

Enclosure 3: Project Sponsor Preparation of Environmental Documents

Existing Regulatory Framework and Practice

The regulations of the U.S. Nuclear Regulatory Commission (NRC) in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” require that applicants submit to the NRC an environmental report (ER) for certain types of licensing applications.¹ Before the applicant submits an ER, the regulations allow them “to confer with NRC staff as early as possible in [the] planning process before submitting environmental information or filing an environmental report” (10 CFR 51.40). While this typically occurs as part of preapplication activities, these preapplication activities are voluntary and vary widely in scope. The ER provides information to the NRC that “may be useful in aiding the Commission in complying with section 102(2)” of the National Environmental Policy Act of 1969 (NEPA) (10 CFR 51.41). However, it is the NRC staff that prepares the environmental assessment (EA) or environmental impact statement (EIS) to comply with NEPA for any licensing action.

In general, after the submittal of a license application and associated ER, as applicable, the NRC staff conducts an acceptance review to determine whether the application is “complete and acceptable for docketing.”² If so, the staff begins a detailed technical review of the application and ER. While the ER informs preparation of the EIS or EA, the staff “will independently evaluate and be responsible for the reliability” of the information used (10 CFR 51.41) and the findings of the NEPA environmental review (i.e., conclusory statements about the significance of the environmental impacts). Accordingly, during the review, the staff might gather additional information from applicants by conducting site audits and visits and submitting requests for additional information. In addition, the staff may gather information from other Federal, State, Tribal, and local agencies as well as from public comments.

The ER also typically includes information that the NRC uses to comply with other environmental statutes³ that may require consultation with other Federal agencies, State agencies, and Tribal governments or organizations. The NRC staff has encouraged applicants to begin outreach to these agencies before submittal of an application; however, some agencies and Tribes may choose to limit direct interactions with applicants because it is the responsibility of the Federal Government, the NRC in this case, to complete the consultation. The NRC staff typically initiates these consultations after submittal of an ER, effectively incorporating the consultation processes under the NEPA process and integrating the necessary documentation to comply with those statutes into the NEPA environmental document. While such consultations are not required to be incorporated into the NEPA process, combining NEPA with other Federal requirements and consultations allows the NRC to fulfill certain public involvement requirements (e.g., the National Historic Preservation Act section 106 requires public involvement) and streamline information gathering through a single process. If consultations are completed

¹ Petitioners are also required to submit an ER with a petition for rulemaking (10 CFR 51.45). The staff does not consider petitioners for a rulemaking to be applicants or project sponsors; therefore, the new requirement in NEPA does not apply to petitioners, and petitioners for rulemaking will not be discussed further.

² See 10 CFR 2.101.

³ The NRC staff conduct consultation and compliance activities associated with statutes such as the Coastal Zone Management Act of 1972, as amended; the Endangered Species Act of 1973, as amended; the Magnuson–Stevens Fishery Conservation and Management Act of 1976, as amended; the National Historic Preservation Act of 1966, as amended; the Clean Air Act of 1963, as amended; the Clean Water Act of 1972, as amended; the Safe Drinking Water Act of 1974, as amended; and the Fish and Wildlife Coordination Act enacted March 10, 1934.

outside the NEPA process, the NRC may publish the final environmental document (e.g., EA or EIS) before the completion of consultations and compliance with other statutes. If there is a delay completing any of the consultations, completing the consultations separately from the final environmental document could allow the NRC to meet the environmental review schedule milestones.

Whenever an EIS, or supplemental EIS (SEIS), is to be prepared by the staff in connection with a proposed action, 10 CFR 51.26 requires that staff issue a notice of intent and conduct an appropriate scoping process. The purpose of the scoping process is to define the proposed action, determine the scope of the environmental review, identify the significant issues to be analyzed in depth, identify cooperating agencies, and eliminate issues that are not significant to the review (10 CFR 51.29). The scoping process identifies public and agency concerns including Federal, State, Tribal, and local agency requirements.

