




UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 13, 2015

MEMORANDUM TO: Commissioner Svinicki
FROM: Stephen G. Burns 
SUBJECT: RESPONSE TO REQUEST FOR A REVISED *FEDERAL REGISTER* NOTICE FOR 10 CFR PART 61

I have received your memo, dated March 4, 2015, in which you raise a concern regarding the staff's inclusion of a "new proposed regulatory requirement" for a defense-in-depth analysis within "Proposed Rule: Low-Level Radioactive Waste Disposal (10 CFR Part 61)(RIN 3150-A192)." In your memo, you state that the proposed regulatory requirement is an "entirely new and original regulatory requirement" and that the staff lacks the authority to introduce this requirement at this stage in the rulemaking process. In order to resolve your concern, you request that I direct the Executive Director of Operations (EDO) to develop a revised *Federal Register* Notice (FRN) that is in conformance with the Commission's Staff Requirements Memorandum (SRM) of February 12, 2014 (SRM-SECY-13-0075).

After careful review of the SRM and the revised FRN, I note that, in paragraph 9 of the SRM, the Commission directs the staff to include clear statements in the proposed rule that licensing decisions will be based on defense-in-depth projections and performance assessment goals but leaves the actual language to the staff's discretion. After consulting with the staff and also with Commissioners Ostendorff and Baran, I do not believe that the staff has abused its discretion with respect to the directives contained in the SRM. Therefore, I do not intend to direct the EDO to further revise the FRN. Accordingly, and recognizing that the public will have an opportunity to comment on the provision of concern and the Commission will have an opportunity to review and approve the final rule, I support the staff's plan to submit the proposed rule to the Office of the *Federal Register* for publication for public comment.

cc: Commissioner Ostendorff
Commissioner Baran
M. Doane, OGC
A. Vietti-Cook, SECY
M. Satorius, EDO
C. Haney, NMSS