

Enclosure 6: Additional Recommendations to Streamline and Enhance Efficiency

Existing Regulatory Framework and Practice

While the U.S. Nuclear Regulatory Commission's (NRC's) regulations implementing the National Environmental Policy Act of 1969 (NEPA) do not specify deadlines for completing environmental impact statements (EISs) or environmental assessments (EAs), the staff already has taken several steps with the goal of enhancing and streamlining environmental reviews to ensure completion in a timely manner, including, but not limited to, the following:

- updating the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (NUREG-1437) and associated rule (see SECY-24-0017)
- developing the draft “Generic Environmental Impact Statement for Advanced Nuclear Reactors” (NUREG-2249) and associated proposed rule (see SECY-21-0098)
- proposing revisions to the categorical exclusion criterion in Title 10 of the *Code of Federal Regulations* (10 CFR) 51.22, “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,” to reduce inefficiencies and inconsistencies and to provide additional flexibility (see SECY-22-0100)
- developing EIS and EA templates and focusing on incorporation by reference as a means for achieving the deadlines mandated in the Fiscal Responsibility Act of 2023 (FRA)
- increasing preapplication engagement opportunities with applicants and licensees

The staff's efforts to increase the effectiveness and shorten the timelines for environmental reviews have been partially motivated by other recent legislation aimed at improving the efficiency of environmental reviews.¹ Before the FRA, environmental impact statements (EISs) were estimated to take 24 months, and once the LR GEIS rulemaking and related environmental reviews have been completed, the staff expects to achieve an 18-month review period, including the EIS, for operating reactor license renewal and subsequent license renewal.² Some EISs prior to the FRA were completed within 18 months; however, some have taken longer depending on the complexity of the action. For environmental assessments (EAs), the environmental review schedules before the FRA typically spanned 12–18 months.

The staff has identified several aspects of the current environmental review process that, if modified, would further assist the staff in enhancing efficiency. Rather than presenting various alternative options for the Commission, this enclosure assembles several considerations that are *all* recommended. Therefore, the format of this enclosure differs slightly from that of the other enclosures.

¹ Such legislation includes, for example, Fixing America's Surface Transportation Act under Title 41 and section 102(c) of the Nuclear Energy Innovation and Modernization Act.

² See SECY-24-0026, “Achieving Timely Completion of License Renewal Safety and Environmental Reviews (License Renewal Roadmap),” dated March 28, 2024.

NEPA Amendments

The most relevant NEPA amendments related to the issue discussed in this enclosure are reproduced below:

SECTION 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

(e) PAGE LIMITS.—

(1) ENVIRONMENTAL IMPACT STATEMENTS.—

- (A) IN GENERAL.—Except as provided in subparagraph (B), an environmental impact statement shall not exceed 150 pages, not including any citations or appendices.
- (B) EXTRAORDINARY COMPLEXITY.—An environmental impact statement for a proposed agency action of extraordinary complexity shall not exceed 300 pages, not including any citations or appendices.

(2) ENVIRONMENTAL ASSESSMENTS.—An environmental assessment shall not exceed 75 pages, not including any citations or appendices.

(g) DEADLINES—

(1) IN GENERAL—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete, as applicable—

- (A) the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable—
 - (i) the date on which such agency determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action;
 - (ii) the date on which such agency notifies the applicant that the application to establish a right-of way for such action is complete; and
 - (iii) the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action; and
- (B) the environmental assessment not later than the date that is 1 year after the sooner of, as applicable—
 - (i) the date on which such agency determines that section 106(b)(2) requires the preparation of an environmental assessment with respect to such action;
 - (ii) the date on which such agency notifies the applicant that the application to establish a right-of way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.

(2) DELAY—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

(3) PETITION TO COURT—

(A) RIGHT TO PETITION.—A project sponsor may obtain a review of an alleged failure by an agency to act in accordance with an applicable deadline under this section by filing a written petition with a court of competent jurisdiction seeking an order under subparagraph (B).

(B) COURT ORDER.—If a court of competent jurisdiction finds that an agency has failed to act in accordance with an applicable deadline, the court shall set a schedule and deadline for the agency to act as soon as practicable, which shall not exceed 90 days from the date on which the order of the court is issued, unless the court determines a longer time period is necessary to comply with applicable law.

(h) REPORT

(1) IN GENERAL.—The head of each lead agency shall annually submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

(A) identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in subsection (g); and

(B) provides an explanation for any failure to meet such deadline.

