

# Withdrawn

NRC Administrative Letter 1994-05, "Notification Concerning Changes to 10 CFR Part 55," dated April 25, 1994, has been withdrawn.

ADAMS Accession Number: ML031110529

See *Federal Register* notice 81 FR 31969, dated  
May 20, 2016

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR REACTOR REGULATION  
WASHINGTON, D.C. 20555

April 25, 1994

NRC ADMINISTRATIVE LETTER 94-05: NOTIFICATION CONCERNING CHANGES  
TO 10 CFR PART 55

Addressees

All licensed operators and all holders of operating licenses or construction permits for nuclear power reactors, test, and research reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this administrative letter to inform addressees of the implementation of the amendments to the regulations in Title 10, Code of Federal Regulations, Part 55 (10 CFR Part 55) concerning renewal of operator licenses. No specific action or written response is required.

Background

Section 306 of the Nuclear Waste Policy Act of 1982 directed the NRC to promulgate regulations or other appropriate guidance to establish "simulator training requirements...and...requirements governing NRC administration of requalification examinations." On May 26, 1987, the NRC amended 10 CFR Part 55 to require each licensed operator to pass a comprehensive written requalification examination and an operating test conducted by the NRC during the term of the operator's 6-year license as a prerequisite for license renewal.

At that time, the Commission determined that during the term of a 6-year license, the staff would conduct individual operator requalification examinations for the purpose of license renewal. As a result of conducting these examinations over the ensuing 6 years, the staff has determined that facility licensees have established a high standard of performance and that NRC examiners are largely duplicating tasks already required of, and routinely performed by, facility licensees.

Discussion

Enclosed for your information is a copy of a final rule amending 10 CFR Part 55 (Attachment 1).

The final rule deletes the requirement that each licensed operator at power, test, and research reactors pass a comprehensive requalification written examination and operating test conducted by the NRC during the term of the operator's 6-year license as a prerequisite for license renewal. The rule now

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requires a facility licensee to have a requalification program reviewed and approved by the NRC and to submit, upon request consistent with NRC inspection program needs, a copy of its comprehensive requalification written examinations or annual operating tests to the NRC for review. The NRC will conduct requalification examinations when this action is deemed to be the most effective tool to evaluate and understand programmatic issues or if the NRC loses confidence in the ability of a facility licensee to conduct its own examinations. In addition, the final rule amends the "Scope" of the regulations pertaining to operators' licenses so that the regulations also apply to facility licensees.

This administrative letter requires no specific action or written response. If you have any questions about this letter, please call the Office of Nuclear Reactor Regulation (NRR) contact listed below or the appropriate NRC Regional Office contact.



Brian K. Grimes, Director  
Division of Operating Reactor Support  
Office of Nuclear Reactor Regulation

Technical contacts: D. J. Lange, NRR (301) 504-1031 M. A. Ring, RIII (708) 829-9703  
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Attachments:

1. "Renewal of Licenses and Requalification Requirements for Licensed Operators," Federal Register, Vol. 59, No. 27, page 5934, February 9, 1994
2. List of Recently Issued NRC Administrative Letters

*Enclosure filed in Jacket*

LIST OF RECENTLY ISSUED  
 NRC ADMINISTRATIVE LETTERS

Administrative Letter No.	Subject	Date of Issuance	Issued to
94-04	Change of the NRC Operations Center Commercial Telephone & Facsimile Numbers	04/12/94	All NRC licensees.
94-03	Announcing an NRC Inspection Procedure on Licensee Self-Assessment Programs for NRC Area-of-Emphasis Inspections	03/17/94	All holders of OLs or CPs for nuclear power reactors.
94-02	Acknowledgement of Receipt and/or Update of Official Agency Files of Licensee Submittals	01/28/94	All holders of OLs or CPs for nuclear power reactors.
94-01	Forthcoming NRC Meeting with Industry to Discuss the Potential for Pressure Locking and Thermal Binding of Gate Valves	01/13/94	All holders of OLs or CPs for nuclear power reactors.
93-05	Announcement of Public Workshop on the Form and Content of Design Certification Rules	10/29/93	All holders of OLs or CPs for nuclear power reactors.
93-04	Announcement of Forthcoming Public Meetings on Whistleblower Protection Activities	09/09/93	All holders of OLs or CPs for nuclear power and research reactors and selected materials licensees.
93-03	Operator Licensing National Examination Schedule	09/07/93	All power reactor licensees and applicants for an operating license.
93-02	Implementing the Revised Systematic Assessment of Licensee Performance (SALP) Program	08/30/93	All holders of OLs or CPs for nuclear power reactors.

