

PROCESSING REQUESTS FOR ADMINISTRATIVE REVIEWS AND DEMANDS FOR HEARINGS

A. PURPOSE

The purpose of this Operator Licensing Manual Chapter (OLMC) is to provide additional guidance to the NRC staff on the implementation of the requirements contained in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," concerning the processing of applicant-requested administrative reviews and applicant-demanded hearings.

B. BACKGROUND

This OLMC expands upon the discussion in NUREG-1021 regarding administrative reviews and hearing demands. An applicant may request an administrative review upon receipt of preliminary examination results and may demand a hearing upon receipt of application denial. Each of these actions involves specific processes and responsibilities, which are discussed below. If there is a disagreement between this OLMC and NUREG-1021, NUREG-1021 will provide the acceptable practice. This OLMC shall be used in conjunction with NRR Office Instruction LIC-201, "NRR Support to the Hearing Process," to ensure that all aspects of the hearing process are documented.

C. OVERVIEW OF THE PROCESS (Refer to Section D for Detailed Instructions)

1. Administrative Reviews (also referred to as "informal staff reviews" or "reviews")

Upon receipt of the applicant's request for an administrative review, the NRC regional office will inform the NRR Operator Licensing and Human Factors Branch (IOLB) staff of the request. IOLB staff will take administrative actions and determine who will perform the review (i.e., non-affected region, IOLB, or a panel). The assigned reviewer(s) will use the review guidance in Section E to independently assess the request. In parallel, the affected region will perform and document its own review of the request. Once the assigned reviewer(s) have made an independent assessment, the reviewer(s) should consider the review by the affected region. If the reviewer(s) propose a change to the examination grading that differs from the affected region's review, then the IOLB branch chief should offer to hold a meeting with the reviewer(s) and the affected region to discuss their different perspectives prior to making a final recommendation to NRR/DRO management. If informed that the recommendation to DRO management will differ from the affected region's position, the affected region shall be afforded the opportunity to submit an additional written response from their Regional Administrator to the Director of

NRR. When the administrative review is complete, the Chief of IOLB will forward the recommended resolution to the Director of DRO for final approval.

If the administrative review results in the applicant passing the licensing examination, then the affected region will determine whether the licensing action should be delayed due to a deferral or based upon the applicant's medical condition. If there is no basis for delay or other reason for denial, then the regional office shall issue the applicant a license. If the administrative review results in the applicant failing the licensing examination, then the Director of DRO will inform the applicant of the denial of the application, and the applicant may demand a hearing within 20 days of the date of the denial.

If the applicant submitted a claim of misconduct or unacceptable performance related to the examination administration, IOLB will process the complaint in accordance with NRC MD 8.17, "Licensee Complaints Against NRC Employees."

2. Hearings

An applicant may file a demand for a hearing in accordance with 10 CFR Part 2, "Agency Rules of Practice and Procedure," and the NRC's E-Filing rule (Volume 72 of the Federal Register, page 49139; August 28, 2007) within 20 days from the date of the notice of denial, or such longer period as may be specified in the notice. Pursuant to 10 CFR 2.307, the applicant may request that the Commission or the presiding officer extend this 20-day period of time for good cause. Examples of good cause may include a delay in transmitting the denial, problems with the electronic filing system, or sudden illness of the applicant. Guidance on how to file a demand for a hearing will be provided in the notice of denial. Generally, a demand for a hearing should explain why the applicant believes that the NRC's denial of its application was in error and why the applicant believes that it has, in fact, satisfied the requirements for license issuance.

If the applicant submits a claim of misconduct or unacceptable performance related to the examination administration coincident with a demand for a hearing, IOLB will process the complaint in accordance with NRC MD 8.17, "Licensee Complaints Against NRC Employees." If a hearing is demanded, refer to 10 CFR Part 2 and NRR Office Instruction LIC-201, "NRR Support to the Hearing Process," and follow the guidance provided by OGC, which is the lead office for hearings.

