

**POLICY ISSUE**  
**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Tomas E. Herrera, Acting Secretary  
**FROM:** Commissioner Annie Caputo  
**SUBJECT:** SECY-23-0072: Final Agency Decision to Implement  
the Flexible Work Model

Approved \_\_\_\_ Disapproved X Abstain \_\_\_\_ Not Participating \_\_\_\_

**COMMENTS:** Below \_\_\_\_ Attached X None \_\_\_\_

Original signed on 10/26/2023

**Entered in STAR**

Yes X

No \_\_\_\_

  
\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

10-31-23

## Commissioner Caputo's Comments on SECY-23-0072: Final Agency Decision to Implement the Flexible Work Model

In SRM-COMAXC-23-0001, the Commission directed the staff to provide certain information related to the staff's proposed work environment plan, including the "staff's proposed decision" to the Commission "no later than 10 business days before the NRC is expected to reach a final agency decision[.]"<sup>1</sup> On August 22, 2023, the staff submitted a paper to "inform the Commission of the staff's final decision to implement the Flexible Work Model," and stated its intent to move forward with implementation 11 business days after the date of the paper. Subsequently, the information paper was converted to a voting matter. I recognize that this was not ideal for employees who have been kept in suspense awaiting an answer for nearly two years. I understand that the staff have been in limbo with uncertainty around telework changes largely since re-entry, complicating their ability to make career decisions, personal decisions, manage their families, etc. As I previously stated in COMAXC-23-0001,<sup>2</sup> I support workplace flexibilities, including telework, but enabling successful mission execution must remain the primary goal regardless of where employees work. I have not weighed in on this matter lightly; it is only after careful consideration and listening that I have decided to cast my vote.

The Commission is responsible for setting direction on policy for the agency. In my view, this decision has long-term ramifications, and greatly impacts employees at all levels. This decision, although difficult, is necessary and I believe it is appropriate for the Commission to act. This is not a matter with which only the NRC is grappling; the entire federal government and, indeed, the whole country are making key decisions regarding in-person work that impact their workforce and missions.<sup>3</sup> Additionally, there has been increased interest from Congress and direction from the Office of Management and Budget and the White House.<sup>4</sup>

After careful consideration of the staff's proposed flexible work model and staff feedback provided in various fora, I continue to be concerned. Considerations raised in my April 2023

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<sup>1</sup> Staff Requirements—COMAXC-23-0001—Enabling the Mission – A Measured Approach to the Future of Work (June 9, 2023) (ADAMS accession no. ML23160A274).

<sup>2</sup> Commission Action Memorandum—COMAXC-23-0001—Enabling the Mission - A Measured Approach to the Future of Work (Apr. 6, 2023) (ML23164A041) (COMAXC-23-0001).

<sup>3</sup> Some agencies are requiring a certain number of in-person days. See, e.g., Federal Times, "Department of Justice boosts in-office requirement for employees" (Sept. 26, 2023) <https://www.federaltimes.com/management/career/2023/09/26/departement-of-justice-boosts-in-office-requirement-for-employees/>. Other agencies are calling on their senior leadership to increase their in-person presence in the office. See, e.g., E&E News, "EPA steps up return-to-office mandate for managers" (July 13, 2023) <https://www.eenews.net/articles/epa-steps-up-return-to-office-mandate-for-managers/>. According to a March 2023 Bureau of Labor Statistics news release, "[t]he percent of establishments with some (but not all) employees teleworking was 16.4 percent in 2022, compared to 29.8 percent in 2021." U.S. Business Response Summary, USDL-23-0539 (Mar. 22, 2023), <https://www.bls.gov/news.release/brs1.nr0.htm>.

<sup>4</sup> See Memorandum from Shalanda D. Young to Heads of Executive Departments and Agencies, "Measuring, Monitoring, and Improving Organizational Health and Organizational Performance in the Context of Evolving Agency Work Environments" (Apr. 13, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/04/M-23-15.pdf>; Alex Thompson, Axios, "Scoop: Biden pushes to end remote work era for feds" (Aug. 4, 2023), <https://www.axios.com/2023/08/04/biden-end-remote-work-federal-employees>.

