
ES-502
PROCESSING REQUESTS FOR ADMINISTRATIVE REVIEWS AND HEARINGS
AFTER INITIAL LICENSE DENIAL

A. PURPOSE

This standard describes the options and associated responsibilities regarding administrative reviews and hearings related to license application denials and license denials resulting from examination failures. This standard also addresses license reapplications after a denial becomes final.

B. BACKGROUND

Those operator license applicants who are denied the opportunity to take an NRC licensing examination because they do not meet the eligibility requirements for a license pursuant to Title 10, Part 55, of the *Code of Federal Regulations* (10 CFR Part 55) and those applicants who are denied a license because they failed a written examination or operating test administered pursuant to 10 CFR Part 55 are notified of their denials in writing. The proposed denial letters describe the nature of the deficiencies noted and inform the applicants of their available response options. Applicants may reapply pursuant to the provisions of 10 CFR 55.35. However, the NRC will not accept a reapplication as long as a request is pending for either an administrative NRC review or a hearing.

C. RESPONSIBILITIES

1. Applicant

- a. An applicant who does not appear to meet the experience and training requirements for a license may be asked to provide additional information to the NRC regional office in accordance with ES-202. If the application is still denied after providing the additional information requested by the NRC, the applicant may exercise one of the following options within 20 days after the date on the proposed denial letter from the regional office:
 - (1) Do nothing. The proposed denial letter then becomes the final denial. The applicant may reapply after obtaining the requisite training or experience.
 - (2) Request reconsideration of the application denial. Such requests must be submitted to the Operator Licensing Program, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. The applicant's submittal must clearly state the basis for the request.
 - (3) Request a hearing pursuant to 10 CFR 2.103(b)(2). Such requests must be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the

Associate General Counsel for Hearings, Enforcement, and Administration, Office of the General Counsel, at the same address.

b. If an applicant fails the operator licensing written examination or operating test (or both) and receives a proposed license denial letter issued by an NRC regional office in accordance with ES-501, the applicant has 20 days from the date on the letter to exercise one of the following three options:

- (1) Do nothing. The proposed denial letter then becomes the final denial. The applicant may reapply, pursuant to 10 CFR 55.35, two months after the date on the denial letter.
- (2) Request that the NRC administratively regrade the written examination, the operating test, or both, in light of new information to be provided by the applicant. Such requests must be submitted to the Operator Licensing Program, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If the applicant submits such a request, the NRC will not consider a reapplication pursuant to 10 CFR 55.35 until a denial is final.

The applicant's request for administrative review must identify the item(s) for which additional review is requested and must include documentation supporting the item(s) in contention. The applicant is responsible for ensuring that the request and the supporting documentation is sent to the NRR operator licensing program office within 20 days after the date on the proposed denial letter.

If the NRC administratively reviews a failure and determines that the applicant did not provide sufficient basis to justify passing grades on all sections of the licensing examination, a letter will be issued to the applicant sustaining the proposed denial. The applicant may then request a hearing pursuant to 10 CFR 2.103(b)(2). A request for a hearing after an administrative review must be submitted by the applicant within 20 days after the date on the letter from the NRR operator licensing program office sustaining the proposed denial. The hearing request must be submitted in accordance with Section C.1.b(3).

If the applicant does not request a hearing when the proposed denial is sustained by the NRR operator licensing program office, then the proposed denial becomes the final denial. The applicant may then reapply for a license, pursuant to 10 CFR 55.35, two months after the date of the sustained denial letter.

- (3) Request a hearing as provided by 10 CFR 2.103(b)(2). The hearing request must be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Associate General Counsel for Hearings, Enforcement, and

Administration, Office of the General Counsel, at the same address. If the applicant requests a hearing, the NRC will not consider a reapplication pursuant to 10 CFR 55.35 until the denial is final.

2. Facility Licensee

- a. The facility licensee is expected to provide reference materials and technical support as necessary for the NRC to evaluate and resolve any concerns raised by a license applicant who has requested the NRC to reconsider a proposed denial of an application or a license.
- b. If the facility licensee prepared the examination, it shall ensure that any written examination questions that are determined to be invalid (e.g., those that have no or multiple correct answers) are retrieved from any examination bank in which they have been deposited and corrected or discarded.

3. NRC

- a. The NRC will conduct administrative reviews of Part 55 license application denials based on eligibility as described in Section D.1 below.
- b. The NRC will conduct administrative reviews of Part 55 license denials based on examination failures as described in Section D.2 below.
- c. The NRC will conduct Part 55 operator licensing hearings in accordance with Subpart L, "Administrative Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders."

D. ADMINISTRATIVE REVIEW PROCEDURES

1. Application Denial

If an applicant requests an administrative review in accordance with Section C.1.a, the NRR operator licensing program office will generally complete its review of the applicant's eligibility within 60 days of receiving the request. When the review is completed, the applicant will be notified in writing if he or she will be allowed to take the license examination. If the review results in the original denial being sustained, the applicant may request a hearing pursuant to 10 CFR 2.103(b)(2).

2. Examination Results

If an applicant requests an administrative review in accordance with Section C.1.b, the review will generally be completed, as follows, within 60 days after the NRR operator licensing program office receives the request.

- a. The NRR operator licensing program office will determine whether to: (1) review

the appeal internally; (2) have the regional office review the appeal; or (3) convene a three-person board to review the applicant's documented contentions. The appeal board normally will be composed of a branch chief and two examiners or subject matter experts; it may include a representative from the affected region but no one who was involved with the applicant's licensing examination.

For written examinations, the review shall focus only on those questions that are being contested. The review shall evaluate the original grading of the applicant's examination, the reference material supplied by the facility licensee, and the contentions and supporting documentation provided by the applicant.

For operating tests, the review shall evaluate the examiner's comments, the examination report, the test that was administered, and the contentions and supporting documentation provided for review by the applicant or facility licensee (e.g., plant system descriptions, operating procedures, logs, chart recorder traces, and process computer printouts).

- b. Based on the findings and recommendations from the review, a decision will be made whether to sustain or overturn the applicant's license examination failure. The NRR operator licensing program office will notify the applicant in writing of the results of the review.
- c. When the NRR operator licensing program office has concurred in the results of the review, the NRC regional office will: (1) issue a license if the proposed denial was overturned; (2) review the examination results of the other applicants to determine if any of the licensing decisions are affected; and (3) update the master examination file to reflect any test item deletions or answer key changes.

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