D. RESPONSIBILITIES AND DETAILED PROCESS INSTRUCTIONS (See also NUREG-1021)

1. NRR Operator Licensing and Human Factors Branch

Administrative Reviews

- a. Upon receipt of an applicant's request for an administrative review from the affected region, IOLB will perform the following administrative actions:
 - (i) Prepare a letter for signature by the Director of DRO notifying the applicant that his or her request has been received and is being reviewed (sample letter provided as Attachment 1).
 - (ii) Open a fee-billable EPID number for the administrative review using the facility docket number(s) and CAC 000492, "FB-OR-EXAM REVIEW." Assign employees to the review in the Reactor Program System Licensing/Workload Management (RPS-WM) application and assign the affected region as an input organization in RPS-WM or assist the affected region in assigning employees in the Cost Activity Code System (CACs). Coordinate with the regional office, and assist as necessary, assigning regional examiners supporting the administrative review to the EPID and CAC.
- b. The IOLB branch chief will determine whether to have IOLB perform the review or have independent qualified examiner(s) from one of the non-affected regions perform the review. For requests concerning dynamic simulator scenarios, a three-person panel of examiners will normally be used. However, depending on the number of issues being challenged, the complexity of the arguments, and the availability of resources, a single examiner may be used. Since all administrative review results are subject to final approval by DRO, in order to enhance efficiency, IOLB will typically perform the review and document the results, taking into account the affected region's review.
- c. IOLB shall ensure that the review is completed and documented in accordance with the guidance in Section E.
- d. If it is determined that an appeal panel will be used for the review, then the Chief, IOLB will determine the makeup of the panel. Note that an appeal panel shall consist of two vendor-certified examiners from non-affected regions and a designated chairperson from IOLB or a non-affected region (usually a branch chief with current or previous operator

licensing experience, or an examiner-qualified, senior reactor engineer from NRC headquarters). The panel shall not include individuals involved with the applicant's licensing examination. Additionally, individuals who have had any involvement in the applicant's prior examinations (i.e., examiners who have participated on any of an applicant's examinations if that applicant has had multiple retakes, or examiners who participated on an SRO-U's RO examination if an SRO-U is requesting the review) are also prohibited from participating as a member of the panel.

- e. Regardless of who performs the review, IOLB will be familiar with the circumstances of any contested examination failure or application denial and with the contents of any applicant request for an administrative review.
- f. The results of all administrative reviews will be approved by IOLB and signed out by the Director of DRO, considering the affected region's review. If the preliminary examination results change because of an administrative review, IOLB will afford the affected region the opportunity to submit an additional written response. This additional written response shall be from the Regional Administrator to the Director of NRR.
- g. Upon mailing the administrative review results letter to the applicant, IOLB will take actions to close the applicable EPID number.

Hearings

- h. For hearings, IOLB will coordinate with OGC to present to the Commission or presiding officer the NRC staff's position on the applicant's hearing demand, and the Commission or presiding officer will make the determination on the applicant's hearing demand. IOLB will send a copy of the applicant's hearing demand to the affected region. Additionally, IOLB, as directed by OGC, will notify staff that all documents related to the application, either existing or yet to be created, must be preserved so that they can be placed into the hearing file, as necessary.
- i. The Chief of IOLB, in consultation with IOLB staff, the affected region, and OGC will determine who will serve as the NRC staff's witnesses. For contested operating test failures, the staff witnesses should include the examiner(s) that administered the contested portion(s) of the test (i.e., those with first-hand knowledge of the contested issues). For written examination failures, the staff witnesses may include any staff member qualified to speak to the development and grading of the contested portion(s) of the examination. The Chief of IOLB will also select one staff

member to coordinate with OGC the collection of all documents potentially related to the application in order to develop the hearing file. Due to the potentially extensive amount of effort required to develop hearing files, it is imperative that this individual be selected quickly.

- j. OGC will draft all staff legal arguments and will coordinate with staff witnesses in the development and presentation of their testimony.

