



SECRETARY

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

April 18, 2019

COMMISSION VOTING RECORD

DECISION ITEM: SECY-17-0059

TITLE: PROPOSED ENFORCEMENT POLICY REVISION FOR
PROCESSING FITNESS-FOR-DUTY CASES RESULTING
FROM SITE FITNESS-FOR-DUTY DRUG AND ALCOHOL
VIOLATIONS BY INDIVIDUALS

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 18, 2019.

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

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Svinicki
Commissioner Baran
Commissioner Burns
Commissioner Caputo
Commissioner Wright
OGC
EDO
PDR

VOTING SUMMARY – SECY-17-0059

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAIN</u>	<u>NOT PARTICIPATING</u>	<u>COMMENTS</u>	<u>DATE</u>
Chrm. Svinicki	X				X	04/10/19
Cmr. Baran	X				X	06/27/17
Cmr. Burns	X				X	12/20/17
Cmr. Caputo	X				X	04/10/19
Cmr. Wright	X				X	04/10/19

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN SVINICKI

SUBJECT: SECY-17-0059: Proposed Enforcement Policy Revision for Processioning Fitness-for-Duty cases resulting from site Fitness-for-Duty Drug and Alcohol Violations by Individuals

Approved XX Disapproved Abstain Not Participating

COMMENTS: Below XX Attached None

I approve the staff's proposed revision to the enforcement policy, establishing that the NRC will not typically consider fitness-for-duty (FFD) drug and alcohol-related violations involving non-licensed individuals for enforcement action unless there is an apparent deficiency in the licensee's FFD program. I also approve the staff's specific, proposed implementation of this change, through the addition of a new paragraph to Section 4.1 of the NRC's enforcement policy, as proposed in the paper. The staff concludes that an individual violation of a site FFD policy, particularly where the licensee program has identified the violation and where the sanctions required by 10 CFR Part 26 have already been imposed by the licensee, does not, as a routine matter, call into question the efficacy of the FFD program. One can reasonably argue that it indicates the opposite, i.e., that the program is working as intended.



SIGNATURE

04/ 10 /19

DATE

Entered on "STARS" Yes No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: SECY-17-0059: Proposed Enforcement Policy Revision for
Processioning Fitness-for-Duty cases resulting from site
Fitness-for-Duty Drug and Alcohol Violations by
Individuals

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"

Yes

No



SIGNATURE

6/27/17

DATE

**Commissioner Baran's Comments on SECY-17-0059,
"Proposed Enforcement Policy Revision for Processing Fitness-For-Duty Cases
Resulting from Site Fitness-for-Duty Drug and Alcohol Violations by Individuals"**

In this paper, the staff recommends a revision to NRC's enforcement policy related to cases involving individuals who violate drug and alcohol provisions of site fitness-for-duty programs. Specifically, the new paragraph of the enforcement policy would state that NRC will not typically take enforcement action against a licensee for an individual's drug or alcohol-related violation of a fitness-for-duty program unless there appears to be a deficiency in the program itself. According to the staff, "NRC will continue to investigate [fitness-for-duty] cases in which the NRC identifies an apparent breakdown of the licensee's [fitness-for-duty] program" such as "violations involving potential wrongdoing, significant [fitness-for-duty] policy violations, or program weaknesses that are safety or security significant."

I find the staff's proposed enforcement policy revision to be reasonable, and I approve its issuance. I agree with the staff that successfully identifying an individual's alcohol or drug-related violation does not, as a general matter, raise concerns about the effectiveness of a licensee's fitness-for-duty program. On the contrary, this is an indication that the program is working as intended. In fact, when the staff examined approximately 40 fitness-for-duty cases related to drug or alcohol use that were processed during the last nine years, the staff found that licensees had usually imposed the appropriate sanctions on the individuals for the violations before NRC began its investigative work. Under the revised policy, the Office of Investigations and the Office of Enforcement should retain access to individual case information in order to monitor for emerging trends at site fitness-for-duty programs.

