

Enclosure 5: Programmatic Environmental Documents

Existing Regulatory Framework and Practice

While the use of the term “programmatic environmental document” is not new, the National Environmental Policy Act of 1969 (NEPA) did not define it before the enactment of the amendments in the Fiscal Responsibility Act of 2023. The Council on Environmental Quality (CEQ) specifically requires agencies to prepare programmatic environmental documents when necessary to avoid segmentation, and agencies can also prepare such documentation voluntarily when appropriate (e.g., to assist the agency in weighing alternatives regarding new programs). In 2014, the CEQ issued governmentwide guidance on “Effective Use of Programmatic NEPA Reviews,” discussing how such reviews relate to the specific requirements in NEPA and the CEQ’s NEPA implementing regulations and how agencies may make effective use of such reviews.¹ As used in that 2014 CEQ guidance, “[t]he term ‘programmatic’ describes any broad or high-level NEPA review; it is not limited to a NEPA review for a particular program.” The CEQ is careful to distinguish programmatic analyses from data collections, assessments, and research. The CEQ notes, “an analysis prepared by an agency is not a NEPA programmatic review unless that agency is making decisions on a proposed Federal action.”

The U.S. Nuclear Regulatory Commission (NRC) has used the term “generic,” rather than “programmatic,” to refer to certain NEPA documents, but this choice of terminology was not based on any formal statutory or regulatory definition. The staff prepares generic environmental impact statements (GEISs) documenting the staff’s systematic analysis of environmental impacts from activities that have the same or share similar characteristics or are common to a series of licensing actions (e.g., power reactor license renewal, in situ uranium recovery facilities, and decommissioning of power reactors). The NRC typically prepares GEISs to make NEPA reviews more efficient by enabling the staff to develop project-specific environmental impact statements (EISs) and environmental assessments (EAs) to supplement the GEIS (consistent with Appendix A, “Format for Presentation of Material in Environmental Impact Statements,” to Subpart A, “National Environmental Policy Act—Regulations Implementing Section 102(2),” of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 51, “Environmental Protection Regulations for Domestic Licensing and Regulated Regulatory Functions”) or by relying on the GEIS and its findings.

In its NEPA-implementing regulations in 10 CFR Part 51, the NRC has codified the findings from two GEISs: (1) “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (NUREG-1437) and (2) “Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel” (NUREG-2157). Other NRC GEISs, such as the “Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities” (NUREG-0586), have not been codified, but the staff uses them to streamline certain project-specific NEPA reviews. Furthermore, while not GEISs themselves, the NRC relies upon certain codified environmental information for project-specific NEPA reviews, including 10 CFR 51.51, “Uranium fuel cycle environmental data—Table S-3,” and 10 CFR 51.52, “Environmental effects of transportation of fuel and waste—Table S-4.”

¹ The CEQ published a notice in the *Federal Register* (FR) (79 FR 76986; December 23, 2014) about availability of the 2014 CEQ guidance on programmatic NEPA reviews and discussing public comments on a draft version of the guidance.

NEPA Amendments

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

SECTION 108. PROGRAMMATIC ENVIRONMENTAL DOCUMENT.

When an agency prepares a programmatic environmental document for which judicial review was available, the agency may rely on the analysis included in the programmatic environmental document in a subsequent environmental document for related actions as follows:

- (1) Within 5 years and without additional review of the analysis in the programmatic environmental document, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.
- (2) After 5 years, so long as the agency reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid.

SECTION 111. DEFINITIONS.

In this title:

(11) PROGRAMMATIC ENVIRONMENTAL DOCUMENT.—The term ‘programmatic environmental document’ means an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.

Summary

The NEPA amendments establish the definition of a programmatic environmental document, which was previously undefined in the statute. As defined, a programmatic environmental document must be an “environmental document for which judicial review was available” and must analyze the environmental effects of “a policy, program, plan, or group of related actions.” The CEQ Phase 2 final rule states that agencies “may use programmatic environmental documents to conduct a broad or holistic evaluation of effects or policy alternatives; evaluate widely applicable measures; or avoid duplicative analysis for individual actions by first considering relevant issues at a broad or programmatic level” (89 FR 35442, 35561; May 1, 2024).

The NEPA amendments create a new requirement for how and when subsequent environmental documents may rely on the analysis in the programmatic environmental document relative to the age of programmatic environmental documents. Under the NEPA amendments, a programmatic environmental document may be relied upon for up to 5 years, “unless there are substantial new circumstances or information....” After 5 years, reevaluation of the analysis in the programmatic environmental document is required. Therefore, this involves distinguishing between the level of review associated with a “substantial new circumstances” review as compared to a “reevaluation,” neither of which are defined in the NEPA amendments.

The CEQ's 2014 guidance also addresses the lifespan of programmatic NEPA documents and how programmatic documents are used for environmental reviews. As stated, "[a]gencies should determine the factors that may result in the need to supplement or refresh the analysis, establish criteria for evaluating the programmatic document for its use as a basis for subsequent proposal-specific NEPA, and communicate this to stakeholders. When a programmatic review is projected to be used for subsequent decision-making and have a long lifespan, then the agency should pay close attention to the possible effects of new information." Evaluating new information requires that the agency consider the following, as discussed in the CEQ memorandum:

- Does the new information pertain to a programmatic NEPA review that was prepared for a now-completed decision-making process?
- Are there any more decisions to be made by the agency that would use the original NEPA review to meet all or a portion of the agency's NEPA compliance responsibilities for any upcoming decision?
- If there are no further decisions to be made, revising the original programmatic NEPA review serves no purpose and is not required.
- If the new information is relevant to a future decision for which the agency intends to rely upon the original programmatic NEPA review to meet all or a portion of its NEPA compliance responsibilities, then the new information may be reviewed in order to determine if it has any potential effect on the content of the original programmatic review, either in terms of: (a) the accuracy of the previously analyzed impacts (direct, indirect or cumulative); or (b) the feasibility of the alternatives presented or their comparative analysis.
- If supplementation is not required, agencies should consider documenting that determination. For example, an agency could include a memorandum to the administrative record for the programmatic NEPA review.