OL = Operating License  
 CP = Construction Permit

Accordingly, the program fees are being increased as set forth below.

#### Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from \$44.60 to \$47.20 for services performed between 6 a.m. and 6 p.m. and from \$49.00 to \$52.00 for services performed between 6 p.m. and 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increases the hourly fee for continuous resident services from \$39.60 to \$42.20.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

#### List of Subjects in 7 CFR Part 58

Diary products, Food grades and standards, Food Labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

#### PART 58—(AMENDED)

##### Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for part 58 is revised to read as follows:

Authority: 7 U.S.C. 1621-1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

#### § 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in § 58.43 and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of \$47.20 for service performed between 6 a.m. and 6 p.m., and \$52.00 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period including the time required for

preparation of certificates and reports and the travel time of the inspector and grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

#### § 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of \$42.20 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: February 2, 1994.

Lon Hafamiya,  
Administrator.

[FR Doc. 94-2961 Filed 2-8-94; 8:45 am]  
82 FRG CODE 3110-02-P

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 55

RIN 3150-AE39

#### Renewal of Licenses and Requalification Requirements for Licensed Operators

AGENCY: Nuclear Regulatory  
Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to delete the requirement that each licensed operator at power, test, and research reactors pass a comprehensive requalification written examination and an operating test conducted by the NRC during the term of the operator's 6-year license as a prerequisite for license renewal. The final rule requires that facility licensees shall have a requalification program reviewed and approved by the Commission and shall, upon request consistent with the needs of the Commission's inspection program, submit to the Commission a copy of its annual operating tests or comprehensive written examinations used for operator requalification for review by the Commission. In addition, the final rule amends the "Scope" provisions of the regulations pertaining to operators' licenses to include facility licensees.

The amendments will improve operational safety at each facility by redirecting NRC resources to administer the requalification program by inspecting and overseeing facility requalification programs rather than conducting requalification examinations. This, in turn, will reduce both licensee and NRC costs related to the program.

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT:  
Anthony DiPalo, Office of Nuclear  
Regulatory Research, telephone: (301)  
492-3784, or Frank Collins, Office of  
Nuclear Reactor Regulation, U.S.  
Nuclear Regulatory Commission,  
Washington, DC 20555, telephone (301)  
504-3173.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 306 of the Nuclear Waste Policy Act (NWPA) of 1982 authorized and directed the NRC "to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other appropriate operating personnel." The regulations or guidance were to "establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant licensee personnel training programs." On March 25, 1987 (52 FR 9453), the Commission accomplished the objectives of the NWPA that were related to licensed operators by publishing a final rule in the Federal Register that amended 10 CFR part 55 and became effective May 26, 1987. The amendment revised the licensed operator requalification program by establishing (1) simulator training requirements, (2) requirements for operating tests at simulators, and (3) instructional requirements for the program (formerly appendix A to 10 CFR part 55). The final rule also stipulated that in lieu of the Commission accepting certification by the facility licensee that the licensee has passed written examinations and operating tests given by the facility licensee within its Commission approved program developed by using a systems approach to training (SAT), the Commission may give a comprehensive requalification written examination and

an annual operating test. In addition, the amended regulations required each licensed operator to pass a comprehensive requalification written examination and an operating test conducted by the NRC during the term of the operator's 6-year license as a prerequisite for license renewal.

Following the 1987 amendment to part 55, the NRC began conducting operator requalification examinations for the purpose of license renewal. As a result of conducting these examinations, the NRC determined that the existing regulations have established a high standard of licensee performance and that the NRC examiners were largely duplicating tasks that were already required of, and routinely performed by, the facility licensees.

The NRC revised its requalification examination procedures in 1988 to focus on performance-based evaluation criteria that closely paralleled the training and evaluation process used for a SAT based training program. This revision to the NRC requalification examination process enabled the NRC to conduct comprehensive examinations for the purpose of renewing an individual's license and, at the same time, use the results of the examinations to determine the adequacy of the facility licensee's requalification training program.

Since the NRC began conducting its requalification examination program, the facility program and individual pass rates have improved from 81 to 90 percent and from 83 to 91 percent, respectively, through fiscal year 1991. The NRC has also observed a general improvement in the quality of the facility licensees' testing materials and in the performance of their operating test evaluators. Of the first 79 program evaluations conducted, 10 programs were evaluated as unsatisfactory. The NRC issued Information Notice No. 90-54, "Summary of Requalification Program Deficiencies," dated August 28, 1990, to describe the technical deficiencies that contributed to the first 10 program failures. Since that time only 6 programs, of 120 subsequent program evaluations, have been evaluated as unsatisfactory.

