

February 9, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-266

TITLE: FINAL RULE - REQUIREMENTS FOR INITIAL OPERATOR LICENSING EXAMINATIONS

The Commission (with Commissioners McGaffigan agreeing and Commissioners Dicus and Merrifield agreeing in part) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM ) of February 9, 1999. Chairman Jackson and Commissioner Diaz disapproved the paper and Commissioners Dicus and Merrifield disapproved in part.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of February 9, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-98-266

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON		X			X	2/2/99
COMR. DICUS	X	X			X	12/11/98
COMR. DIAZ		X			X	12/16/98
COMR. McGAFFIGAN	X				X	12/23/98
COMR. MERRIFIELD	X	X			X	12/2/98

COMMENT RESOLUTION

In their vote sheets, Commissioners Dicus, McGaffigan and Merrifield approved the final rule but agreed to change the restrictions placed on licensee

personnel who prepare initial operator written examinations to be the same as the restrictions associated with the preparation of requalification examinations. The Commission (with all Commissioners agreeing) disapproved the proposed changes to the enforcement policy. Chairman Jackson and Commissioner Diaz disapproved the paper. Subsequently, the Commission affirmed the final rule in an Affirmation Session as noted in the SRM issued on February 9, 1999.

Commissioner Comments on SECY-98-266

Chairman Jackson's Comments on SECY-98-266

I disapprove of the staff intention to modify [10 CFR Part 55](#) to allow power reactor licensees to prepare and administer operator license examinations. While I have not, to date, opposed the pilot program or previous rulemaking efforts in this area, the subject paper has not made a compelling case for the rule change in question. It is not clear to me what advantage will be gained from the proposed action. While I agree with the staff that this approach will save NRC resources, the subject paper leads me to conclude that the costs that would have been incurred by NRC will, on balance, simply be redistributed over the power reactor community. I agree with the staff position that some licensees may realize less of a resource burden by this approach (i.e. those that are capable of preparing high quality examinations with limited NRC involvement); however, it is not clear to me why all power reactor licensees could not experience similar reductions in burden through effective staff management of NRC contractor activities. In balancing the unpredictable nature of the benefits to be realized against the increased potential for the compromise of examinations and the difficulty in planning NRC activities due to the voluntary nature of this approach, I conclude that it is preferable for NRC to reestablish sole responsibility for the preparation and administration of initial licensed operator examinations.

I am troubled by the fact that the subject paper describes a decision-making process which places budget ahead of the agency public health and safety mission. Specifically, the paper states that the staff's proposal in this area was, in part, the result of anticipated resource reductions; thus, it would appear that a decision was made to require licensees to administer operator license examinations to support those anticipated (and, eventually, realized) resource reductions. The subsequent determination that requiring licensees to prepare and administer operator license examinations constituted a backfit has now placed the staff in the position of proposing to allow, rather than require, licensees to perform these functions. Remaining mindful of the fact that many of the approximately 75% of licensees participating in the pilot program in this area may have done so in preparation for what they anticipated to be a requirement and that they may now request NRC to prepare and administer examinations at their facilities, I am concerned that this action may result in no net benefit for licensees and an increased planning burden (due to demand uncertainties) for the NRC. Additionally, the planning and budgeting uncertainties incumbent in the proposed action may add additional difficulty to staff efforts to ensure that NRC is not an impediment to licensees staffing their facilities with the numbers of licensed operators that they feel is appropriate (in this vein, some licensees have already complained that NRC can be just such an impediment, or at least an obstacle, by only offering generic fundamentals examinations twice in a given year).

Commissioner Dicus' Comments on SECY-98-266

I approve the proposed changes to 10 CFR 55 as proposed by the staff, subject to the following comments:

1. If a large number of licensees elect to develop their own exams, licensees will continue to gain experience in exam development, while the NRC examiners, with fewer opportunities to develop exams, may not be able to maintain their proficiency at the same level it is today. As a result, the level of difficulty between licensee developed exams and NRC developed exams may begin to diverge.

In the Commission's 12/17/96 SRM to SECY-96-206 pertaining to the proposed rulemaking, the staff was directed to ensure that examiners maintain proficiency by writing at least one initial operator licensing examination per calendar year in each NRC Region. The intent of this requirement was to ensure all qualified examiners that administer exams were able to maintain their proficiency. Based on the above, the staff should monitor exam results to ensure the exams developed by the NRC remain at a comparable level to that of licensee developed exams. If the staff identifies a decline in examiner proficiency, additional training in exam development should be included in the examiner continual training program.

2. I agree with Commissioner Merrifield's comment regarding the restrictions in interim Rev. 8 to NUREG-1021 placed on facility personnel who can participate in developing the initial operator licensing examinations. These restrictions are more limiting than what has been imposed on licensee personnel involved in the development of requalification exam materials, and is an undue burden on facility licensees with minimal benefit. Therefore, I believe the restrictions placed on initial exam development in interim Rev. 8 to NUREG-1021 should be modified prior to issuance of the final Rev. 8 to be consistent with the requalification exam development restrictions. However, the staff should continue to monitor licensee programs and recommend additional restrictions on initial exam development in NUREG-1021 if actual exam development problems are identified.