2. Affected and Non-Affected Regions

Administrative Reviews

- a. Upon receiving an administrative review request, the affected region will transmit the request to IOLB by e-mail or ADAMS link as soon as possible so that IOLB can send an acknowledgement letter and start the review process. Also, the affected region will enter the request to the applicant's docket and input the appeal information in RPS-OL.
- b. The affected region will submit its review of the applicant's request via memorandum to the Director of DRO for consideration by the reviewer(s), usually within 15 working days after receiving the request or as agreed with IOLB. The affected region will also be responsible for answering questions and providing assistance as requested by the reviewer(s). This assistance may include obtaining technical references by interfacing with the facility licensee point of contact, providing IOLB with the facility licensee point of contact information, or providing certain examination documents (see Sections E.1.c and E.1.f for a list of documents).
- c. Typically, IOLB will perform and document administrative reviews. However, non-affected regions may be asked to provide resources. If an appeal panel is to be used, all non-affected regions should examine their personnel resources and determine who would be available to serve as panel members (see D.1.d above for panel membership restrictions).
- d. If a non-affected region conducts the review, the region conducting the review shall:
 - (i) Ensure that the review is not performed by any examiners involved with the applicant's original licensing examination. This restriction extends to individuals who have had any involvement in the applicant's prior examinations (i.e., examiners who have participated on any of an applicant's examinations if that applicant has had multiple retakes, or examiners who participated on an

SRO-U's RO examination if an SRO-U is requesting the appeal). This will help ensure that the review is conducted in an impartial fashion.

- (ii) Conduct and document the review in accordance with Section E.
 - (iii) Establish and maintain communications with IOLB during the review to ensure that the review results include IOLB's input.
 - (iv) Upon completion, forward draft results to IOLB for review, concurrence, and routing to the Director of DRO for approval.
- e. It is expected that the affected region will be familiar with the circumstances of any contested examination failure or application denial, as well as with the contents of any applicant request for an administrative review.
- f. If the preliminary examination results change because of an administrative review, IOLB will afford the affected region the opportunity to submit an additional written response. This additional written response shall be from the Regional Administrator to the Director of NRR. If the administrative review results in the applicant passing the licensing examination, then the affected region will determine whether the licensing action should be delayed due to a deferral or based upon the applicant's medical condition. If there is no basis for delay or other reason for denial, then the affected region shall issue the applicant a license.
- g. When IOLB has concurred on the results of the review, the affected region will also add a document describing any test item deletions or answer key changes to the master examination file. The affected region will also update the applicant grades in the results summary and consider the need to correspond with the facility licensee regarding the quality of the examination.

Hearings

- h. For hearings, the affected region will consult with IOLB staff and OGC to determine what resources will be required from the affected region to help accomplish the responsibilities discussed in D.1 (Hearings) above.
- i. The hearing demand and other pleadings filed before the Commission or presiding officer are placed in the ADAMS operator docket file.

3. Informal Review Panel

- a. During a review by an informal review panel, the panel should conduct and document its review in accordance with the guidance in Section E.
- b. The informal review panel will establish and maintain communications with IOLB to ensure that the review results include IOLB's input. Additionally, the panel must ensure that it considers formal input from the affected region.
- c. Upon completion, the informal review panel will forward its draft results to IOLB for review, concurrence, and routing to the Director of DRO for approval.

4. OGC

- a. With respect to administrative review requests, the assigned OGC attorney(s) will provide advice during the development of the review results and will evaluate the review results for legal objections, if requested.
- b. With respect to hearing demands, OGC will be the lead office, will keep IOLB fully apprised of all developments, will consult with IOLB and the affected region on the selection of witnesses and a staff member to manage the hearing file, will draft all staff legal arguments, and will coordinate with staff witnesses in the development and presentation of their testimony. The assigned OGC attorney(s) carry out all communications (acknowledgment letters, phone calls, etc.) with the applicant and all communications with the Commission or presiding officer. There will be no direct communication between the NRC technical staff or management and the applicant or the Commission or presiding officer.

5. Facility Licensee

During an administrative review or hearing, the facility licensee is expected to designate a single point of contact to provide answers and reference materials for detailed technical questions, as necessary. Establishing the facility licensee point of contact will be arranged with input from the affected region. Refer to NUREG-1021 for further details.

