

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-21-0001: Rulemaking Plan - Transforming the NRC's Environmental Review Process

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in STARS

Yes

No

Signature

2/2/22

Date

**Commissioner Baran’s Comments on SECY-21-0001,
“Rulemaking Plan – Transforming the NRC’s Environmental Review Process”**

The NRC staff seeks to initiate a rulemaking to “streamline” and make “substantial revisions” to NRC’s environmental review regulations in Part 51. The staff points to external drivers for the rulemaking: two Executive Orders issued in 2017 under the prior Administration and the Council on Environmental Quality’s (CEQ’s) July 2020 final rule re-writing its regulations for the implementation of the National Environmental Policy Act (NEPA).

I do not support initiating this rulemaking. NEPA is a bedrock environmental law that requires federal agencies to assess the environmental effects of proposed major federal actions prior to making decision. A basic premise of the statute is that informed decisionmaking will help protect the environment by ensuring that agencies consider the consequences of potential actions as well as alternatives that could be less environmentally damaging. NRC should keep its focus on performing thorough, high-quality environmental reviews that inform the agency and the public about the anticipated environmental impacts of our decisions. We should not be setting arbitrary deadlines or page limits for environmental reviews, unjustifiably narrowing the scope of reviews, or reducing opportunities for public participation in the environmental review process.

The two Executive Orders cited by the staff have been revoked by President Biden. And the current Administration has announced a “comprehensive reconsideration” of CEQ’s 2020 NEPA regulation after identifying “numerous concerns” with the rule.¹ On October 7, 2021, the Biden Administration CEQ published a proposed rule to “essentially undo several of the changes made by the 2020 rule.”² As the staff explains, the 2020 CEQ regulation includes provisions that “may be inconsistent with judicial interpretations of NEPA and have specifically been challenged in pending lawsuits ... including CEQ’s deletion of the term ‘cumulative impacts’ from its regulations and deletion of the requirement to analyze reasonable alternatives outside the agency’s jurisdiction.”³ The 2020 CEQ rule also allows an applicant to prepare the Environmental Impact Statement, rather than the federal agency. If NRC were to adopt this practice, it would be an abdication of the agency’s responsibilities under NEPA.

A major focus of the recommended NRC rulemaking would be to lengthen the list of licensing actions that would rely on an Environmental Assessment rather than a more detailed Environmental Impact Statement. NRC should not head in this direction. Major licensing actions, such as nuclear power plant license renewals and testing facility licenses, should continue to be based on a full EIS. Relying on an EA would significantly curtail the ability of interested stakeholders to participate in the environmental review process and could completely eliminate the evaluation of environmental justice considerations in the licensing process.

For these reasons, I disapprove initiating a rulemaking that would weaken NRC’s environmental review process.

However, there are two issues discussed in the staff’s paper that could be addressed in other ongoing rulemaking efforts. First, the staff points out that the current requirement for NRC to produce and distribute paper copies of environmental documents is outdated and inefficient.

¹ See Defendant’s Motion for Remand without Vacatur, *Wild Virginia v. Council on Environmental Quality* (W.D. Va)(Mar. 17, 2021) at 2, 11.

² Supplement to SECY-21-0001 (Jan. 17, 2022) at 1-2.

³ SECY-21-0001 at 6.

This purely administrative change could be considered as part of the agency's retrospective review of administration requirements, which is already underway. Second, the staff thinks it may make sense to explore scaled environmental reviews for some advanced reactors with the potential to have limited environmental impacts, such as micro-reactors. If the agency is going to evaluate the merits of such an approach, it should do so in the Part 53 advanced reactor rulemaking.