

POLICY ISSUE

(Notation Vote)

March 19, 2007

SECY-07-0052

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: NUCLEAR REGULATORY COMMISSION DRUG-FREE
WORKPLACE PLAN - RECOMMENDED TESTING RATE

PURPOSE:

To provide the Commission with options and the staff's recommendations for (1) the annual random drug testing rate¹ for NRC employees, and (2) testing of badged contractor employees with associated resource implications, and an implementation plan as directed in Staff Requirements Memorandum for COMSECY-06-0043, "Nuclear Regulatory Commission (NRC) Drug-Free Workplace Plan - Recommended Changes to Drug Testing Pool," dated September 29, 2006.

BACKGROUND:

By memorandum dated September 29, 2006, "Staff Requirements - COMSECY-06-0043 - Nuclear Regulatory Commission (NRC) Drug-Free Workplace Plan - Recommended Changes to Drug Testing Pool," the Commission approved the staff's recommendation to designate all NRC positions as sensitive and include all NRC employees in its random drug testing pool, and directed staff to develop an implementation plan for Commission consideration, addressing options for the testing rate, including badged contractor employees² and address resource complications.

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¹ The annual random drug testing rate is defined as the number of tests conducted divided by the total number of individuals in the random drug testing pool.

² The staff has considered drug testing for those contractor employees whose duties are of a nature that can legally support including them in a mandatory Federal drug testing program.

NRC's Drug-Free Workplace Plan currently stipulates an annual random drug testing rate of 50 percent for those in a testing designated position. With the current testing pool of approximately 1,800 employees subject to random testing, approximately 900 random and approximately 200 applicant tests are being conducted each year.

Over the last two years, there have been less than .05 percent positive drug tests. We believe this low percentage of positive tests are a direct result of the 50 percent testing rate of those in testing designated positions. In accordance with NRC's policy that its workplace be free from illegal use, possession, or distribution of controlled substances, it is essential that NRC maintains a random drug testing frequency that ensures a sufficient number of employees are tested each year.

There are several contracts that currently include provisions for drug testing in certain situations or for certain positions, e.g., post-accident and pre-assignment screening for certain sensitive positions, such as operators of government vehicles, personnel security support, and those who carry weapons.

DISCUSSION:

The staff considered the current Fitness for Duty (FFD) program for nuclear power plants and results of a survey of other Federal agency programs to develop options and recommended testing rates.

The current FFD program for nuclear power plants, regulated under Title 10 of the Code of Federal Regulations, Part 26 (10 CFR 26), requires licensees to drug test at a rate of at least 50 percent.

Federal agencies that have a security clearance program test employees in sensitive positions at the following rates:

- The National Security Agency tests at a target rate of 100 percent.
- Department of Energy (DOE) employees eligible for annual random testing are tested at a 50 percent rate. These include all employees with a Q security clearance and employees in safety sensitive positions (e.g., electricians, linemen). DOE uses a target rate of 100 percent for very sensitive nuclear weapons related positions.
- The Department of Defense (DOD) has moved to a target rate of 100 percent of their civilian and military workforce. In FY 2006, DOD achieved a 75 percent testing rate.
- The Environmental Protection Agency (EPA) has a testing rate of 15 percent for all of their cleared employees and Presidential appointees, emergency response personnel, drivers, and employees who carry weapons.
- The Federal Aviation Administration and Federal Air Marshals under the Department of Transportation test at a 25 percent testing rate.
- The Transportation Security Administration, under the Department of Homeland Security, tests at a 33 percent testing rate.

Some aspects of NRC's mission are similar to both DOE and EPA. DOE test employees in sensitive positions at a minimum rate of 50 percent. While EPA may have some similarity to the NRC in mission, the majority of EPA positions are not considered sensitive and do not require a security clearance.

ANNUAL RANDOM DRUG TESTING RATE OPTIONS:

The staff examined four annual random drug testing rate options (see Enclosure 1 for pros and cons for each option) for the Agency's approximate 3,500 employees. The testing rate options are:

1. 25 percent;
2. 50 percent;
3. 100 percent; or
4. 50 percent for highest risk employees (i.e., those who hold NRC Q security clearances) and a 25 percent rate for all other employees.

The staff conducted probability calculations for the four annual random drug testing rate options based on the current Commission approved testing frequency of ten times a year. As expected, calculations indicate that the probability of being randomly selected for drug testing at least once during the year increases as the testing rate increases. For example, at a 25 percent annual random drug testing rate, the probability of being randomly selected during a one-year period is 22 percent. At a 50 percent annual random drug testing rate, the probability of being randomly selected at least once during a one-year period is 40 percent. At a 100 percent annual random drug testing rate, the probability of being randomly selected at least once during a one-year period is 65 percent.