E. REVIEW GUIDANCE AND DOCUMENTATION

1. Review Guidance

- a. When an applicant requests an administrative review, the NRC is responsible to ensure that a timely review is performed. Uncomplicated written examination failures are generally reviewed within 75 days of receipt of the applicant's request. More complicated reviews (e.g., several written examination questions and/or an operating test failure) may take longer depending on the scope of the review.
- b. In all cases, each of the applicant's arguments shall be reviewed and addressed in the results documentation.
- c. For reviews involving written examinations, the following items shall be reviewed:
 - (i) a copy of the applicant's request for an administrative review, including all applicant arguments and applicant-supplied reference material;
 - (ii) a copy of the contested written examination questions with answer key;
 - (iii) any documentation and technical references supporting the bases for the correct answers and for why the distractors are incorrect;
 - (iv) as required, any other technical references for the contested questions;
 - (v) a copy of the applicant's original answer sheet;
 - (vi) any documentation of issues raised during the administration of the examination related to the contested written examination questions (e.g., all applicant questions and all the proctor's statements of clarification and/or responses); and
 - (vii) the affected region's formal review of the contested items, but only after the reviewer(s) complete their independent assessment.

The material should be obtained from the affected region, if available, or from the facility licensee point of contact.

- d. In conducting a review of written examination grading, the reviewer(s) should carefully examine each of the contested questions and associated materials. For each contested question, the following is a list of typical possible outcomes:
- (i) Delete the question due to a psychometric-related problem (e.g., unclear, not appropriate as a closed referenced test item, not appropriate to the license level, not linked to job requirements);
 - (ii) Delete the question due to a technical problem (e.g., no correct answer or more than two correct answers);
 - (iii) Keep the question but change the correct answer choice;
 - (iv) Keep the question with no change in grading; or
 - (v) Accept an additional answer choice as correct (note: a question is considered valid with up to two correct answer choices).

See NUREG-1021 for more details on psychometrics, written examination grading, and examples of circumstances that would warrant a change to the answer key.

- e. Upon determining an outcome for each contested question, the reviewer(s) shall re-calculate the applicant's overall examination score and the score on the SRO-only portion of the examination, if applicable. For an example recalculation, see the "Summary" Section of Attachment 4. If multiple applicants have asked for a review of the same written examination, the reviewer(s) will review all arguments and apply the results of all examination key changes to each of the applicants' examinations that are under review. Note that one or more applicants may pass or fail depending on changes to the examination key for questions that the applicants did not challenge; however, applicants who did not request an administrative review will not have their examinations regraded.
- f. For reviews involving operating tests, the reviewer(s) shall consider reviewing the following items, as applicable:
- (i) a copy of the applicant's request for an administrative review, including all applicant arguments and applicant-supplied reference material;

- (ii) a copy of the contested test items (i.e., JPMs and/or scenarios) with answer keys;
 - (iii) any documentation, procedures, or technical references that provide the bases for the correct operator actions;
 - (iv) as required, any other technical references for the contested test items;
 - (v) a copy of the applicant's original operating test grade report and, if the scenario grading is being contested, a copy of the applicant's crew members' grade reports;
 - (vi) a copy of all materials that document the applicant's performance on the contested test items (i.e., examiner notes, notes/procedure markups/calculations made by the applicant, simulator strip chart recordings, video or audio recordings, if available, etc.); and
 - (vii) if the applicant's version of events conflicts with the examiner's version, a signed written statement from the examiner reiterating and detailing exactly what the applicant did or did not do may be required. This should be part of the affected region's review of the contested items.
- g. In cases where the applicant's version of events conflicts with the examiner's version, the reviewer(s) are generally expected to utilize the examiner's version of events in conducting the review, unless there is impartial (e.g., simulator video, simulator traces, audio recordings, etc.) evidence to the contrary.
- h. Administrative reviews are limited to the contested items only. However, in the unlikely event that a new error is identified as a direct result of the review of the contested items, the uncontested error and its effect, if any, on the applicant's pass/fail result should be determined and documented by the reviewer(s) in a memorandum to the Director of DRO and the Regional Director of DRS. An administrative review is permitted to determine that a contested item, or new error identified directly because of a contested item, is a critical task (CT). This can occur regardless of whether the contested item was previously identified as a CT during the examination administration.
- i. If necessary, the reviewer(s) may request that the facility licensee make the simulator available and the reviewer(s) may travel to the site to review

the applicable scenarios or JPMs on the simulator. If the simulator software has been modified since the examination, then IOLB will evaluate the extent of the change, how it would affect the validity of the contested test items, and whether a site visit would still provide useful information.

