

May 15, 2014

MEMORANDUM TO: Raymond Lorson, Director
Division of Reactor Safety
Region I

Terrence Reis, Director
Division of Reactor Safety
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FROM: Scott A. Morris, Director **/RA/**
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Office of Nuclear Reactor Regulation

SUBJECT: INTERIM GUIDANCE RELATED TO THE CONDUCT OF INITIAL
OPERATOR LICENSING EXAMINATIONS

BACKGROUND

In its decision dated March 18, 2014, the Atomic Safety and Licensing Board (ASLB) overturned the staff's denial of a senior reactor operator (SRO) license for an applicant from the Vogtle Electric Generating Plant. In that decision, the Board highlighted the staff's handling of several procedural issues related to the operator licensing examination process. Although a more extensive lessons-learned review is planned to address the scope of these issues in a broader sense, the program office believes it is prudent to institute near term interim guidance to address some specific areas prior to completion of a more formal review.

This interim guidance is aimed at two specific issues identified in the ASLB decision. The first is in regard to processing waivers during re-applications for portions of the examination that an applicant previously passed in accordance with 10 CFR 55.35(b). The second is related to the grading methodology used for simulator operating tests as described in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," ES-303.

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The purpose of this interim guidance is to ensure a more uniform approach across the regional offices to: 1) the handling of waiver requests for an applicant's previously passed portions of a licensing exam, and 2) the grading of simulator operating tests. This interim guidance will remain in effect pending completion of recommendations from the broader licensing process review.

DISCUSSION

- Waiver Requests

The ASLB decision reflects the challenge of informal preliminary discussions with an applicant or applicant's employer regarding the likelihood of the staff to approve or deny a waiver request. Although the nature of the operator licensing process makes it a highly collaborative process between the U.S. Nuclear Regulatory Commission (NRC) staff and facility licensees, good regulatory practice dictates that no preliminary discussion should be used to discourage an applicant or applicant's employer from submitting an application for a waiver or discussing possible outcomes from the NRC's formal review of a waiver request. Any views on the possible outcome of NRC's review of a potential waiver request or one that is under formal NRC review, before a final determination is made, is pre-decisional and should not be provided to external stakeholders. Therefore, facility licensees should not be discouraged to submit any waiver request they are willing to support with justifying information. The NRC staff can then act on the formal request and document its decision to grant or deny the waiver based on the adequacy of the justification provided. Accordingly, staff should be strongly cautioned against conducting informal discussions with an applicant or applicant's employer that could be construed as discouraging submission of an application or providing pre-decisional information. Rather, an applicant or applicant's employer should be directed to submit preliminary and final applications, including waivers, for formal disposition by the NRC staff as described in NUREG-1021, Rev. 9, Supplement 1, "Operator Licensing Examination Standards For Power Reactors," ES-201 and 202.

10 CFR 55.35, "Re-applications," paragraph (b) states "An applicant who has passed either the written examination or operating test and failed the other may request in a new application (on NRC Form 398) to be excused from re-examination on the portions of the examination or test which the applicant has previously passed. The Commission may in its discretion grant the request, if it determines that sufficient justification is presented." The examination standard in NUREG-1021, ES-204 discusses the NRC's processing of waivers requested by applicants. The standard, however, does not contain strict criteria for granting or denying a waiver based on an applicant's previously passing a portion of the examination. Until such time that specific criteria are developed and incorporated into program guidance documents, and as a means of establishing an official agency position for the disposition of specific waiver requests, the regional offices must consult with the program office prior to denying an applicant's waiver request. The existing operator licensing Report on Interaction (ROI) process will be used to document program office concurrence in the denial decision. Currently, NUREG-1021, ES-204, Section C.2.b states "the region does not require written concurrence from the Office of Nuclear Reactor Regulation (NRR) to deny an applicant's waiver request, but it **should** [emphasis added] discuss its decision with the operator licensing program office before informing the applicant; formal concurrence **may be** [emphasis added] desirable in some cases." As part of this interim guidance, a firmer requirement to consult the program office and obtain concurrence using the ROI process is hereby established.

Although any such waiver denial must be discussed with the program office, this interim guidance is only expected to cause a change in the current handling of waiver denials involving simulator operating tests. There is consensus among all NRC regional offices that an applicant's passing the written or walkthrough portion of the examination with the cut score of 80% is in itself sufficient justification for granting a waiver of that portion of the examination, so denials of waivers related to these examination areas are not expected. However, due to the integrated and highly performance-based nature of the simulator operating test and the insights it provides into an applicant's competency, the decision to grant or deny a waiver of that portion of the examination may be more complex. For candidates who would be denied a waiver of the simulator test, more formal documentation of the agency's position is warranted.