The requirement in 10 CFR 51.70(a) requires staff to “prepare a draft environmental impact statement as soon as practicable after publication of the notice of intent to prepare an environmental impact statement and completion of the scoping process.” It also requires concurrent review of or integration with consultations, related surveys, and studies required by other Federal law, “to the fullest extent practicable.” Staff’s mandatory role in preparing environmental documents appear in other regulations throughout 10 CFR Part 51.

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.

In this title:

- (c) REQUEST FOR PUBLIC COMMENT.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.
- (f) SPONSOR PREPARATION.—A lead agency shall prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement under the supervision of the agency. Such agency may provide such sponsor with appropriate guidance and assist in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents.

Summary

The Fiscal Responsibility Act (FRA) enacted section 107(f) of NEPA to require agencies to “prescribe procedures to allow a project sponsor to prepare an [EA] or an [EIS] under the supervision of the agency.” Agencies may provide an applicant with appropriate guidance and supervise the preparation of these environmental documents. The agency “shall independently evaluate the environmental document and shall take responsibility for the contents.” NEPA does not establish a deadline by which such procedures must be prescribed. Additionally, the new

NEPA section 107(c) requires agencies to include a request for public comment with each notice of intent to prepare an EIS.

Changes for the NRC

Current NRC regulations do not provide an option for an applicant or contractor paid by the applicant to prepare an EA or EIS, under the supervision of the NRC.⁴ Current regulations regarding environmental information at 10 CFR 51.41 require an applicant for a—

permit, license, or other form of permission, or amendment to or renewal of a permit, license or other form of permission, or a petitioner for rulemaking to submit such information to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA.

This environmental portion of the application is called the ER.

NEPA now requires the NRC to prescribe procedures to allow a project sponsor to prepare an environmental document under the agency's supervision. The agency shall independently evaluate the environmental document and shall take responsibility for the contents. While the NRC's regulations implementing NEPA do not currently consider the submittal of an EIS or EA by an applicant, existing Council on Environmental Quality NEPA regulations⁵ have already contemplated the possibility of project sponsors developing the environmental document, although the preparation has been understood to take place after the project sponsor submits the application. NEPA section 107(f) does not specify whether the project sponsor would prepare the environmental document before or after submitting the application. If the sponsor prepared the environmental document after the application, it may simplify agency "supervision." However, when considering the new mandatory deadlines, it would be more efficient to have the document prepared before an application submittal. Other agencies' existing, pre-FRA guidance⁶ on project sponsor preparation does not consider these pre-application opportunities for efficiencies, and therefore may not be entirely suited for the NRC's use.

Enclosure 6 discusses changes that could be made to help ensure that the NRC staff will meet the EA and EIS deadlines added to NEPA by the FRA. Some of these potential changes, such as establishing detailed acceptance review criteria and clarifying opportunities for preapplication activities, would help to ensure that environmental documents submitted by applicants are technically sufficient. Therefore, the changes discussed in enclosure 6 could also support any process for the applicant-prepared environmental documents that are discussed below.

Each option discussed below carries with it a likely public perception that the NRC is not performing an independent review of the environmental impacts. The staff would implement strategies to communicate to stakeholders that the NRC remains responsible for all the content of draft EAs and EISs. For example, implementing procedures would include that the NRC

⁴ Throughout this enclosure, where an activity is attributed to the applicant, it may actually be carried out by a contractor paid by the applicant.

⁵ See 40 CFR 1506.5, "Agency responsibility for environmental documents."

⁶ For example, other agencies such as the Bureau of Land Management, the Federal Aviation Administration, and the Federal Emergency Management Agency have issued guidance for preparation of NEPA documents by third-party contractors.

briefly document its independent determination that an environmental document meets the standards under NEPA.^{7,8}

In addition to NEPA, the NRC must comply with several other environmental laws. The NRC staff already encourages applicants to complete surveys and work with the agencies that will participate in consultations as part of the effort to prepare an ER (see, for example, Regulatory Guide 4.2, "Preparation of Environmental Reports for Nuclear Power Stations"). However, consultations, if required, usually must be completed by a Federal agency. The applicant typically provides in its ER information that will aid the NRC staff in completing the consultations. The NRC could revise its guidance to encourage applicants to carry out work with the consulting parties to the maximum extent possible. For example, where permitted and appropriate, the NRC could designate a non-Federal representative to conduct the informal consultation or prepare a biological assessment under the Endangered Species Act.⁹ This issue applies to both options presented in this enclosure.

