



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

April 5, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0052

TITLE: NRC DRUG-FREE WORKPLACE PLAN - RECOMMENDED
TESTING RATE

The Commission (with Chairman Klein and Commissioners McGaffigan, Jaczko, and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 5, 2007. Commissioner Merrifield disapproved the paper.

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

A handwritten signature in black ink, appearing to read "A. L. Bates", written over a horizontal line.

Andrew L. Bates
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-07-0052

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	4/2/07
COMR. McGAFFIGAN	X				X	3/21/07
COMR. MERRIFIELD		X			X	3/26/07
COMR. JACZKO	X				X	3/27/07
COMR. LYONS	X				X	3/22/07

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners McGaffigan, Jaczko, and Lyons approved the staff's recommendation. Commissioner Merrifield disapproved the staff's recommendation. All Commissioners provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 5, 2007.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM:

SUBJECT: SECY-07-0052 - NUCLEAR REGULATORY
COMMISSION DRUG-FREE WORKPLACE PLAN -
RECOMMENDED TESTING RATE

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

4/2/07

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-07-0052

I approve the staff recommendations to perform drug testing at a rate of 50% for NRC employees and to perform random testing of badged or unbadged contractors in sensitive positions.

I support Commissioner Lyons' comment regarding updating the tracking system. It was understood from COMSECY-06-0043 that resources for this would be covered in the cost of annual software application maintenance.

I echo Commissioner McGaffigan's concern the fact that drug testing of contractors cannot be based solely on having access to NRC physical facilities according to applicable law.

 4/2/07
Dale E. Klein Date

NOTATION VOTE

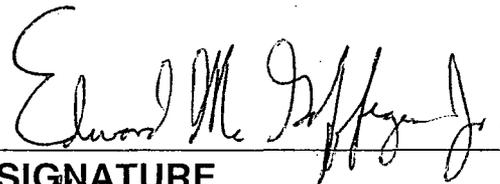
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: SECY-07-0052 - NUCLEAR REGULATORY
COMMISSION DRUG-FREE WORKPLACE PLAN -
RECOMMENDED TESTING RATE

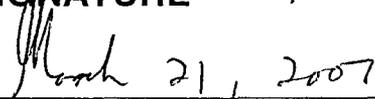
Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE



DATE

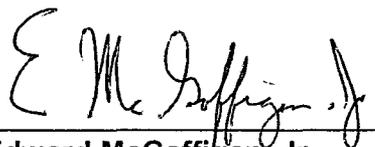
Entered on "STARS" Yes No

Commissioner McGaffigan's Comments on SECY-07-0052

I support the staff's proposals for both the testing rate for NRC employees (50 percent) and contractor drug testing.

I note that the latter proposal is limited to those contractors in sensitive positions or who admit to recent illegal drug use. The staff informs us "Drug testing of contractors based solely on their having access to NRC physical facilities cannot be justified under applicable law."

I personally would urge Congress to close this loophole. If Congress truly desires "drug free" federal workplaces, Congress needs to ensure that contractor employees, who work side-by-side with federal employees, with access badges to most of the facility where they are employed, are covered by mandatory drug testing programs.

 3/21/07

Edward McGaffigan, Jr. (Date)

NOTATION VOTE

RESPONSE SHEET

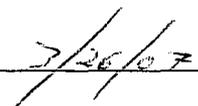
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-07-0052 - NUCLEAR REGULATORY
COMMISSION DRUG-FREE WORKPLACE PLAN -
RECOMMENDED TESTING RATE

Approved _____ Disapproved Abstain _____
Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

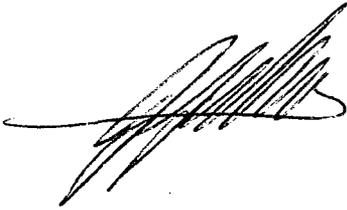


DATE

Entered on "STARS" Yes _____ No _____

Commissioner Merrifield's comments on SECY-07-0052:

I disapprove the staff's recommended Option 2 (testing 50% of NRC employees) in favor of Option 1 (testing 25% of NRC employees). As the staff's paper highlights, over the past two years, there have been less than .05% positive drug tests. At that testing rate, I can not justify increasing the agency's costs for this program by an additional \$394K, even as the program is being expanded to all agency personnel and some contractors. I would begin at the 25% testing rate and adjust periodically as the testing results warrant.



3/26/07

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-07-0052 - NUCLEAR REGULATORY
COMMISSION DRUG-FREE WORKPLACE PLAN -
RECOMMENDED TESTING RATE

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE
3/27/07

DATE

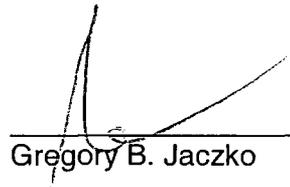
Entered on "STARS" Yes No _____

**Commissioner Jaczko's Comments on SECY-07-0052
NRC Drug-Free Workplace Plan - Recommended Testing Rate**

I approve the staff's recommendations for the random drug testing rate for employees as well as the staff's recommendations for contractor drug testing. For employees, I agree with the staff's Option 2 that a 50 percent random testing rate should be maintained. I believe continuing to provide the same level of deterrence to substance abuse is important, even though the number of employees subject to testing will increase to include all employees, as all NRC employees require security clearances.

For contractors, I agree with the staff's Option 2. I understand that there are constitutional issues surrounding expanding drug testing to contractors based solely on access to NRC facilities. Thus, I support the staff's proposal to ensure the testing extends to badged and un-badged NRC contractors who are in sensitive positions or admit to recent illegal drug use. The staff should ensure this includes all contractors who hold security clearances.

Because of the complex nature of the program, its actual implementation is critical in ensuring applicable law is closely followed. Staff should work closely with OGC on the implementation details.



Gregory B. Jaczko

3/22/07

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-07-0052 - NUCLEAR REGULATORY
COMMISSION DRUG-FREE WORKPLACE PLAN -
RECOMMENDED TESTING RATE

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None


Peter B. Lyons
SIGNATURE

3/22/07
DATE

Entered on "STARS" Yes No

Commissioner Lyons' Comments on SECY-07-0052

I approve the staff's recommendation, Option 2, for a 50 percent random drug testing rate for all NRC employees and for NRC contractors who are in sensitive positions as defined in the paper. I support the staff's full implementation of the recommendation in FY2008. I appreciate the staff efforts to consult other Federal agencies to better inform a recommendation for Commission deliberation.

Previously, in COMSECY-06-0043, staff noted that it was investigating a replacement for the existing drug testing tracking system that had not been modified since 1999. Staff should expeditiously replace/modify the existing tracking system to support the revised testing program.

I further support Commissioner McGaffigan's comment on the need for Congress to close the loophole to ensure testing of all contractor employees. I would further recommend that NRC staff engage the appropriate federal agencies to develop proposed legislation that could be provided to Congress for their consideration.

 3/22/07
Peter B. Lyons Date