- j. Upon determining the applicant's actual actions during the contested test items, the reviewer(s) shall utilize the grading policies contained in NUREG-1021 to re-grade the contested portion(s) of the operating test. The reviewers shall determine for the walk-through test whether any JPM critical steps were omitted or incorrectly performed; for the simulator operating test whether the competencies were appropriately scored; and, in general, the accuracy and applicant performance on any follow-up questions. In addition, the reviewer(s) shall examine the validity of the contested operating test items, including whether critical steps and critical tasks were in fact critical, and whether the associated JPM guides/scenario guides were technically correct and properly constructed. For each contested test item, the following is a list of typical possible outcomes:

- (i) Delete the test item due to a flaw in the test item (e.g., JPM cue unclear, not an appropriate test item);
- (ii) Delete the test item due to a technical problem (e.g., no truly correct actions);
- (iii) Keep the test item with no change in grading; or
- (iv) Keep the test item but change the applicant's grading or accept additional actions as correct based on additional technical information provided by the applicant or obtained from the facility licensee.

Upon determining an outcome for all contested test items, the reviewer(s) shall use the grading criteria in NUREG-1021 to determine the applicant's overall operating test score based on the remaining test items.

- k. Once the administrative review is complete and documented in a written report, pre-decisional drafts, e-mail correspondence, and other background information shall be handled in accordance with MD 3.53, "NRC Records and Document Management Program." An "Administrative Review" ADAMS package shall be created to store

documents required to satisfy MD 3.4, "Release of Information to the Public" and IMC 0620, "Inspection Documents and Records."

2. Documenting Administrative Review Results

- a. All administrative review documents that contain personal information about the applicant (e.g., name, docket number, home address, grades, review results, etc.) are not to be made publicly available; when entered in ADAMS, they shall be coded as sensitive, non-public documents.
- b. There are two possible outcomes following an administrative review: (1) the applicant receives a passing score on the licensing examination or (2) the applicant does not receive a passing score on the licensing examination.

Depending on the overall results, the reviewer(s) shall prepare a cover letter transmitting the review results to the applicant, as shown in Attachments 2 and 3.

- c. The details of the review will be presented in a report as an enclosure or enclosures to the cover letter. In all cases, each of the applicant's arguments will be addressed as discussed below. The reviewer(s) shall prepare the enclosure(s) to the cover letter. Attachments 4 and 5 are provided as examples.
- d. To enhance clarity, the review report should contain an overall summary section including the examination date(s), the date of the applicant's review request, the applicant's original score, and the applicant's revised score. This section could also contain a table that summarizes the review report's conclusions for each contested item (i.e., written question, JPM, or simulator event).
- e. The following information should be included for each contested item in the review report:

FOR WRITTEN EXAMINATIONS, provide the following, as applicable:

- Question number,
- K/A number and importance rating,
- The full text of the question as it appeared on the original examination,

- The answer key answer choice,
- The applicant's answer choice,
- The full text of the applicant's arguments (preferred) or a well-constructed summary of the applicant's arguments if the arguments are excessively lengthy, and
- The NRC staff's analysis, response, and resolution of each of the applicant's arguments.

An example of a written examination review report is presented in Attachment 4.

FOR OPERATING TEST JPMS, provide the following:

- JPM number (e.g., facility bank reference, examination reference, etc.),
- JPM title,
- Initial conditions,
- Initiating cue,
- The expected operator actions/summary of how the JPM should have been performed per the facility licensee's procedures for all contested steps,
- The applicant's actions as documented in the original grading and any follow-up questions and responses related to the JPM,
- The full text of the applicant's arguments (preferred) or a well-constructed summary of the applicant's arguments if the arguments are excessively lengthy, and
- The NRC staff's analysis, response, and resolution of each of the applicant's arguments. If the staff analysis does not agree with the applicant's arguments and does not change the grading, the analysis should include the adverse consequences, if any, caused by the applicant's incorrect actions and/or the lack of knowledge or ability that the applicant demonstrated.