Pilot requalification examinations were conducted during the period August through December 1991. The pilot test procedure directed the NRC examiners to focus on the evaluation of crews, rather than individuals, in the simulator portion of the operating test. In conducting the pilot examinations, the NRC examiners and the facility evaluators independently evaluated the crews and compared their results. The results were found to be in agreement.

Furthermore, the NRC examiners noted that the facility evaluators were competent at evaluating crews and individuals and were aggressive in finding deficiencies and recommending remedial training for operators who exhibited weaknesses. The performance of the facilities' evaluators during the pilot examinations further confirmed that the facility licensees can find deficiencies, provide remedial training, and retest their licensed operators appropriately.

In June 1992, the Commission agreed with the staff to proceed with initiation of rulemaking to eliminate the requirement for each licensed operator to pass a comprehensive requalification written examination and operating test administered by the Commission during the term of the operator's 6-year license. On December 28, 1992, proposed amendments to 10 CFR part 55 on renewal of licensees and requalification requirements for licensed operators were submitted to the Commission for approval.

On May 20, 1993 (58 FR 29366), the Commission published a proposed rule in the Federal Register to amend 10 CFR part 55. The proposed amendments were to:

1. Delete the requirement that each licensed operator pass an NRC-administered requalification examination during the term of his or her license.

2. Require that facility licensees submit to the NRC their annual requalification operating tests and comprehensive requalification written examinations at least 30 days prior to the conduct of these tests and examinations.

3. Include "Facility Licensees" in the "Scope" of part 55.

The period for public comment on the proposed amendments ended on July 20, 1993.

#### Summary of Public Comments

The NRC received 42 comments on the proposed rule. Based on analysis of these comments, several changes have been made in the final rule. A summary of the public comments and, where appropriate, a description of the changes that resulted from them is discussed for each of the proposed amendments to 10 CFR part 55.

1. *Proposed Amendment:* Delete the requirement that each licensed operator pass an NRC-administered requalification examination during the term of a licensed operator's 6-year license.

*General Statement:* Of the 42 comments received, 36 favored this proposed amendment and 6 opposed its

adoption. Most of the respondents who favored the proposed change based their support on the expectation that this change would reduce the regulatory burden on licensees and would improve operational safety at nuclear facilities. One respondent indicated that while the NRC's involvement has had a positive impact on the content and conduct of licensee requalification, utilities have proven their ability to develop and administer requalification examinations that meet the requirements of 10 CFR 55.59(a)(2)(iii). Another respondent representing the utility industry stated that, "We believe the performance-based inspection process will be an effective means for ensuring high quality operator requalification programs." This respondent further stated, "The proposed rule change will also afford better operating crew continuity. Because personnel changes occur over time, operating crews may be configured with individuals who have or have not had an NRC administered exam. In the past, it has been a common practice to reconfigure crews to accommodate the NRC-administered requalification examination by putting together individuals whose 6 years is about to end. Use of this practice to facilitate the conduct of requalification exams may not be in the best interest of crew coordination and teamwork."

The six comments in opposition to the proposed amendment to delete the NRC-conducted requalification examination varied in content. For example, two public citizen respondents were against a rule change of any kind on the basis it would give the public the perception that the NRC's authority over the operation of power and non-power reactor plants would be weakened. Two respondents, one representing a State public service department with oversight of a nuclear power plant and a second representing a State nuclear safety department, urged that from a defense-in-depth standpoint to reactor safety the proposed rule should be reconsidered. The State of Vermont, in two separate comments, indicated that it was because of the current regulation that the NRC was able to detect the unsatisfactory requalification program at Vermont Yankee and identify corrective actions to ensure safety of the plant. The State of Illinois contended that the current regulations provided incentive for licensees to maintain quality operator training programs and that the likelihood of further improving or even maintaining that quality without the periodic independent involvement by the NRC is unlikely. The State of Illinois recommended a combination of routine

NRC inspections of crew examinations on a plant simulator and a periodic independent test administered simultaneously to all licensed operators every 6 years. Finally, one respondent was opposed to this amendment, especially its application to test and research reactors and suggested the existing rule be deleted because the regulatory analysis for the 1987 rule stated that the rule would not apply to non-power reactors (NPR). This same respondent believed it important to maintain NRC staff competence in relation to NPR operator licensing and felt this could be accomplished by maintaining a nucleus of specialized qualified personnel, either as part of or in conjunction with the NPR directorate, and through specialized training and administration of initial examinations, which occur rather frequently.

