

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Caputo
SUBJECT: SECY-20-0032: RULEMAKING PLAN ON “RISK-
INFORMED, TECHNOLOGY-INCLUSIVE
REGULATORY FRAMEWORK FOR ADVANCED
REACTORS (RIN-3150-AK31; NRC-2019-0062)”

Approved X In-part Disapproved X In-part Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____

Entered in STARS

Yes X

No _____

Signature

Date

**Commissioner Caputo's Comments on SECY-20-0032:
Rulemaking Plan on Risk-Informed, Technology-Inclusive Regulatory
Framework for Advanced Reactors (RIN 3150 AK31; NRC 2019 0062)**

In SECY-20-0032, the staff requests Commission approval of a “proposed approach to a rulemaking to develop the regulatory infrastructure to support the licensing of advanced nuclear reactors.” The operative word in the staff’s request is “proposed”; in other words, a plan or roadmap of sorts to a destination—the final rule—with many opportunities along the way to receive input from our stakeholders. While this journey began decades ago with the Commission’s policy statement on advanced reactors in 1986, interest in advanced reactors has grown substantially over the last 15 years, and Congress has expressly provided funding for the agency’s work in this area.

The Nuclear Energy Innovation and Modernization Act (NEIMA) directs the NRC to develop regulatory infrastructure to support the development and commercialization of advanced nuclear reactors by December 31, 2027. To meet this statutory requirement, the staff proposes to develop 10 CFR Part 53, which would adopt technology-inclusive approaches and include the use of risk-informed and performance-based techniques to provide flexibility for licensing and regulating advanced nuclear reactor technologies and designs. Specifically, Part 53 would:

- Continue to provide reasonable assurance of adequate protection of public health and safety and the common defense and security;
- Reduce requests for exemptions from the current requirements in 10 CFR Part 50 and 10 CFR Part 52;
- Establish new requirements to address non-light-water reactor technologies;
- Recognize technological advancements in reactor design; and
- Credit the response of advanced nuclear reactors to postulated accidents, including slower transient response times and relatively small and slow release of fission products.

10 CFR Part 53 will promote regulatory stability, predictability, and clarity by providing a foundation for effective and efficient reviews of novel technologies.

Staff anticipates development of Part 53 to be a long, complicated journey that will push up against NEIMA’s statutory deadline to publish the final rule in August 2027. However, in a bipartisan, May 14, 2020 letter to Chairman Svinicki, Senators Barrasso, Whitehouse, Booker, and Crapo strongly encouraged the Commission to identify actions to accelerate completion of rulemaking. The Senators reminded the Commission that NEIMA authorizes appropriations through fiscal year (FY) 2024 to complete this rulemaking, and that the Commission should heed the direction and funding provided by Congress to expedite this rule. The Senators emphasized that NEIMA’s statutory deadline is intended to serve as a backstop, not a target completion date.

Congress has recognized the energy security and environmental benefits that advanced reactors may provide. Accordingly, Congress has provided direction and resources to enable the NRC to prepare for this challenge. While the NRC’s role cannot be a promotional one, we must recognize the serious national policy implications of this work and the risk to the agency’s reputation if we fall short. This does not mean we should undercut our safety mission in an effort to rush the rule to completion. But it *does* mean that we must recognize the impact of our work on the future of these technologies. We must complete a high-quality rule in a timeframe that demonstrates our transformation into a modern, risk-informed regulator and respects how our sense of urgency influences the future of these technologies.

Consequently, I support the Chairman's approach in its entirety. The staff should develop a schedule with milestones and resource requirements to achieve publication of the final rule by August 2024 and provide the schedule to the Commission as an information paper within 30 days of the approval of the SRM for SECY-20-0032.