I disapprove the proposed changes to the enforcement policy for the following reasons:

First, the staff should reevaluate the proposed examples to determine if the examples cover the spectrum necessary to ensure consistent application of the enforcement policy and that the technical and regulatory significance have been appropriately considered. For example, the staff has not made a compelling argument as to why identification of exam compromise immediately before an exam is administered and identification immediately following exam administration constitutes the difference between a Level IV and Level III violation. However, if the compromise is identified after licenses are issued, the situation may be more severe, and if it is determined that one or more of the operators granted a license didn't possess the requisite knowledge and abilities to operate the associated facility, an even higher severity level may be warranted.

Second, the staff included in its example of a Level III violation, a case where the compromise was willful. The treatment of willful violations, including

the factors that should be considered when determining the severity of a willful violation, is already addressed in Section IV, "Severity of Violations," of the enforcement policy.

Commissioner Diaz' Comments on SECY-98-266

On October 18, 1996, I voted to disapprove delegating authority for initial licensed operator examinations. On May 15, 1997, I stated that I was even more convinced that the proposed rule was inappropriate, and I asked two questions. My review of the package before us reinforced my view that, to allow some flexibility, we have designed a very complex process which may not serve either licensees or the NRC well. It is an axiom that one can delegate authority but not responsibility. It appears that this rulemaking may give responsibility but with many strings attached.

Having well-qualified licensed operators is fundamental not only to safe plant operation but to NRC's assurance that the public's and the workers' health and safety are protected. As I stated in my 1996 vote: "In the absence of significant cost savings, only an improvement in the protection of the health and safety of the public or workers would justify such an action. Such an improvement has not been demonstrated." This continues to be the case. Therefore, I disapprove this final rule.

Commissioner McGaffigan's Comments on SECY-98-266

I commend the staff on their work on this issue and I approve the proposed changes to 10 CFR 55, subject to the following comments:

1) I join with Commissioners Merrifield and Dicus on the subject of restrictions to be placed on licensee personnel who prepare initial operator written examinations. That is, I believe the restriction provisions associated with the preparation of requalification examinations are sufficient for personnel preparing initial operator examinations.

2) I agree with Commissioner Dicus that the proficiency of NRC examiners should be monitored and that the quality of NRC-developed examinations should be compared with those developed by the licensees. It should be noted, however, that higher quality licensee-developed examinations could be the result of a decline in NRC examiner proficiency (as suggested by Commissioner Dicus), or that licensee-developed examinations are being held to a higher standard, as some licensees have asserted. In either case, however, examination quality differences merit assessment and, potentially, corrective action by NRC.

3) I agree with Commissioner Dicus in calling for changes in the proposed changes to the enforcement policy. Specifically, I agree that willful violations associated with this rule should be assessed similarly to other willful violations, as provided for in the enforcement policy. I also am of the view that the demarcation between escalated and non-escalated violations (non-willful) is better placed at the point of license issuance rather than examination administration. While I do not feel the need to spell out violation examples that would merit Severity Level I or II, I believe the Commission would certainly agree to the issuance of a violation at such a severity level in particularly egregious circumstances.

Commissioner Merrifield's Comments on SECY-98-266

I commend the staff on their efforts to make the examination process more effective and efficient. The NRC must continue to ensure that the quality of the operator licensing examinations and the effectiveness of the operator licensing program are maintained. I agree with the staff's assessment that the dynamic simulator and walk-through portions of the operating test are the most performance-based aspects of the licensing process and permit the NRC to truly evaluate the applicants' competence under normal and abnormal plant conditions. As such, continued NRC evaluation of applicant performance during these portions of the initial operator licensing examination is prudent.

I do not agree with the restrictions placed on facility personnel who can participate in developing the initial operator licensing examinations. I believe the restriction which precludes instructors from preparing questions related to those topics on which they provided instruction places an undue burden on facility licensees with minimal benefit. Operator training is usually a collaborative process in which several instructors and managers are involved in the preparation, review, approval, and presentation of training material. Those involved in this process would likely have a comparable understanding of the instruction content as that of the instructor. Thus, placing the stated restriction on the instructor does not accomplish its intent of diminishing the potential for bias in examination content.

Further, I do not believe the staff has provided an adequate basis to demonstrate why these restrictions should be more limiting than the NRC's restrictions on requalification examination personnel. The staff's concern regarding the potential for instructors to bias examination content should be the same regardless of whether it is an initial or requalification examination, and thus, the restrictions should be similarly consistent. I believe the requalification examination personnel restrictions in conjunction with the NRC's enforcement authority provide an acceptable degree of deterrence against any bias in the content of an examination. Therefore, I endorse adopting a parallel to the NRC's restrictions on requalification examination personnel to allow any instructor to prepare the initial operator licensing examination as long as he or she refrains from teaching the applicants after starting work on their licensing examination.