*Response:* After reviewing the six comments opposing the proposed regulation, the Commission has concluded that the basis for this requirement remains sound and that it should be adopted. This determination is based on the following considerations:

(i) The NRC believes that since the beginning of the requalification program, experience indicates that weaknesses in implementation of facility licensee's programs are generally the root cause of deficiencies in the performance of operators.

(ii) The NRC believes if its resources were directed towards inspection and oversight of facility licensee's requalification programs rather than continuing to conduct individual operator requalification examinations, the operational safety at each facility will continue to be ensured and in fact, will be improved. A routine inspection frequency of once per SALP cycle will ensure consistency between inspection scheduling and licensee performance. A minimum routine inspection frequency of at least once every 2 years will ensure active NRC oversight of facility licensee's requalification programs. For facility licensees with good performance, consideration will be given to not performing an onsite inspection during the SALP period.

(iii) The NRC believes that the facility requalification programs have been demonstrated to be basically sound during the pilot examinations. Given the broad range of possible approaches built into the inspection process, the NRC would only conduct examinations when they are the most effective tool to evaluate and understand the programmatic issues, or if the NRC loses confidence in the facility licensee's ability to conduct its own examinations.

Examples which could result in a regional management decision for a "for cause" requalification examination include:

- a. Requalification inspection results which indicate an ineffective licensee requalification program;
- b. Operational problems for which operator error is a major contributor;
- c. A SALP Category 3 rating in plant operations attributed to operator performance; and
- d. Allegations regarding significant training program deficiencies.

When conditions such as these exist, the NRC may initiate planning to conduct requalification examinations during the next annual examination cycle scheduled by the facility.

Regarding the comments from the State of Vermont, the proposed inspection program includes reviews, observations, and parallel grading of selected operating tests and written examinations by NRC examiners; reviews of operational performance, interviews of facility personnel, and a general inspection of the facility licensee's implementation of its requalification training program. Application of the inspection program in the case of Vermont Yankee would have disclosed discrepancies in evaluation of operator performance and also would have allowed insight to other, more programmatic, deficiencies. The requalification inspection program implements routine NRC inspections as recommended by the State of Illinois as well as "for cause" examinations.

The Commission believes the existing regulation should not be deleted in the case of non-power reactors, as recommended in the public comments. A continuing need exists for the regulation to apply to operators of all types of reactors. The proposed amendment will continue to ensure operational safety at non-power reactors by inspecting facility requalification programs rather than conducting requalification examinations. The NRC will maintain examiner proficiency by conducting examinations for initial license applicants.

**2. Proposed Amendment:** Require that facility licensees submit to the NRC their annual requalification operating tests and comprehensive requalification written examinations at least 30 days prior to conducting these tests and examinations.

**General Statement:** Of the 42 comments received, only 1 respondent favored the amendment as proposed. This response came from a university operated research reactor, stating that submitting requalification examinations by the facility to the NRC for review

prior to administering the examination was less burdensome, by comparison, than retaining the existing regulation. On the other hand, most respondents stated that submitting all examinations and tests to the NRC 30 days before their administration would place an undue burden on facility licensees and the NRC with little return on the investment. Several respondents offered alternatives that included shortening the lead time, requiring that the examinations and tests be submitted after they are administered, submitting the question banks from which the examinations are developed, and simply having the examinations available for on-site inspection.

*Response:* This requirement was included in the proposed regulation so that the NRC could evaluate the proposed examination materials, in conjunction with other information already available to the NRC, to determine the scope of the on-site inspection. However, the pilot inspection program has demonstrated that a facility's proposed examinations are not an absolute necessity in preparing for the on-site activities. In addition, those facility licensee's examination and simulator scenario banks that were evaluated were found to be adequate for an effective requalification program to be managed by the licensee's staffs. Although being able to review the proposed examinations at the NRC did save some on-site inspection effort, the inspectors were still able to complete the Temporary Inspection procedures within the time allowed (i.e., two inspectors on-site for 1 week).