Under the new section 107(c) of NEPA, when an agency issues a notice of intent to prepare an EIS, it must "include" in that notice "a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action." NRC's NEPA regulations¹⁰ do not mandate that the NRC offer a similar comment opportunity, although staff typically does offer an opportunity for comment.

Staff Actions for Compliance

In response to NEPA section 107(c), staff is ensuring that an opportunity for comment is offered on all notices of intent to prepare an EIS.

NEPA does not establish a deadline by which such procedures must be prescribed. The staff will not take action to prescribe procedures for applicant prepared environmental documents until the agency makes a decision because this topic raises policy issues for applicant involvement in a process the Commission has previously reserved to the NRC.

⁷ CEQ's Phase 2 final rule (89 FR 35442, 35571; May 1, 2024) in § 1506.5(a) states "[t]he agency shall exercise its independent judgment and briefly document its determination that an environmental document meets the standards under NEPA, the regulations in this subchapter, and the agency's NEPA procedures."

⁸ CEQ's Phase 2 final rule (89 FR 35442, 35574) in 1507.3(c)(12)(ii) requires agencies to include a process for the agency to independently evaluate the applicant-prepared EA or EIS; take responsibility for its accuracy, scope, and contents; and document the agency's evaluation in the document consistent with the requirements in § 1506.5(a).

⁹ As stated in 50 CFR 402.08, "Designation of non-Federal representative"—

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

¹⁰ See 10 CFR 51.27 (providing that an NRC notice of intent to prepare an EIS "shall," when describing a "proposed scoping process," address "whether written comments will be accepted").

Implementation Options for Improved Alignment and Efficiency

The staff offers the options described below to more clearly and effectively address the amendments to NEPA on procedures to authorize project sponsor preparation of environmental documents.

Option 3.a: Procedures to Authorize Project Sponsor Preparation Without Rulemaking

Under this option, the applicant would still be required to submit an ER. The staff would issue updated guidance for applicants on how to voluntarily submit an ER that also contains a draft EA or EIS prepared by the applicant under NRC supervision. The staff would also develop guidance for both applicants and staff regarding how the NRC will provide supervision as required by the FRA (e.g., preapplication activities and acceptance review criteria). The guidance would also need to be modified to inform applicant preparers on how to address the changes to NEPA in the FRA (e.g., page limits). The guidance would specify that the EA or EIS would need to be formally submitted to the NRC at the same time the applicant submits the ER.

This approach would not be radically different from the current approach, although applicants would now be asked to include conclusory statements about the significance of the environmental impacts. Preparing both an ER and an environmental document or an ER that contains an EA or EIS could be duplicative and therefore not efficient. This may introduce a potential burden on applicants to prepare both an ER and an EA or EIS and on the staff to have to review both types of documents. Applicants may seek exemptions to submitting an ER if they voluntarily prepare and EA or EIS. Depending on the details of the application, the NRC may need to consider exemptions to allow the licensee to prepare the environmental documents (e.g., from the requirement to submit an ER in 10 CFR 51.45, "Environmental report").

The NRC staff may be able to leverage methods that other agencies already use to allow third-party contractors to prepare draft EAs and EISs. For example, NRC applicants commonly use a contractor to prepare the ERs; a shift to the use of third-party contractors under the supervision of the NRC staff may be the approach that an applicant would choose. Because this option involves only guidance, there is a risk that an applicant will submit a draft environmental document that is inconsistent with the regulatory requirements for EAs and EISs. Because the acceptance criteria in 10 CFR 2.101 apply only to environmental reports, not applicant prepared environmental documents, in the absence of rulemaking, the staff could not refuse to accept the application. In such a case, the NRC staff would have to take on the task of modifying the document after acceptance. This may hinder the staff's ability to meet the new deadlines codified in the FRA.