CEQ recently updated its regulations implementing NEPA and is revisiting relevant definitions, including those for programmatic environmental documents and reevaluation processes. In the Phase 2 final rule, CEQ proposes in 40 CFR 1501.11(c)(2) to "require agencies to *briefly* document their reevaluations when relying on programmatic environmental documents older than 5 years" (emphasis added) (89 FR 35442, 35492). In this regard, CEQ indicates that a reevaluation of a programmatic document is not expected to be a lengthy process and agencies should efficiently verify the accuracy of the evaluation.

Change for the NRC

The NRC's environmental protection regulations in 10 CFR Part 51 do not expressly provide for the kind of reevaluation required by section 108 in the NEPA amendments. If any NRC environmental documents are determined to be subject to the provisions in section 108, the NRC would need to conduct reevaluations to rely on them after 5 years from issuance. Therefore, as discussed below, the staff is providing options to the Commission that would address the requirements in section 108.

The staff already is required to conduct a type of reevaluation when relying on the information in certain GEISs. For example, license renewal supplemental EISs relying on the License Renewal

GEIS (NUREG-1437) and described in 10 CFR 51.95(c)(4) require a new and significant information review. If the generic conclusions of the License Renewal GEIS cannot be validated as part of the new and significant information review, additional site-specific analysis is required. This new and significant review is an example of a type of reevaluation that the staff performs each time it relies on the License Renewal GEIS. The staff also performs other similar reevaluations when it relies on information in other NRC environmental documents.

The new and significant information review associated with the License Renewal GEIS requires consideration of the following:

- information that identifies a significant environmental impact issue that was not considered or addressed in the GEIS and, consequently, not codified
- information not considered in the assessment of impacts evaluated in the GEIS, leading to a seriously different picture of the environmental consequences of the action than previously considered
- any new activity or aspect associated with the nuclear power plant that can act upon the environment in a manner or an intensity and/or scope (context) not previously recognized

Staff Actions for Compliance

The staff will continue its practice of reviewing available information, including new and significant information reviews, when relying on previous environmental information to ensure reliance on the information remains valid. The staff would not begin updating guidance until Commission direction is received.

Implementation Options for Improved Alignment and Efficiency

The staff offers the options described below to more clearly and effectively implement the NEPA amendments regarding programmatic environmental documents.

Option 5.a: Update Guidance to Include Documentation of Reevaluations (Recommended)

Under Option 5.a, the NRC would continue its current practice and procedures for relying on codified environmental information in specific licensing actions and would ensure reevaluations are documented, consistent with section 108 in the NEPA amendments. Project-specific EAs and EISs already go through a reevaluation process each time they supplement a GEIS or incorporate previous environmental analyses by reference. The staff would consider developing new guidance or updating existing guidance to ensure a consistent process to reevaluate GEISs and other environmental information and to ensure that the analysis remains valid.

The staff's review of available information indicates that the NRC's existing reevaluation processes, including new and significant reviews, meet the requirements of the substantial new circumstances and reevaluation requirements in section 108. As noted above, CEQ expects reevaluations to be brief and efficient. CEQ's Phase 2 final rule indicated that reevaluations should, like the NRC's new and significant information reviews, be used to determine whether supplementation of the programmatic environmental document is necessary (89 FR 35442, 35477).

As such, the staff determined that a rulemaking for the NRC's use of programmatic environmental documents and reevaluation processes is unnecessary at this time. Therefore, no new rulemakings would be developed under this option.

Pros:

- Updating guidance is the most efficient and effective manner to reflect that existing processes meet the section 108 requirements.
- This option involves less expenditure of resources and time compared to a rulemaking.
- The staff continues to implement well-understood processes to rely on environmental information and will implement consistent processes for reevaluation of that information.
- Maintains maximum flexibility to adapt to the specific context of the environmental document and the reevaluation.

Con:

- May not provide the same degree of clarity and certainty as a regulatory requirement adopted through rulemaking.

Option 5.b: Rulemaking to Codify Section 108

Under Option 5.b, the NRC would conduct a rulemaking to develop a process and procedures for developing, issuing, and relying on programmatic environmental documents (including GEISs and other environmental information) and for the section 108 reevaluation process, if applicable.

The rulemaking could either codify that some or all of the NRC's GEISs and other environmental information are programmatic environmental documents and thus subject to the section 108 reevaluation process, or that some or all are not programmatic environmental documents.

Pros:

- Promotes clarity, reliability, openness, and transparency by codifying the status of the NRC's GEISs and other environmental information with respect to whether they are or are not programmatic documents.
- Promotes clarity, reliability, openness, and transparency by codifying the section 108 reevaluation process.
- Increases certainty for the staff in applying the reevaluation process.

Cons:

- Offers less flexibility and efficiency as compared to Option 5.a.
- Involves substantial staff time and resources in the near term to undertake rulemaking as compared to updating guidance in Option 5.a, given that the existing processes meet the reevaluation requirements in section 108.

Recommendation

The staff recommends implementing Option 5.a to develop new guidance or update existing guidance to ensure a consistent process to reevaluate GEISs and other environmental information and to ensure reevaluations are documented, consistent with section 108 in the NEPA amendments.