I want to highlight one concern I have with the paper, regarding the staff's brief discussion of the public comments received on the proposed revision. Having read the 12 public comments, I did not find the staff's summary to be an accurate reflection of the range of views expressed by the commenters. In the future, I think it is important for the staff to present a balanced description of the public comments submitted on a proposed regulatory action rather than conveying the views of a single stakeholder.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Burns

SUBJECT: SECY-17-0059: Proposed Enforcement Policy Revision for Processioning Fitness-for-Duty cases resulting from site Fitness-for-Duty Drug and Alcohol Violations by Individuals

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

I approve the NRC staff's recommendation that the Commission revise the enforcement policy with respect to non-licensed individuals who violate the drug and alcohol prohibitions under a site's fitness-for-duty (FFD) program by providing that the NRC will not typically consider failures to abide by FFD drug and alcohol-related restrictions for enforcement action unless there is an apparent deficiency in the licensee's FFD program or other compelling circumstances beyond the routine identification of employees who fail the required FFD screening.

I also approve the staff's proposed method of implementation, i.e., by the addition of a separate paragraph to Section 4.1 of the NRC's enforcement policy, subject to changing the phrase "individuals that" to "individuals who" in the first sentence of the proposed paragraph. In addition, the staff should also modify Section 2.4 of the NRC's enforcement manual, and such other sections as may be appropriate, to reflect the revised policy interpretation and to provide criteria to aid staff in consistently identifying the exceptions to the "typical" FFD drug and alcohol-related violation that would be covered by the revised policy.

Entered in STARS

Yes

No



Signature

20 December 2017

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Caputo

SUBJECT: SECY-17-0059: Proposed Enforcement Policy Revision for Processioning Fitness-for-Duty cases resulting from site Fitness-for-Duty Drug and Alcohol Violations by Individuals


Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

I approve the NRC staff's recommended revision of the enforcement policy as it pertains to non-licensed individuals who violate the drug and alcohol prohibitions under a site's fitness-for-duty (FFD) program. Under the revised enforcement policy, for FFD violations involving non-licensed individuals who violate drug and alcohol provisions of site FFD programs, the NRC will not typically consider FFD drug and alcohol-related enforcement action unless there is an apparent deficiency in the licensee's FFD program to take the required sanctions against the individual(s) or deficiencies in implementation of the licensee FFD program.

I also approve the staff's proposed method of implementing the revision by adding the paragraph proposed in Enclosure 2 of the SECY to Section 4.1 of the NRC's enforcement policy. In addition, the staff should make conforming changes to the NRC's enforcement manual, as appropriate.

Entered in "STARS"
Yes No



SIGNATURE
4/10/2019

DATE

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Wright

SUBJECT: SECY-17-0059: Proposed Enforcement Policy Revision for Processioning Fitness-for-Duty cases resulting from site Fitness-for-Duty Drug and Alcohol Violations by Individuals

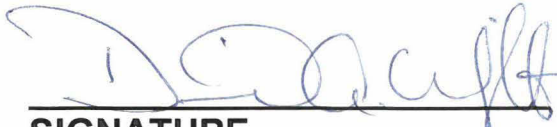
Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

I approve the staff's recommendation to issue a revised enforcement policy to limit the review and processing of cases involving non-licensed individuals who violate drug and alcohol provisions of site fitness-for-duty (FFD) programs which are explicitly described in 10 CFR 26.75, "Sanctions." This recommendation is consistent with previous Commission direction and creates efficiencies in the enforcement process without impacting safety and security at nuclear power plants. Part 26 requires licensees to establish, implement, and maintain a FFD program in order to have reasonable assurance that individuals are trustworthy and reliable as demonstrated by the avoidance of substance abuse. The staff's analysis indicates that the licensees' FFD programs typically identify alcohol or drug related violations, and licensees are imposing at least the minimum sanctions required by 10 CFR 26.75. I agree that separate NRC investigations are unnecessary unless there is an apparent deficiency in a licensee's program.

I agree with Commissioner Burns' additional revisions to Section 4.1 (i.e., changing the phrase "individuals that" to "individuals who" in the first sentence of the proposed paragraph). I also agree that the staff should modify appropriate sections of the NRC's enforcement manual to reflect the revised policy interpretation and to provide criteria to aid staff in consistently identifying the exceptions to the "typical" FFD drug and alcohol-related violation covered by the revised policy. Finally, I share Commissioner Baran's concern that the staff's discussion of public comments on the proposed revision did not accurately reflect the public comments received. In the future, the staff should present an accurate and balanced description of public comments.

Entered in "STARS"
Yes No



SIGNATURE
4/10/19

DATE