policy statement describes the general standards that guide the U.S. Nuclear Regulatory Commission's (NRC) planning, conduct, and use of "evidence-building" activities, which is defined by OMB to include, among other activities, "program evaluation" (evaluation).¹ The NRC previously published a "Proposed Evaluation Policy Statement" in the *Federal Register* on December 8, 2020 (85 FR 79042). The NRC staff has expanded the policy statement to include all types of evidence-building applicable to the NRC, based on comments received from the public.

CONTACT: Matthew R. Meyer, OEDO
301-415-6198

¹ The Evidence Act defines "evaluation" as "an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency" (5 U.S.C. § 311(3)). Evaluation can look beyond the program, policy, or organizational level to include assessment of specific projects within a program or the effectiveness or impact of specific strategies relating to agency programs, policies, or organizations. OMB, M-20-12, "Phase 4 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Program Evaluation Standards and Practices," Appendix A (March 10, 2020) (M-20-12).

BACKGROUND:

The Evidence Act was enacted to enhance agency evidence-building activities, make data more accessible, and strengthen privacy protections with respect to data acquired for statistical purposes.² “[T]he Evidence Act creates a new paradigm by calling on agencies to significantly rethink how they currently plan and organize evidence-building, data management, and data access functions to ensure an integrated and direct connection to data and evidence needs.”³ The Evidence Act requires each agency to name an Evaluation Officer. At the NRC, the Director of the Office of Nuclear Regulatory Research holds this position and is required to “establish and implement an agency evaluation policy.”⁴ The Evidence Act also empowers OMB to issue “program evaluation” guidance that is consistent with widely accepted standards for evaluation, which agencies must then implement.⁵

OMB has provided guidance to agencies on establishing an agency evaluation policy based on “approaches that Federal agencies have found useful.”⁶ This guidance includes “[e]nsuring that the agency evaluation policy incorporates the evaluation standards” recommended by OMB and any other “standards and principles deemed important for the agency.”⁷ OMB developed their evaluation standards through an interagency council that “reviewed an extensive list of source documents to identify widely accepted standards for evaluation.”⁸ The interagency council identified the following evaluation standards: relevance and utility, rigor, independence and objectivity, transparency, and ethics.⁹ OMB’s guidance states that, once published, an agency’s evaluation policy “should guide the agency’s activities throughout the evaluation lifecycle.”¹⁰

In SECY-20-0088, “Proposed Evaluation Policy Statement,” dated October 1, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML20268A650](#)), the staff provided a proposed evaluation policy statement to the Commission for its consideration. The proposed evaluation policy statement included the five evaluation standards developed by the interagency council, as well as an agency-specific standard (collaboration) developed by NRC staff. On November 10, 2020, the Commission approved the proposed evaluation policy statement in Staff Requirements Memorandum SECY-20-0088, “Proposed Evaluation Policy Statement” (ADAMS Accession No. [ML20315A526](#)), for publication in the *Federal Register* for a 30-day comment period. The proposed evaluation policy statement was published in the *Federal Register* on December 8, 2020 (85 FR 79042).

DISCUSSION:

As a result of the December 8, 2020, publication in the *Federal Register*, the NRC received letters from Louisiana Energy Services, LLC dated January 6, 2021 (ADAMS Accession No. [ML21061A043](#)), and the Nuclear Energy Institute dated January 7, 2021 (ADAMS Accession No. [ML21061A044](#)), that contained a total of nine comments. The comments primarily requested that the NRC clarify the applicability of the policy statement to activities beyond

² Pub. L. No. 115-435, 132 Stat 5529 (2019) (Evidence Act).

³ OMB, M-19-23, “Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance,” 2 (July 10, 2019) (M-19-23).

⁴ 5 U.S.C. § 313(d)(3).

⁵ Evidence Act § 101(e), 132 Stat. 5534 (5 U.S.C. § 311 note).

⁶ M-20-12, Appendix C.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.* at 3-5.

¹⁰ *Id.*, Appendix C.

“evaluation” as that term is defined in the Evidence Act, such as, licensing, oversight, rulemaking, and other NRC regulatory processes (e.g., reviews conducted under the National Environmental Policy Act or the NRC’s Backfit Rule). The NRC staff has included a comment resolution table in Enclosure 2.