RESOURCE REQUIREMENT ESTIMATES FOR TESTING NRC STAFF:

The following resource requirement estimates for each option are in addition to those currently budgeted for in FY 2007 and FY 2008 (\$376K and \$396K, respectively) for the Drug Testing Program; these costs will extend into each successive year. All options assume implementation in FY 2008 and 100 percent testing of applicants who have accepted positions with the NRC.

Option 1 (25 percent of employees) - resource requirements would be expected to increase by approximately \$67K.

Option 2 (50 percent of employees) - resource requirements would be expected to increase by approximately \$204K.

Option 3 (100 percent of employees) - resource requirements would be expected to increase by approximately \$443K.

Option 4 (50 percent of employees with Q clearance/25 percent of remaining employees) - resource requirements would be expected to increase by approximately \$190K.

For each of the options presented above, FY 2008 funds will come from the reallocation of funds from lower priority items; FY 2009 funds will be addressed through the FY 2009 Planning, Budgeting, and Performance Management (PBPM) process. Regardless of the option chosen for the testing rate, the cost of the program will increase over the current program due to the increased number of staff in the pool.

RECOMMENDATION FOR EMPLOYEE DRUG TESTING RATE:

The staff recommends that the Commission approve Option 2 which will maintain a 50 percent testing rate while increasing the pool to include all NRC employees. This option provides a reasonable deterrence of illegal drug use by all NRC employees with a reasonable expenditure of NRC resources. In addition, the 50 percent testing rate is consistent with the Commission-approved 50 percent testing rate in 10 CFR 26 for those individuals who have unescorted access to nuclear power plants.

CONTRACTOR RANDOM DRUG TESTING PROGRAM:

NRC does not currently require that all badged or unbadged contractor employees be included in the Federal random drug testing program since they are not NRC employees. However, under contract provisions, NRC currently requires random drug testing for its contractors who operate government vehicles, carry weapons and perform pre-assignment drug testing for the personnel security contractor. The staff reviewed activities performed by badged and unbadged NRC contractors requiring unescorted access against the NRC employee drug testing criteria and the requirements of 10 CFR 26. Based on the results of this review, the staff developed strategies for badged and unbadged contractor employees who may require unescorted access to nuclear power plants, access to safeguards and/or classified information, and those who admit to recent drug use. Two options for contractor drug testing are provided in Enclosure 2.

RECOMMENDATION FOR CONTRACTOR DRUG TESTING:

The staff recommends that the Commission approve Option 2, which will require pre-assignment and random drug testing for badged and unbadged NRC contractors who are in sensitive positions (i.e., those who operate government vehicles and carry weapons as well as those that require unescorted access to nuclear power plants, and access to safeguards and/or classified information) or admit to recent illegal drug use. Drug testing of contractors based solely on their having access to NRC physical facilities cannot be justified under applicable law.

RESOURCE SUMMARY:

As a result of its review of this issue, the staff recommends that the Commission continue with a 50 percent testing rate for all NRC employees and that the current program for drug testing a limited number of badged contractor employees be expanded to include those contractors who require unescorted access to nuclear power plants, access to safeguards and/or classified information, and those who admit to recent illegal drug use.

It is anticipated that implementation of recommended options will commence in FY 2008.

For employee drug testing, the additional cost to implement Option 2 (50 percent annual random drug testing rate) is approximately \$204K. An implementation plan for Option 2 is provided as Enclosure 3. For contractor drug testing, while specific details on the implementation of Option 2 to extend this program to contractors have yet to be developed, the staff estimates the cost to be approximately \$190K for an estimated total increased cost of \$394K. A separate implementation plan for contractor testing, along with detailed resource estimates, will be provided for Commission review by August 29, 2007.

These additional resources are not included in the FY 2008 budget, but will be reallocated from lower priority activities. For FY 2009, resources will be addressed in the FY 2009 PBPM process.

COMMUNICATION PLAN:

A Communication Plan for disseminating information to employees and fulfilling our statutory obligations with the National Treasury Employees Union is enclosed (Enclosure 4).

COORDINATION:

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of General Counsel has reviewed this paper and has no legal objection.

/RA/

Luis A. Reyes
Executive Director
For Operations

Enclosures:

1. Annual Drug Testing Rate Options
for Employees - Pros and Cons
2. Contractor Drug Testing Program
Options - Pros and Cons
3. Implementation Plan
4. Communication Plan

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1. Annual Drug Testing Rate Options for Employees - Pros and Cons
2. Contractor Drug Testing Program Options - Pros and Cons
3. Implementation Plan
4. Communication Plan

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NAME	MScott (RWebber for)	LBarnett	JSchaeffer	THagan	JSilber	LReyes
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