This heightened level of review is not expected to be overly burdensome given the very small population of candidates whose performance on the simulator test is marginal enough to result in denial of a waiver although they received an overall passing score.

- Simulator Test Grading

The ASLB decision reflects that differing interpretations of the simulator operating test grading scheme contained in NUREG-1021, ES-303, were used between the original grading by the regional staff and by the administrative review panel convened upon the applicant's appeal of the initial results. This observed inconsistency was used as a basis for ASLB to conclude that the applicant was not treated in the same manner as other applicants, and thus was unfairly denied an SRO license. As a foundation to ensuring that all applicants, regardless of the regional office by which they are examined, are subject to a uniform set of grading conditions, it is important that all NRC examiners apply a common set of criteria supported by the examination standards. As an outcome of the planned lessons-learned review, the grading criteria contained in NUREG-1021 may be modified, or at a minimum further clarified to remove any actual or perceived ambiguity. Until such time that this review is completed, the current interpretation of NUREG-1021 by the program office and as taught to NRC examiners in the approved course conducted at the Technical Training Center (G-107, NRC Examiner Operating Techniques) will represent the simulator test grading methodology to be used by all NRC examiners. Three specific requirements where differences have been observed are highlighted below, along with reinforced expectations to ensure consistent application:

- NUREG-1021, ES-303, D.1.c requires documentation of "every action, response, note or comment that may constitute a performance deficiency." Thorough documentation of all observed deficiencies is especially important and must be completed in substantiating any unsatisfactory grade.
- NUREG-1021, ES-303, D.1.d discusses the coding of each observed deficiency with the rating factor(s) it most accurately reflects. Furthermore, this section states "whenever possible, attempt to identify the root cause of the applicant's deficiencies and code each deficiency with no more than two different rating factors. However, one significant deficiency may be coded with additional rating factors if the error can be shown, consistent with the criteria in Section D.3.b, to be relevant to each of the cited rating factors." Nothing in this section should be construed as limiting the assignment of an error to only one rating factor. Conversely, when it is appropriate, multiple rating factors must be considered consistent with the guidance contained in this section.

- NUREG-1021, ES-303, D.2.b contains the provision that “if an applicant makes two errors related to a rating factor, circle an “RF Score” of “1” for that rating factor unless a score of “2” can be justified based on correctly performing another activity (or activities) related to the same rating factor...” As taught in the G-107 Operating Techniques course, the exercise of this provision is not subject to examiner discretion. If an applicant commits two non-critical errors in a rating factor, but performs another activity correctly related to that same rating factor, the rating factor score must be increased from “1” to “2.” Documentation is required to identify the additional task that was correctly performed to warrant the grade increase, or to identify that no additional activity was correctly performed as the basis for maintaining a score of “1” for two documented errors. The provision that three or more non-critical errors in the same rating factor require a score of “1” is unchanged, as is the requirement that a single error associated with a critical task results in a score of “1.”

Regional staff are encouraged to consult with the program office on any proposed simulator operating test failure or if clarifications are needed on any of the NUREG-1021 grading criteria.

SUMMARY

Effective immediately, the following interim operator licensing guidance is prescribed:

1. Operator licensing staff must be strongly cautioned against conducting informal discussions with applicants or their employers that could be construed as discouraging submission of an application or providing information that is pre-decisional in nature (e.g., discussing potential outcomes of waiver requests). Rather, applicants or their employers should be directed to submit preliminary and final applications, including waivers, for formal disposition by the NRC staff as described in NUREG-1021, ES-201 and 202.
2. Regional management shall discuss with the NRR program office its decision to deny an applicant’s request for waiver of a test based on previously passing that portion of the examination. Concurrence shall be obtained using the ROI process.
3. Regional management shall reinforce with all examiners that all simulator operating tests are to be graded in accordance with NUREG-1021, with added attention to ensure that:
 - all observed deficiencies are adequately documented.
 - all observed deficiencies are coded with applicable rating factors following the guidance in ES-303, D.1.d. Errors are assigned to multiple rating factors when appropriate.
 - the provision to raise a rating factor score from a “1” to a “2” when two non-critical errors are offset by the applicant correctly performing one or more additional activities related to the same rating factor is uniformly applied. The basis for raising the score by identifying the additional correct activity or for retaining the score at “1” if no additional correctly performed activity can be identified is adequately documented.

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