(2) INCLUSIONS—Each report submitted under paragraph (1) shall identify, as applicable—

(A) the office, bureau, division, unit, or other entity within the Federal agency responsible for each such environmental assessment and environmental impact statement;

(B) the date on which—

(i) such lead agency notified the applicant that the application to establish a right-of-way for the major Federal action is complete;

(ii) such lead agency began the scoping for the major Federal action;
or

(iii) such lead agency issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action; and

(C) when such environmental assessment and environmental impact statement is expected to be complete.

Summary

NEPA section 107(e) requires that environmental assessments (EA) be limited to 75 pages and environmental impact statements (EIS) to 150 pages. If the proposed agency action is “of extraordinary complexity,” then the EIS may be up to 300 pages. The FRA NEPA amendment indicate that page limits exclude citations and appendices.

Section 107(g)(1) in the NEPA amendments establishes deadlines for the completion of EAs and EISs, with a 1-year deadline for issuing an EA and a 2-year deadline for an EIS. The starting point is the sooner of either the date on which the agency determines an EA or EIS is required or the date on which it issues a notice of intent (NOI) to prepare an EA or EIS. In general, the NRC’s determination that either an EIS or EA will be prepared is made upon acceptance of the application for docketing, and this happens before the date the NRC issues an NOI. The clock typically stops upon NRC publication of the final EA or EIS.³ NEPA does not provide for “pausing” the clock; however, it provides flexibility to extend the schedule “in consultation with the applicant.”

Section 107(g)(2) provides procedures for extending the deadlines, when necessary, in consultation with the applicant. Section 107(g)(3) gives applicants a right to seek enforcement of deadlines in courts. Section 107(h) requires the head of each agency to annually submit to Congress a report that identifies any EIS or EA that the agency did not complete by the deadline and explains any failure to meet such deadline.

Change for the NRC

Under the new section 107(e) of NEPA, page limits for EAs and EISs are now a statutory requirement. Although time limits of 2 years for an EIS and 1 year for an EA have existed in Council on Environmental Quality (CEQ) regulations since 2020 (40 CFR 1501.10), those regulations allowed for the senior agency official of the lead agency to approve a longer period, and the NRC had not been required to meet defined deadlines for completion of environmental documents until enactment of the FRA. Failure of a Federal agency to meet the statutory deadlines must be reported to Congress. These additional requirements are not considered in current NRC regulations.

Two key drivers that influence the timelines of a review are the quality of the data within the application and the effectiveness of preapplication activities. The current acceptance review process is flexible, and applicants often supplement environmental reports (ERs) after initial submittal when additional information is available. The staff will often accept applications if sufficient information is available for the staff to conduct a review even if the staff determines

³ The Council on Environmental Quality (CEQ) Phase 2 final rule in 40 CFR 1501.10(b)(4)(i) (effective July 1, 2024) specifies for EAs that the end date is the date on which the agency publishes an EA or NOI to prepare an EIS. In 40 CFR 1501.10(b)(4)(i), the CEQ specifies for EISs that the end date is the date on which the agency publishes a notice of availability of the final EIS or, where applicable, the date the agency makes the final EIS available pursuant to its predecisional administrative review process, consistent with 40 CFR 1506.10(c)(1).

that it may need to conduct multiple audits and issue a significant number of requests for additional information (RAIs) to complete a review. This approach may present challenges to meeting deadlines because of the time it takes for applicants to support multiple audits or respond to RAIs necessary to support regulatory findings. A more robust acceptance review could result in stronger submittals and reduce the need for audits and RAIs.

Preapplication interactions are voluntary for applicants. For large construction projects or novel projects, applicants typically request preapplication engagement. Typically, preapplication interactions help to identify information gaps, improve the application, and familiarize the staff with the project, which will help in reviewing the application.

Staff Actions for Compliance

The staff has taken the following actions for compliance with NEPA the amendments regarding page limits and deadlines and streamlining.

Page Limits (NEPA section 107(e))

- implementing page limits in environmental documents following the CEQ definition of “page”⁴
- developing staff guidance on page limit requirements and what actions would be “of extraordinary complexity”
- continuing to develop streamlined templates for EISs and EAs and focusing analyses on the most significant environmental issues
- considering additional efforts to reduce page counts, such as moving certain content to EIS appendices or supporting reports
- identifying and applying lessons learned and successes related to reducing document length in future environmental reviews

Completion Deadlines (NEPA section 107(g))

- setting schedules that comply with the NEPA deadlines and consulting with applicants on and notifying external stakeholders of extensions, as needed
- developing procedures to help ensure the timely completion of consultations and interagency coordination when they are conducted in parallel with the staff’s NEPA reviews
- updating procedures for determining whether supplementation is necessary when the final EA/EIS is completed ahead of the safety review to support meeting the new NEPA deadlines
- updating and developing preapplication procedures for environmental reviews to support meeting the new NEPA deadlines

⁴ The CEQ’s definition of “page” at 40 CFR 1508.1(v) states that “Page means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.”

