UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

March 26, 2013

COMMISSION VOTING RECORD

DECISION ITEM: SECY-13-0001

TITLE: STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 26, 2013.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-13-0001

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X	X			X	3/8/13
COMR. SVINICKI	X				X	2/19/13
COMR. APOSTOLAKIS	X					2/11/13
COMR. MAGWOOD	X				X	2/4/13
COMR. OSTENDORFF	X				X	2/11/13

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Allison M. Macfarlane

SUBJECT: SECY-13-0001 – STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

Approved __X__ **Disapproved** __X__ **Abstain** _____

Not Participating _____

COMMENTS: **Below** ___ **Attached** _X_ **None** ___

SIGNATURE

3/8/13

DATE

Entered on "STARS" Yes ___ **No** ___

Chairman Macfarlane's Comments on SECY-13-0001
"Staff Recommendations for Improving the Integration of the Ongoing 10 CFR Part 61 Rulemaking Initiatives"

I approve the recommendation to proceed with development of the limited draft rule as described in the paper. The limited draft rule will address the potential option for site-specific waste acceptance criteria (Option 3 of SECY-10-0165) and a two-tiered performance approach. However, I reserve judgment on these approaches, which will be part of the regulatory analysis accompanying the draft rule in July 2013. I also reserve judgment on the plan to risk-inform the Part 61 waste classification tables beginning in fiscal year 2015 (Option 1 of SECY-10-0165), as part of the integrated approach described in the paper.

I disapprove the recommendation to completely eliminate option 4 in SECY-10-0165 from future rulemaking consideration. Option 4 planned to gather stakeholder feedback and consider alignment with International Atomic Energy Agency (IAEA) General Safety Guide (GSG)-1. This option is a matter of Commission policy that needs a full regulatory analysis. It should ideally be evaluated in an integrated manner at the same time with other elements of the framework, such as waste acceptance criteria, revised waste classification tables, and new performance assessment approaches. However, it is important to proceed with the limited rulemaking to address pending challenges in disposing large quantities of uranium, without further delay.

Therefore, in lieu of the scheduled notation vote paper in 2014 on the specific SECY-10-0165 options, the staff should provide a paper to the Commission on the second rulemaking effort for the waste classification tables. The paper should outline the objectives and timeline for developing the regulatory basis of this second rulemaking, in consideration of the outcome of the near-term limited rulemaking that will precede it. The staff should also include in the paper an assessment of IAEA GSG-1 (option 4 in SECY-10-0165).

As described in SECY-10-0165, IAEA GSG-1 outlines a comprehensive radioactive management approach by relating the radiological hazard posed by a particular waste stream to a specific disposition strategy. It directly considers both the half-life and activity of waste. The staff appears to have made significant progress in examining GSG-1 both in SECY-10-0165 and in the draft regulatory basis for the limited rulemaking coming this July.[1] The staff notes in the paper that there is "waning interest" among stakeholders for commenting further on this option, and sees no compelling reason to engage in further public discussions. However, the staff did not provide a thorough regulatory analysis for eliminating this option from future rulemaking consideration. The staff should address the advantages, disadvantages, and legal constraints of this approach[2], including the linkage with our other regulatory frameworks that govern radioactive waste management.[3] There may be various challenges in fully employing IAEA GSG-1. But there may also be long-term, risk-informed advantages in regulating future low-level waste disposal practices in this manner, or a hybrid thereof. This should be fully evaluated and weighed by the Commission.

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[1] Federal Register Vol. 77 No. 236 (pg 72997), December 7, 2012, "Regulatory basis and preliminary rule language; second request for comment."
[2] The staff notes in SECY-10-0165 that a key policy issue for Commission consideration is the alignment of any new classification scheme with the disposal responsibilities in the Low-Level Waste Policy Act Amendments of 1985.
[3] See Table 2 of Enclosure 1 of SECY-10-1065.

I also appreciate the effort that staff has invested in engaging various groups in many meetings on evolving rulemaking options. It is clear that a variety of groups have differing interests and opinions on this matter. It was difficult, however, to determine in the paper how the comments by specific groups and individuals were weighed in the analysis to not consider additional options, and end further work on the SECY 10-0165 options. It appears that some waste disposal entities do not favor any further revision to Part 61, if a new option for waste acceptance criteria is implemented into the rule. But it is not clear, for example, how the comments in favor of options 2 and 4 in SECY-10-0165 were considered in the staff analysis in Enclosure 2.[4] The paper to the Commission on the second phase of rulemaking should identify the interests of specific commenters, and clearly articulate the staff's regulatory basis in accepting or dismissing them. It is also important not to overuse the generic term "stakeholder," when relaying ideas by a specific group or Agreement State with unique values and interests.