The staff would also develop guidance on the role of applicants in the scoping process and in responding to public comments. The guidance would have to be flexible, allowing for varying levels of (1) NRC involvement in the preapplication phase and (2) applicant involvement in NEPA processes after the application has been submitted. These levels of involvement would be negotiated between the applicant and the NRC staff, depending on project-specific factors. Under 10 CFR 51.26, "Requirement to publish notice of intent and conduct scoping process," the NRC staff is required to initiate scoping with the issuance of the notice of intent; as such, applicants are not currently permitted to conduct scoping.

Under this option, the NRC would issue guidance that would instruct applicants on how to voluntarily submit an ER that also contains a draft EA or EIS prepared by the applicant under NRC supervision. The staff is seeking Commission direction on these topics because they raise

high-level policy issues for applicant involvement in a process the Commission has previously reserved for the NRC. Further, NEPA leaves agencies significant discretion for agency procedures, including how and when to issue the procedures and what the procedures should provide. If the Commission chooses this option, the staff will conduct stakeholder engagement to inform guidance development and provide a draft of the guidance to the Commission in an information paper.

Pros:

- Could be implemented more quickly than a rulemaking.
- Less resource intensive than a rulemaking to implement.
- Would include an opportunity for public engagement, similar to a rulemaking.

Cons:

- There is no regulatory framework to support an applicant submitting an environmental document as part of its application.
- The staff may need to routinely process exemption requests, such as from the requirement to submit an ER.
- Stakeholders may have a negative perception that the NRC is using guidance instead of a rule change given the regulations require staff to prepare environmental documents.
- The staff's mandatory roles in preparing documents under 10 CFR Part 51 (indicated by use of "the staff shall") constrain the NRC's ability to develop flexible procedures through guidance.

Option 3.b: Rulemaking to Authorize Project Sponsor Preparation (Recommended)

Under this option, the NRC would pursue a rulemaking to codify requirements related to the applicant's preparation of an environmental document (EA or EIS). The exact changes to the regulations would be determined during the rulemaking process. Regardless of the form that the changes to the regulations may take, the activities described for Option 3.a in terms of guidance, scoping, and comment responses would still apply under Option 3.b. Option 3.b could also include changes to 10 CFR Part 2, "Agency Rules of Practice and Procedure," to allow for an environmental document other than, or in addition to, an ER and to clarify the criteria for accepting an application for docketing. Further, the rulemaking could also consider (1) whether and how an applicant should be involved in an EIS's scoping process;¹¹ (2) what NRC supervision would entail and whether it would occur before or after the application is submitted, or both; and (3) the extent to which conforming changes to other regulations (e.g., 10 CFR 2.101, "Filing of application") might be necessary to accommodate changes to the format or content of applications.

¹¹ NEPA section 107(c) effectively requires an opportunity for public comment in the scoping process with issuance of the notice of intent.

Pros:

- Provides for increased transparency, public engagement, and reliability through the rulemaking process.
- Provides opportunities to enhance acceptance review criteria in the rule (in 10 CFR 2.101, currently “complete and acceptable for docketing”) and create new regulations governing preapplication interactions for applicant-prepared environmental documents through the rulemaking process.
- Should result in overall efficiency and resource savings in the long term as compared to Option 3.a due to enhanced clarity and reliability through rulemaking.

Con:

- Requires more time and resources to make changes through rulemaking than through guidance in Option 3.a.

Recommendation

The NRC staff recommends Option 3.b, rulemaking, to implement the new requirement in NEPA section 107(f). The rulemaking would codify the new requirements related to the preparation of a draft environmental document in response to the new FRA requirement. Enclosure 7 contains the rulemaking plan, and enclosure 8 provides resource information.