The NRC believes that it will be advantageous to have selected examinations available for review at NRC offices in addition to other documentation customarily provided, consistent with the Commission's inspection program needs. During the on-site inspection, the inspectors will observe the facility evaluators administer written examinations and operating tests to the crews being evaluated. Although the facility examination may last several weeks, the NRC's on-site inspection usually lasts only one week. Normally, the NRC intends to request that the facility licensee submit only those written examinations or operating tests that will be administered during the week of the NRC inspection. Obtaining this examination material in advance of the inspection will allow the inspectors to prepare for their on-site inspection activities by reviewing the examinations or tests before they travel to the facility. This advance preparation will result in

a more effective use of on-site inspection time and reduce the burden on the facility licensee by placing fewer demands on their training staff during the examination week. Therefore, the NRC will delete the amendment to § 55.59(c) as proposed from the final rulemaking and will require instead that comprehensive written examinations or operating tests be submitted upon request consistent with the Commission's inspection program needs and sustained effectiveness of the facility licensee's examination and simulator scenario banks.

3. *Proposed Amendment:* Include facility licensees in the scope of 10 CFR part 55, specifically § 55.2, will be revised to include facility licensees.

*General Statement:* Only 1 of the 42 respondents to the FRN addressed and endorsed this provision of the proposed rulemaking.

*Response:* The NRC believes the absence of comments regarding this proposal substantiates the NRC's position that this is simply an administrative correction and does not materially change the intent of the regulation. The NRC considers this amendment as an administrative addition to these regulations. The NRC proposed this change to eliminate the ambiguities between the regulations of parts 50 and 55. Section 50.54 (l) through (m) already imposes part 55 requirements on facility licensees, and part 55 already specifies requirements for facility licensees. On this basis, the NRC has determined that the requirement should be adopted.

#### Finding of No Significant

#### Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal Action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required.

#### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150-0101.

The rule will relax existing information collection requirements for the separately cleared, "Reactor Operator and Senior Reactor Operator Licensing Training and Qualification Programs." The public burden for this

collection of information is expected to be reduced by 3 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0101), Office of Management and Budget, Washington, DC 20503.

#### Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the values (benefits) and impacts (costs) of implementing the regulation for licensed operator requalification. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Anthony DiPalo, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3784.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule primarily affects the companies that own and operate light-water nuclear power reactors and non-power research reactors. The companies that own and operate these reactors do not fall within the scope of the definition of "small entity" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121.

#### Backfit Analysis

The staff believes that it could ensure and improve operational safety at each facility by directing its resources to inspect and oversee facility requalification programs rather than conducting requalification examinations. The staff's experience since the beginning of the requalification program indicates that weaknesses in the implementation of

the facility programs are generally the root cause of significant deficiencies in the performance of licensed operators. The staff could more effectively allocate its resources to perform on-site inspections of facility requalification examination and training programs in accordance with indicated programmatic performance rather than scheduling examiners in accordance with the number of individuals requiring license renewal. By redirecting the examiner resources, the staff expects to find and correct programmatic weaknesses earlier, and thus improve operational safety.

Currently, facility licensees assist in developing and coordinating the NRC-conducted requalification examinations. The assistance includes providing to the NRC the training material used for development of the written examinations and operating tests and providing facility personnel to work with the NRC during the development and conduct of the examinations. The Commission has concluded on the basis of the analysis required by 10 CFR 50.109, that complying with the requirements of this final rule would reduce the regulatory burden on the facility licensees by reducing the effort expended by the facility licensees to assist the NRC in developing and conducting NRC requalification examinations for licensed operators. A smaller increase in regulatory burden is anticipated due to a need for the facility licensee to provide data and support for periodic requalification program inspections.

As part of the final rule, facility licensees shall have a requalification program reviewed and approved by the Commission and shall, upon request consistent with the Commission's inspection program needs, submit a copy of its comprehensive written examinations or annual operating tests to the Commission. The NRC has determined that the pilot inspection program demonstrated that the facility's proposed examinations are not an absolute necessity in preparing for the on-site activities. Therefore, the NRC would request test submittal on a case-by-case basis consistent with the Commission's test inspection program needs and review these examinations for conformance with 10 CFR 55.59(a)(2)(i&ii). The NRC would continue to expect each facility to meet all of the conditions required of a requalification program in accordance with 10 CFR 55.59(c).

Licensed operators would not have to take any additional actions. Each operator would be expected to continue to meet all the conditions of his or her

license described in 10 CFR 55.53, which includes passing the facility requalification examinations for license renewal. Each licensed operator would be expected to continue to meet the requirements of the facility requalification training program. However, the licensed operator would no longer be required to pass a requalification examination conducted by the NRC during the term of his or her license in addition to passing the facility licensee's requalification examinations, as a condition of license renewal.

