

October 4, 2002

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0023A

TITLE: ADDENDUM TO SECY-02-0023: PROPOSED
REVISION TO THE ENFORCEMENT POLICY TO
INCLUDE AN INTERIM POLICY REGARDING
ENFORCEMENT DISCRETION FOR FITNESS-
FOR-DUTY ISSUES.

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 4, 2002.

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 Meserve
 Commissioner Dicus
 Commissioner Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-02-0023A

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X				X	9/3/02
COMR. DICUS	X				X	8/30/02
COMR. DIAZ	X					9/23/02
COMR. McGAFFIGAN	X				X	9/18/02
COMR. MERRIFIELD	X				X	9/19/02

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 4, 2002.

Commissioner Comments on SECY-02-0023A

Chairman Meserve

I approve the staff's plan to implement fitness-for-duty (FFD) enforcement discretion, subject to the following comments.

The revised policy reduces unnecessary regulatory burden because it allows licensees to take credit for testing and inquiries conducted under other Part 26 programs monitored by the NRC. This practice assumes the previous programs were in compliance with the regulations. The staff should develop guidance to help ensure that any violations of the requirements of Part 26 by one licensee are immediately reported to other licensees who have taken credit for the Part 26 program of the licensee in violation.

I attach some minor edits to the Federal Register notice.

Commissioner Dicus

I approve the staff's proposed enforcement policy amendment and publication of the amendment in the *Federal Register*. The amendment appears to reduce unnecessary burdens in the area of fitness-for-duty while still requiring adequate measures so that licensees and the NRC will continue to have reasonable assurance that employees are fit to perform their duties. Edits to the *Federal Register* Notice are attached.

Commissioner McGaffigan

I concur in the Chairman's edits and comments and offer one additional edit.

Commissioner Merrifield

I approve the staff's plan to implement fitness-for-duty (FFD) enforcement discretion as discussed in SECY-02-0023 and SECY-02-0023A, and modified in the staff's Correction Notice of July 24, 2002. The Commission has been very clear in its support of prudent fitness-for-duty measures aimed at ensuring that the nuclear power plant workplace is drug and alcohol free and that plant workers are fit to perform their duties. Based on my review of the information provided by the staff, I believe the staff's final recommendations are consistent with the Commission's views on FFD as well as the agency's performance goals.

I am pleased that the staff has established frequent communication with stakeholders on the FFD rulemaking effort and other FFD initiatives including those associated with the subject SECY paper. Based on the information provided by the staff in SECY-02-0023, SECY-02-0023A, and the July 24th Correction Notice, it is clear that our stakeholder outreach efforts have been beneficial and I commend the staff for leading these efforts. However, I ask the staff to reflect further on what the results of these outreach efforts may be indicating. Specifically, significant stakeholder discussions preceded the staff's proposed revision to the Enforcement Policy

described in SECY-02-0023 (dated February 1, 2002). Subsequently, following further dialogue with stakeholders, the staff recognized that their recommendations proposed in SECY-02-0023 were not entirely appropriate and recommended additional changes in SECY-02-0023A (dated May 23, 2002). Then, following further dialogue with stakeholders, the staff recognized that additional changes were necessary to their recommendations provided in SECY-02-0023A and submitted the July 24th Correction Notice. From my perspective, the numerous changes made since the staff's initial submission of SECY-02-0023 clearly reflect that there is constructive dialogue occurring between the staff and our stakeholders. However, they may also reflect that our staff is still trying to get its arms completely around our FFD requirements and how licensees implement these requirements.

I encourage the staff to aggressively continue their dialogue with stakeholders to ensure that our oversight of licensee FFD programs is sound. As I am sure the staff would agree, anything short of this outcome would simply be unacceptable. I also encourage the staff to keep me and my Commission colleagues informed on significant FFD matters including those associated with the FFD rulemaking effort.

Finally, I support the edits proposed by the Chairman and Commissioner McGaffigan.