In response to these comments, the NRC staff has changed the title of the policy statement to “Evidence-Building and Evaluation Policy Statement” and inserted “evidence-building” throughout the policy statement in lieu of or in addition to “evaluation,” as appropriate. As previously stated, “evaluation” as defined in the Evidence Act (i.e., a systematic analysis of the effectiveness or efficiency of an agency program, policy, or organization) is one of several means through which an agency can engage in “evidence-building” to support regulatory and policy decisionmaking.¹¹ The staff recommend this change to avoid the potential for confusion because in practice the NRC frequently uses the general term “evaluation” to describe activities that are not “evaluations” under this Evidence Act definition, but instead are considered other types of “evidence-building.” As one illustrative example, a “safety evaluation report” prepared by the NRC staff in support of a licensing action is not an “evaluation” consistent with the Evidence Act definition because it is an analysis of a particular application against NRC regulatory requirements, rather than an assessment of the effectiveness or efficiency of an NRC program or policy. Other NRC activities which may be thought of in ordinary parlance as “evaluations,” or “evaluative” in nature, also fall within other components of “evidence-building” as defined by OMB.¹²

Although this change results in an expansion of the scope of the policy statement, the NRC staff does not believe that this will result in an increase in burden or a practical change for the agency. First, when the policy statement was initially drafted, the term evaluation was being used in a broader sense to include many of the activities conducted by the NRC (e.g., safety evaluations) that fall into the larger category of evidence-building. This is also evident from statements in the “Background” section of the *Federal Register* notice for the Proposed Evaluation Policy Statement provided by the Commission via SRM-SECY-20-0088 that described broader evidence-building activities at the NRC as “evaluations” (e.g., “Historically, the NRC has relied on high-quality evidence for its environmental and safety evaluations of civilian applications to utilize nuclear technologies.”).

Second, as recognized in both the draft and final policy statement, OMB’s government-wide evaluation standards motivating the policy statement overlap with the NRC’s Principles of Good Regulation and the Organizational Values that have guided the agency’s “evidence-building” activities since before the passage of the Evidence Act. Therefore, the NRC staff does not believe that the expansion represents a departure from the previous intent of the policy statement nor would the Commission be breaking new ground by stating that it is the policy of the agency, when engaging in “evidence-building” activities in furtherance of its regulatory

¹¹ The Evidence Act defines “evidence” narrowly, to include “information produced as a result of statistical activities conducted for a statistical purpose.” 44 U.S.C. § 3561(6). However, OMB’s implementing guidance (which blends Evidence Act concepts within the larger Federal Performance Framework) instructs agencies to take a more expansive view of “evidence,” defining the term as “the available body of facts or information indicating whether a belief or proposition is true or valid.” See M-20-12, Appendix A (defining “evidence” and citing M-19-23, Appendix A).

¹² See M-19-23, Appendix A. For example, research performed in support of an NRC rulemaking would likely fall within OMB’s definition of “foundational fact finding,” not “evaluation.” Day-to-day regulatory oversight of NRC-licensed activities, even if thought of as “evaluating” licensee compliance, would most likely fall within OMB’s definition of “performance measurement.” For examples of NRC program “evaluations,” see Fiscal Year 2022 Annual Evaluation Plan (ADAMS Accession No. [ML21053A191](#)).

mission, to do so with rigor, relevance, transparency, collaboration, independence and objectivity, and a cognizance of ethics. These general standards are already present in the NRC's performance of its regulatory mission and its operations.¹³ A policy statement limited solely to "evaluation" has the potential to create confusion over its breadth, both within the agency and for external stakeholders.

The NRC staff is also recommending additional revisions in the final policy statement to language previously approved by the Commission, including rearranging the order of sentences that appeared in the draft policy statement, as well as various editorial or clarifying revisions. For example, the final policy statement includes additional examples of what constitutes "evidence-building" generally, under OMB guidance ("analysis, assessment, research, and program evaluation") as well as at the NRC specifically ("conducting research with scientific integrity," and "ensuring that licensing and oversight findings are supported by evidence"). Enclosure 3 provides a track-changes comparison between the draft and final policy statement.

COMMITMENT:

Listed below are the actions or activities committed to by the staff in this paper.

1. Publish the final Evidence-Building and Evaluation Policy Statement in the *Federal Register* for public notice following Commission approval.

RECOMMENDATION:

The staff recommends that the Commission approve the enclosed Evidence-Building and Evaluation Policy Statement for publication in the *Federal Register*.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Comment Resolution Table
3. Track-Changes Comparison

¹³ The NRC staff also observes that the President recently issued a Presidential Memorandum on "Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking." 86 FR 8845 (Feb. 10, 2021). This memorandum broadly declares the policy of the Executive branch to "make evidence-based decisions guided by the best available science and data," and states that evidence is "central to the development and iterative improvement of sound policies, and to the delivery of equitable programs, across every area of government." An expansive policy statement that encompasses the full range of NRC "evidence-building" activities would be consistent with these broad principles.

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**ADAMS Accession Nos: Pkg: ML21070A180; SECY Paper: ML21070A180; Enc 1: ML21070A193;
Enc 2: ML21070A196** SRM-S20-0088-2

OFFICE	OEDO	OGC	RES	CIO	OEDO	EDO
NAME	M. Meyer	E. Michel	R. Furstenau	D. Nelson	C. Haney	M. Doane
DATE	03/11/21	03/19/21	03/19/21	03/19/21	03/19/21	03/31/21

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