The "Scope" of part 55, 10 CFR 55.2, would be revised to include facility licensees. This is an administrative addition to these regulations. It eliminates currently existing ambiguities between the regulations of parts 50 and 55. Part 50, in § 50.54(i) through (m), already imposes part 55 requirements on facility licensees, and part 55 already specifies requirements for facility licensees.

The Commission believes that licensed operators are one of the main components and possibly the most critical component of continued safe reactor operation, especially with respect to mitigating the consequences of emergency conditions. Two-thirds of the requalification programs that have been evaluated as "unsatisfactory" had significant problems in the quality or implementation of the plant's emergency operating procedures (EOPs). In some of these cases, the facility licensees did not train their operators on challenging simulator scenarios or did not retrain their operators after the EOPs were revised. The Commission believes that it could have identified these problems sooner by periodic inspection of facility requalification training and examination programs. Facility licensees could have then corrected these problems and improved overall operator job performance sooner.

This final rule will improve operational safety by providing the staff direction to find and correct weaknesses in facility licensee requalification programs. The experience gained from conducting NRC requalification examinations indicates that the NRC is largely duplicating the efforts of the facility licensees to maintain a high standard of operator performance. The NRC could now, by amending the regulations, more effectively use its resources to oversee facility licensee requalification programs rather than conducting individual operator requalification examinations. In FY92, the NRC resources committed to this program for NRC staff and contractor support were approximately 12 FTE and

\$1.3 million (equivalent to 8 FTE), respectively. The staff projects that a slightly larger average number of examinations, requiring approximately 1.5 additional staff FTE and an additional \$200,000 contractual support (equivalent to 1.25 FTE), would be conducted in future years if the NRC continues conducting requalification examinations for all licensed operators. Thus, if it is assumed that without the rule change, this program would continue into the future, the relevant baseline NRC burden would approximate \$2.65 (1.35 NRC + 1.5 contractor) million per year in 1992 dollars for FY93 through FY97. The 13.5 (12 + 1.5) NRC staff years (FTE) were converted to \$1.35 million (\$100,000 per staff year) based on allowances for composite wage rates and direct benefits.<sup>1</sup>

Under the final rule change, NRR's analysis indicates that NRC staff could perform all necessary inspections of requalification exam programs with 11 NRC FTEs and \$300,000 in contractor support, equivalent to 1.85 contractor FTEs, per year. At \$100,000 per NRC FTE and \$162,000 per contractor FTE, this converts to an annual cost in 1992 dollars of \$1.4 million. Thus, the annual savings in NRC operating costs is estimated to be on the order of \$1.45 million (\$2.85 million less \$1.4 million). Over an assumed 25-year remaining life, based on a 5% real discount rate, the 1992 present worth savings in NRC resources is estimated at about \$20.25 million in 1992 dollars.

Each facility licensee would continue in its present manner of conducting its licensed operator requalification program. However, this final rule reduces the burden on the facility licensees because each facility licensee would have its administrative and technical staff expend fewer hours than are now needed to assist in developing and conducting the NRC requalification examinations. Facility licensees are expected to realize a combined annual operational cost savings of approximately \$1.24 million. Over an assumed 25-year remaining life, based

<sup>1</sup> NRC labor costs presented here differ from those developed under the NRC's license fee recovery program. For regulatory analysis purposes, labor costs are developed under strict incremental cost principles wherein only variable costs that are directly related to the development, implementation, and operation and maintenance of the proposed requirement are included. This approach is consistent with guidance set forth in NUREG/CR-3368, "A Handbook for Value Impact Assessment," and general cost benefit methodology. Alternatively, NRC labor costs for fee recovery purposes are appropriately designed for full cost recovery of the services rendered and, as such, include non-incremental costs (e.g. overhead and administrative and logistical support costs).

on a 5% real discount rate, the 1992 present worth industry savings is estimated at about \$17.48 million in 1992 dollars.

In summary, the final rule will result in improved operational safety by providing more timely identification of weaknesses in facility licensees' requalification programs. In addition, the final rule would also reduce the resources expended by both the NRC and the licensees. The Commission has, therefore, concluded that the final rule meets the requirements of 10 CFR 50.109, that there would be a substantial increase in the overall protection of public health and safety and the cost of implementation is justified.

#### List of Subjects in 10 CFR Part 55

Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and record-keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 55.

#### PART 55—OPERATORS' LICENSES

1. The authority citation for 10 CFR part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 68 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97-425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.2, paragraph (c) is added to read as follows:

§ 55.2 Scope.

(c) Any facility licensee.

§ 55.57 [Amended]

3. Section 55.57 is amended by removing paragraph (b)(2)(iv).

4. In § 55.59, the introductory text of paragraph (c) is revised to read as follows:

§ 55.59 Requalification.