Implementation Recommendations for Improved Alignment and Efficiency

The staff has identified several considerations to streamline and enhance efficiency which are also related to the other topics presented in this paper. As stated in the description of staff actions for compliance above, staff is developing staff procedures on these topics. There is value in addressing these topics in the rulemaking because it will allow staff to engage stakeholders for input on potential options and better explore the connection between these topics and other recommendations in this paper (e.g., the connection between applicant prepared EIS or EAs, bifurcated applications, preapplication interactions, and acceptance criteria or the connection between the procedure for determination of the level of review, clarifying deadlines, and acceptance criteria.) Including these topics in the rulemaking process will promote a holistic approach and affords the staff flexibility to consider whether these topics should be clarified through guidance alone or through accompanying revisions to the regulations during the development of the regulatory basis.

The staff recommends considering these issues in the regulatory basis phase of the rulemaking. The staff would include discussion with stakeholders of whether this issue should be resolved through guidance or rulemaking; the staff currently anticipates that guidance is likely to be the more appropriate path. Below are the considerations that are recommended to be addressed in the rulemaking (referred to as Recommendation 6). The rulemaking would address, but not be limited to, the areas described below.

Recommendation 6a: Clarify Deadlines and Extensions

The staff recommends considering in the regulatory basis phase of the rulemaking what an appropriate process would be for deadline extensions and how to establish start/end points at the NRC for EAs and EISs. The NEPA amendments contain starting points for the timeframes, and the staff would interpret the end points for codification as publication of the final environmental documents (e.g., EA or EIS). Rulemaking would provide regulatory certainty and promote reliability.

Recommendation 6b: Consider Bifurcated Application Submittals

The staff recommends considering in the regulatory basis phase of the rulemaking what an appropriate process would be for bifurcated application submittals in light of the new deadlines. The rulemaking would consider revisions to the regulations in 10 CFR Part 2, "Agency Rules of Practice and Procedure," regarding the timing of submittals. The regulations in 10 CFR Part 2 currently allow certain applicants (under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants") to submit portions of their applications at different times, such as the submittal of safety or environmental portions separately. The regulation in 10 CFR 2.101, "Filing of an application," allows for as many as 6 months between the submittal of portions of the application for a construction permit or combined license, and as many as 18 months between the submittal of portions of the application for a limited work authorization. Also, applicants for other types of licensing actions not indicated in 10 CFR 2.101 have sought exemptions from the regulations to bifurcate applications to accommodate their needs.

Consistent with the FRA, once an application is submitted and docketed, the starting point for the 1-year EA or 2-year EIS timeframe would begin, because this is when the NRC has committed to deciding on the application. Accordingly, if the safety portion of the application is

submitted before the environmental portion of the application, the timeframe for completing the environmental review would start before submittal of the ER. In such cases, the staff would likely need to extend the schedules in consultation with the applicant. If the environmental portion of the application is submitted before the safety portion, there is a risk that safety information might not be available if needed to complete the environmental review. There also is a risk that information for the safety portion of the application may continue to be developed, and discrepancies with the previously submitted environmental portion of the application may occur after finalization of the environmental document. If such information is considered significant, the staff would need to issue a supplemental environmental document, which would add staff time and further extend the schedule.

The recommended rulemaking would consider whether procedures for how to set NEPA schedules in consultation with the applicant for bifurcated application submittals could be clarified through guidance alone or revisions to the regulations. The rulemaking may also explore revising regulations to remove the option in 10 CFR 2.101 to submit 10 CFR Part 50 and 10 CFR Part 52 applications in separate parts.

Recommendation 6c: Establish Detailed Acceptance Criteria for Environmental Information

The staff recommends considering in the regulatory basis phase of the rulemaking appropriate acceptance criteria for environmental information. The rulemaking would consider revising the regulations for acceptance and docketing to reduce the need for RAIs and to ensure the environmental information submitted by the applicant is technically sufficient to support issuance of an EA or EIS within the required timeframes. A rulemaking could explore consistent standards for acceptance criteria for applications considered across the agency and provide clarity on the minimum acceptable environmental information requirements. Specifically, in the regulatory basis stage, the staff would explore increasing the acceptance review time and specific acceptance criteria for environmental information. If rulemaking is not pursued, the staff would clarify acceptance criteria in guidance documents. However, this would not be legally binding.