Finally, it remains important to update the regulatory framework with the latest science, and the extensive U.S. and international experience in waste disposal. In its rulemaking efforts on Part 61, the staff should carefully address how safety decisions for disposal facilities balance technical judgment and comparative analysis, with the quantitative performance assessments for large time periods.

3/8/13

Allison M. Macfarlane Date

[4] The Health Physics Society (ML12198A289) and The Council on Radionuclides and Radiopharmaceuticals (ML1111A135 and ML12208A094)

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-13-0001 – STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

Approved __XX__ **Disapproved** _____ **Abstain** _____

Not Participating _____

COMMENTS: **Below** __XX__ **Attached** ___ **None** ___

I approve the staff's recommended path forward for improving the efficiency and effectiveness of ongoing 10 CFR Part 61 rulemaking initiatives by integrating, revising, deferring, and eliminating certain earlier Commission direction that has been issued piecemeal over the past, approximately, five years. The staff's reasoning as articulated in SECY-13-0001 is based on fulsome public meeting engagements with stakeholders, solicitation and consideration of public comment, and balancing of competing, internal agency resource priorities. I approve having the staff proceed with the limited scope rulemaking, as described in the paper, but join Commissioner Ostendorff in his appropriate caution that additional changes that have the potential to extend further the time needed to complete this rulemaking should be avoided, if possible.

SIGNATURE

02/19/13

DATE

Entered on "STARS" **Yes** ✓ **No** ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Apostolakis

SUBJECT: SECY-13-0001 – STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

Approved X **Disapproved** _____ **Abstain** _____

Not Participating _____

COMMENTS: Below __ Attached ___ None X

SIGNATURE

2/11/13
DATE

Entered on "STARS" Yes ✓ **No** ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER WILLIAM D. MAGWOOD

SUBJECT: SECY-13-0001 – STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___

Wm Magwood

SIGNATURE

4 February 2013

DATE

Entered on "STARS" Yes X No ___

Commissioner Magwood's Comments on SECY-13-0001, Staff's Recommendation for Improving the Integration of the Ongoing 10 CFR Part 61 Rulemaking Initiatives

I thank the staff for its hard, diligent work over the last couple of years in engaging our broad stakeholder community to discuss the revision of one of the agency's most important regulations. I particularly appreciate staff's well-executed engagement of diverse stakeholders to inform its plan to streamline the ongoing 10 CFR Part 61 rulemaking.

I approve staff's recommendation to cease further efforts associated with SECY-10-0165. I agree with staff that the current work directed by SRM-COMWDM-11-002/COMGEA-11-0002, which directed an amendment to the 2011 version of the draft proposed rule, accomplishes the Commission's original direction in SRM-SECY-08-0147, and implements relevant aspects of SECY-10-0165. I also agree that this limited-scope integrated rulemaking best accomplishes the Commission's direction with respect to 10 CFR Part 61, and a separate rulemaking is no longer needed to address the issues raised in SECY-10-0165.

Finally, I fully support staff's approach to address stakeholders concerns associated with the reporting of certain highly-mobile radionuclides as required by Appendix G of 10 CFR Part 20. I encourage staff to work with stakeholders to resolve this matter expeditiously.

Staff's consideration of these important regulatory issues has been thoughtful and comprehensive. I appreciate the hard work and deft leadership staff has brought to this very complex and important set of issues.

2/4/13

William D. Magwood, IV **Date**

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-13-0001 – STAFF RECOMMENDATIONS FOR IMPROVING THE INTEGRATION OF THE ONGOING 10 CFR PART 61 RULEMAKING INITIATIVES

Approved X **Disapproved** _____ **Abstain** _____

Not Participating _____

COMMENTS: **Below** X **Attached** ___ **None** ___

I approve terminating further efforts associated with SECY-10-0165 at this time in accordance with the staff's proposal. I believe the staff's integrated approach will improve the efficiency of the ongoing rulemaking. Considering the additional options noted in SECY-10-0165 to risk inform 10 CFR Part 61 at this time may divert attention that is needed to complete the ongoing rulemaking. In addition, the revisions to 10 CFR Part 61 being considered in the ongoing rulemaking may obviate the need for further efforts to risk inform the requirements. As I noted in my vote on COMWDM-11-0002/COMGEA-11-0002, given that the ongoing rulemaking is needed to address the safe disposal of depleted uranium and other long-lived wastes, I would caution against any additional changes at this time that have the potential to extend the rulemaking.

SIGNATURE

2/11/13

DATE

Entered on "STARS" Yes X No ___