(c) Requalification program requirements. A facility licensee shall have a requalification program reviewed and approved by the Commission and shall, upon request consistent with the Commission's inspection program

needs, submit to the Commission a copy of its comprehensive requalification written examinations or annual operating tests. The requalification program must meet the requirements of paragraphs (c) (1) through (7) of this section. In lieu of paragraphs (c) (2), (3), and (4) of this section, the Commission may approve a program developed by using a systems approach to training.

Dated at Rockville, Maryland, this 2nd day of February, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94-2927 Filed 2-8-94; 8:45 am]

BILLING CODE 7590-01-P

## RESOLUTION TRUST CORPORATION

12 CFR Part 1627

RIN 3205-AA19

### Service of Process Upon the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

**SUMMARY:** The Resolution Trust Corporation (RTC) hereby issues this final rule designating the officers upon whom service of process may be made when RTC is sued in its receivership, conservatorship, or corporate capacities. In the interest of providing prompt guidance in an area that has caused much confusion, RTC is publishing this final rule.

**EFFECTIVE DATE:** This final rule is effective February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Gregg H. S. Golden (Counsel), telephone 202-736-3042.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) added a new section 21A to the Federal Home Loan Bank Act, 12 U.S.C. 1441a, establishing the RTC. RTC was authorized to sue and be sued in its corporate capacity (12 U.S.C. 1441a(b)(9), as amended by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law No. 102-233, sections 310 and 314(2)(B)(i), 105 Stat. 1761, 1769, 1771 (1991)). The provisions of the Federal Rules of Civil Procedure establishing the method for service of process upon a government corporation contemplate

that the corporation will designate an agent for service.

By reference to section 11, 12, and 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1821, 1822, and 1823, FIRREA also granted RTC the same powers as the Federal Deposit Insurance Corporation when acting in its receivership or conservatorship capacity (12 U.S.C. 1441a(b)(4)(A), as amended). Inherent among these is the power to sue and be sued in such capacity, see 12 U.S.C. 1821(d)(2).

Because of the important differences among the capacities in which RTC functions, process is frequently served upon officers, employees, or temporary agents who have little or no connection with or responsibility for the component of RTC involved in the underlying lawsuit. Both RTC and the litigants are inconvenienced by the resulting confusion, delay, and expense. In the interest of reducing these costs to the public, RTC by this rule designates the agents who will accept service of process on behalf of RTC in its conservatorship, receivership, and corporate capacities.

Because RTC acts as conservator or receiver for a large number of savings associations, and because compulsory process (such as a subpoena for production of documents) does not always clearly identify the institution in question, the regulation provides that where process is served upon RTC in its capacity as conservator or receiver for a savings association, the savings association should be clearly identified on the face of the papers. This provision is intended to facilitate a prompt and constructive response to the papers.

On April 8, 1993 (58 FR 18144), RTC issued an Interim Rule with Request for Comments, designating its agents for service of process. A printing error in the original publication was corrected by notice on April 22, 1993 (58 FR 21627). RTC has proceeded under authority of the interim rule in the succeeding months, and thus has obtained useful experience in the practicality of the rule. RTC has received one comment on its interim rule and is now issuing a final rule.

##### II. Comment and Discussion

In response to the April 8, 1993, interim rule and request for comment, RTC received one comment. That single comment commended RTC's express designation of agents for service of process, and asked that RTC also consider designating specific officers to receive notices under agreements with other parties.

RTC's experience with the interim rule has been generally favorable.

### III. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, RTC hereby certifies that this proposal is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

#### List of Subjects in 12 CFR Part 1627

Administrative practice and procedure.

For the reasons set out in the preamble, the Resolution Trust Corporation revises part 1627 of title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

### PART 1627—SERVICE OF PROCESS UPON THE RESOLUTION TRUST CORPORATION

#### Sec.

1627.1 Service of process on RTC in its corporate capacity.

1627.2 Service of process on RTC as conservator or receiver.

Authority: 12 U.S.C. 1441a(b)(4)(A), (9)(E), (11)(A), 1821(d)(2).

§ 1627.1 Service of process on RTC in its corporate capacity.

Any summons, complaint, subpoena, or other legal process issued against RTC in its corporate capacity shall be duly issued and served upon:

- (a) The Assistant General Counsel (Litigation); and
- (b) The Secretary, the address for both of whom is: 801 17th Street, NW., Washington, DC 20434-0001; and
- (c) Upon such other persons as may be required by the provisions of the Federal Rules of Civil Procedure governing service of process upon an agency of the United States.