Currently, the staff conducts an acceptance review to determine if the application is complete and acceptable for docketing. As described above, the staff will often accept applications if sufficient information is available for the staff to conduct a review even if the staff determines that it may need to conduct multiple audits and issue a significant number of RAIs. This approach may present challenges to meeting deadlines because of the time it takes for applicants to support multiple audits or respond to RAIs necessary to support regulatory findings. While the issue of technical sufficiency existed prior to the FRA NEPA amendments, the staff did not have mandatory deadlines prior to the FRA and therefore was able to take the necessary time to address insufficiencies through the RAI process. The staff recommends considering in the regulatory basis phase of the rulemaking appropriate acceptance criteria for environmental information to help ensure applicants provide a complete and technically sufficient ER or environmental document before the staff docket the application.⁵

The NRC's environmental review process currently addresses compliance with other environmental statutes in addition to NEPA, such as conducting any necessary consultations (e.g., Endangered Species Act [ESA], National Historic Preservation Act [NHPA]) and verifying required certifications (e.g., consistency certification for the Coastal Zone Management Act) are obtained. While these requirements are not subject to the NEPA deadlines established by the

⁵ The staff would develop guidance for acceptance reviews that would also address a situation in which an applicant submits a draft EA or EIS in accordance with new NEPA section 107(f) (see enclosure 3).

FRA, they are typically completed within the NRC's NEPA process. Therefore, the staff recommends the rulemaking also consider acceptance review criteria with respect to information that is needed to comply with other statutes. For example, preparation for NHPA and ESA consultations and outreach to environmental justice communities may occur before application submittal; therefore, the staff would explore, through the rulemaking effort, having the applicant complete preliminary outreach and coordination before submittal of an application. Thus, before submittal, the applicant could perform the initial steps for gathering information under the ESA and NHPA, such as conducting outreach to Tribes and other Federal agencies and planning for or conducting needed surveys or studies, with special consideration given to surveys that need to take place during a certain time of year or are lengthy to conduct. Applicants may also reach out to or identify Tribes and populations to be considered for environmental justice analysis or coordinate with State agencies or Federal agencies such as the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration, as appropriate, to gather needed site information before submitting their application. This would allow the staff to proceed with consultations quickly upon acceptance of an application, rather than experiencing delays gathering information after acceptance.

By ensuring the applications include the information critical to consultations, the staff will be more likely to conclude consultation activities before publication of the final environmental document. While doing so is not required, there can be benefits in documenting the consultation findings within the final environmental document. For example, new and significant information discovered through consultation could affect the impact conclusions in the environmental document, and therefore completing consultation before the final environmental document may avoid the need to supplement the document. Also, the NRC may receive contentions on issues—which might otherwise have been addressed in consultation—that are absent from the final environmental document if the final EA or EIS is published ahead of completing consultations. Furthermore, it provides clarity and transparency to address all matters of environmental compliance in a single document. Finally, it supports more timely final disposition of the application given that in most cases the consultations must be completed before the NRC may issue the license.

Recommendation 6d: Clarify Opportunities for Preapplication Interactions

The staff recommends considering in the regulatory basis phase of the rulemaking ways to clarify opportunities for preapplication interactions. For example, regulations defining the boundaries around what the staff may discuss with the applicant regarding environmental reviews could afford additional flexibilities and clarity to the staff and applicants. The staff could explore, with stakeholders, options for guidance on a more interactive role with the applicants compared to its current preapplication approach. For example, preapplication engagement could include preparation for National Historic Preservation Act and Endangered Species Act consultations and outreach to environmental justice communities.

Enhanced preapplication activities should result in improved submittals, which should in turn support the staff's timely completion of environmental documents.⁶ For example, the acceptance review could focus on issues raised during the preapplication period, which in turn could help reduce the number of RAIs issued during the review.

⁶ Applicant preparation of environmental documents, as discussed in enclosure 3, may assist in meeting deadlines, but the NRC would need to verify that the environmental document is technically sufficient to serve as the agency's environmental document.

Recommendation

The staff recommends several considerations to be addressed in the regulatory basis phase of the rulemaking to enhance the staff's ability to meet the FRA deadlines, including, but not limited to, clarifying deadlines and extensions, considering bifurcated applications, establishing detailed acceptance review criteria for environmental information, and clarifying opportunities for preapplication engagement. Enclosure 7 contains the rulemaking plan, and enclosure 8 provides resource information.