Commission Action Memorandum (COM) remain unaddressed.<sup>5</sup> The proposed work model also does not address issues identified by the Telework Policy and Implementation Working Group in its report.<sup>6</sup> Employee feedback indicates (1) a desire for certainty about work schedules; (2) concern about potential inconsistencies in telework approvals for similar positions; and (3) uncertainty about telework eligibility for internal job postings or rotation opportunities. This feedback also appears to be unaddressed by the proposed work model. We need to allow flexibility for our staff while also ensuring stability, consistency, and transparency about what is expected.

Finally, I cannot reach a conclusion that the agency is any more efficient or effective in its operations in the current work environment. As the staff stated in SECY-23-0072, “[w]hile the agency’s performance indicators provide keen insights into the health of the NRC’s programs and functions, they should not be used as a measure to determine the success or failure of the Flexible Work Model. Monitoring timeliness and impacts to milestones and schedules at the activity level would provide better insight into productivity.”<sup>7</sup> I would like to see the agency improve on its ability to measure productivity and truly understand its performance. Without measuring productivity, there is no real insight as to whether the agency is headed in the right direction.

For these reasons, I disapprove the flexible work model, effective immediately. In its place, the agency should retain its current telework practice (i.e., first-line supervisors should retain the authority to approve up to six days of remote work per pay period), except as applied to individuals serving in Senior Executive Service (SES) positions. This exception for SES employees is similar to recent policies adopted by other Federal Executive Branch agencies, such as the Departments of Agriculture, Education, Interior, and Labor, as well as the Environmental Protection Agency. As the most senior career employees of the agency, SES employees are entrusted with critical roles, the performance of key authorities, and agencywide leadership responsibilities that inherently necessitate a higher level of in-person presence. For this reason, in-person work for individuals serving in SES positions should increase to at least six days per pay period, effective at the start of the first pay period that occurs 60 days after the issuance of the SRM.<sup>8</sup> An in-person day for SES positions is a minimum of six hours.

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<sup>5</sup> For example, the paper does not address the implications the proposed work model would have on training and knowledge management, organizational health, office space, and productivity and performance.

<sup>6</sup> For example, there is the potential for inconsistent implementation of a presence with purpose philosophy since it relies on supervisors and individual employees to decide on a case-by-case basis, potentially week to week, what an individual in office presence should be. See Telework Policy and Implementation Working Group Final Report, 26, 42 (Oct. 2022) (ML23249A210). Since presence with purpose is a philosophy, each first line supervisor may have different interpretations for what constitutes a matter for which the employee should be in the office. As noted by the staff, presence with purpose could require the employee to be in the office more or less than their approved telework schedules. See SECY-23-0072, Enclosure 2 at 9. In addition, the staff’s paper does not explain how it would ensure the proposed additional authority delegated to first line supervisors does not overburden those supervisors or what measures or indicators it proposes to alert management in such a case.

<sup>7</sup> SECY-23-0072 at 7.

<sup>8</sup> For SES employees, this does not affect existing reasonable accommodation or other special circumstances arrangements.

I would like to thank NRC employees for their candid feedback on the proposed changes to the telework program and the important work they do every day, regardless of location, in support of the agency's mission. As noted in my COM, "insufficient planning and foresight during and after re-entry has resulted in formation of multiple working groups, subsequent pivots, lack of clarity among the staff about the agency's plans[.]"<sup>9</sup> This matter has persisted for almost two years since agency re-entry and quite frankly and understandably, the staff is frustrated with the prolonged indecision. Its deeply regrettable that our employees have been impacted by delayed decision making and inadequate communication on this issue. I sincerely appreciate the staff's patience while they awaited staff leadership's development of an approach and further waited during the Commission's deliberation.

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<sup>9</sup> COMAXC-23-0001 at 2.