§ 1627.2 Service of process on RTC as conservator or receiver.

- (a) Any summons, complaint, subpoena, or other legal process issued against RTC in its capacity as conservator or receiver for a savings association shall be duly issued and served upon RTC's Assistant General Counsel in the field office having jurisdiction over the state, Commonwealth, possession, territory, or district in which such savings association has its principal office. The name and principal office of such savings association should be stated on the face of the summons, complaint, subpoena, or other process. In addition, a copy of such process shall be delivered to the Secretary, Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434-0001 (telephone: 202-416-7572).

requires a facility licensee to have a requalification program reviewed and approved by the NRC and to submit, upon request consistent with NRC inspection program needs, a copy of its comprehensive requalification written examinations or annual operating tests to the NRC for review. The NRC will conduct requalification examinations when this action is deemed to be the most effective tool to evaluate and understand programmatic issues or if the NRC loses confidence in the ability of a facility licensee to conduct its own examinations. In addition, the final rule amends the "Scope" of the regulations pertaining to operators' licenses so that the regulations also apply to facility licensees.

This administrative letter requires no specific action or written response. If you have any questions about this letter, please call the Office of Nuclear Reactor Regulation (NRR) contact listed below or the appropriate NRC Regional Office contact.

Original signed by  
 Brian K. Grimes

Brian K. Grimes, Director  
 Division of Operating Reactor Support  
 Office of Nuclear Reactor Regulation

Technical contacts: D. J. Lange, NRR (301) 504-1031 M. A. Ring, RIII (708) 829-9703  
 R. J. Conte, RI (610) 337-5210 J. L. Pellet, RIV (817) 860-8159  
 T. A. Peebles, RII (404) 331-5541

Attachments:

- "Renewal of Licenses and Requalification Requirements for Licensed Operators," Federal Register, Vol. 59, No. 27, page 5934, February 9, 1994
- List of Recently Issued NRC Administrative Letters

Jim Conran of the CRGR staff was consulted on this administrative letter on March 7, 1994.

\*SEE PREVIOUS CONCURRENCE

OFFICE	*OGCB	*TECH ED.	*C:HOLB/NRR	*D:DRCH/NRR	*AC:OGCB/NRR
NAME	CVHodge	MFMejac	RMGallo	BABoger	AJKugler
DATE	03/01/94	03/03/94	03/08/94	03/15/94	03/16/94

*OGC	D:DORS/NRR
STreby	BKGrimes
03/31/94	04/21/94

Commission inspection program needs, a copy of its comprehensive requalification written examinations or annual operating tests to the Commission for review. The NRC will conduct requalification examinations only when this action is deemed to be the most effective tool to evaluate and understand programmatic issues or if the NRC loses confidence in the ability of a facility licensee to conduct its own examinations. In addition, the final rule amends the "Scope" of the regulations pertaining to operators' licenses so that the regulations also apply to facility licensees.

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 T. A. Peebles, RII (404) 331-5541 P. J. Morrill, RV (510) 975-0293

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<i>S. Treby</i>	BKGrimes
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\*2 3/8

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*NRR*

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Brian K. Grimes, Director  
 Division of Operating Reactor Support  
 Office of Nuclear Reactor Regulation

Contact(s): ~~Robert M. Gallo, NRR~~  
~~(301) 504-1031~~

*Change as shown on signature copy*

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BKGrimes
03/ /94

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examination and an operating test conducted by the NRC during the term of the operator's 6-year license as a prerequisite for license renewal. The amendment requires facility licensees to submit, upon request consistent with the Commission's inspection program needs, a copy of its requalification written examinations or annual operating tests to the Commission for review. The NRC will only conduct examinations when they are the most effective tool to evaluate and understand the programmatic issues, or if the NRC loses confidence in the facility licensee's ability to conduct its own examinations. In addition, the final rule amends the "Scope" provisions of the regulations pertaining to operators' licenses to include facility licensees.

The staff believes that operational safety at each facility will be improved by directing its examiners to inspect and oversee facility requalification programs rather than by conducting individual requalification examinations. By redirecting the examiner resources, the staff expects to find and correct programmatic weaknesses earlier and thus improve operational safety.

This administrative letter requires no specific action or written response. If you have any questions about this letter, please contact the contact listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

Brian K. Grimes, Director  
 Division of Operating Reactor Support  
 Office of Nuclear Reactor Regulation

Contact(s): Robert M. Gallo, NRR  
 (301) 504-1031

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