FOR OPERATING TEST SCENARIO EVENTS, provide the following:

- Scenario number and event number,
- Event title,
- The applicant's position on the crew during the event (e.g., RO, BOP, SRO, etc.),
- Important/relevant plant conditions prior to or coincident with the event,
- Expected operator actions/summary of how the scenario event should have been performed per the facility licensee's procedures,
- The applicant's actions as documented in the original grading and any follow-up questions and responses related to the scenario event,
- The full text of the applicant's arguments (preferred) or a well-constructed summary of the applicant's arguments if the arguments are excessively lengthy, and
- The NRC staff's analysis, response, and resolution of each of the applicant's arguments. If the staff analysis does not agree with the applicant's arguments and does not change the grading, the analysis should include the adverse consequences, if any, caused by the applicant's incorrect actions and/or the lack of knowledge or ability that the applicant demonstrated.

An example of an operating test review report is presented in Attachment 5.

3. Hearing Documentation

OGC is the lead office for hearings and will direct the development of all necessary hearing documentation on a case-by-case basis. This includes the assigned OGC attorney(s), under the attorney-client relationship, coordinating with the assigned staff witnesses in the development and presentation of testimony and with the staff member assigned to the hearing file in the collection of potentially related documents.

F. ATTACHMENTS

Attachment 1, "Acknowledgment of an Applicant's Request for an Administrative Review"

Attachment 2, "Notification of Passing the Licensing Examination - Cover Letter"

Attachment 3, "Notification of Failing the Licensing Examination and Application Denial - Cover Letter"

Attachment 4, "Sample Administrative Review Report for a Written Examination"

Attachment 5, "Sample Administrative Review Report for an Operating Test"

ATTACHMENT 1: Acknowledgment of an Applicant's Request for an Administrative Review

NRC Letterhead
[Date]

[Applicant's name]
[Street address]
[City, State, Zip Code]

Dear [Mr./Ms. Applicant's Name]:

This is to acknowledge receipt of your letter dated [postmarked date], requesting a U.S. Nuclear Regulatory Commission (NRC) staff administrative review of your [reactor operator, senior reactor operator, or limited senior reactor operator] license examination. We will review the information and the material that you provided and inform you of our decision.

The administrative review process is described in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," and also in OLMC-500, "Processing Requests for Administrative Reviews and Demands for Hearings" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20230A201). ADAMS is accessible on the NRC's Web site at <https://www.nrc.gov/reading-rm/adams.html>. For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The administrative review process encompasses reconsideration of the grading of the examination items identified in your letter [as well as those identified by other applicants who also requested an administrative review]. The NRC endeavors to complete the review of your claims, reconsider your grading, and inform you of the results of the review in a timely manner, typically within 75 days, although more time may be needed depending on the scope of our review.

If you have any questions, please contact [name], Chief, Operator Licensing and Human Factors Branch, at (301) 415-XXXX.

Sincerely,

[Name], Director
Division of Reactor Oversight
Office of Nuclear Reactor Regulation

Docket No.: 55-[number]

cc: [Training representative who signed the applicant's NRC Form 398]

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ATTACHMENT 2: Notification of Passing the Licensing Examination - Cover Letter

NRC Letterhead
[Date]

[Applicant's name]
[Street address]
[City, State, Zip Code]

Dear [Mr./Ms. Applicant's Name]:

In response to your letter dated [postmarked date], the U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the preliminary results of the [operating test, written examination, or operating test and written examination] taken by you on [date(s)], in connection with your application for a [reactor operator, senior reactor operator, or limited senior reactor operator] license for the [facility name]. Upon review of the additional information that you supplied, the staff has determined that you passed the [operating test, written examination, or operating test and written examination].

The NRC's regional office has been informed of this and will issue a license if the requirements of 10 CFR 55.33 are otherwise met.

For your information, I am enclosing a copy of the staff's administrative review report. If you have any questions, please contact [name], Chief, Operator Licensing and Human Factors Branch, at [telephone number].

Sincerely,

[Name], Director
Division of Reactor Oversight
Office of Nuclear Reactor Regulation

Docket No.: 55-[number]

Enclosure: Administrative Review Report

cc w/o enclosure: [Senior facility representative who signed the applicant's NRC Form 398]

cc w/enclosure: [Training representative who signed the applicant's NRC Form 398]

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ATTACHMENT 3: Notification of Failing the Licensing Examination and Application Denial –
Cover Letter

NRC Letterhead
[Date]

[Applicant's name]
[Street address]
[City, State, Zip Code]

Dear [Mr./Ms. Applicant's Name]:

In response to your letter dated [postmarked date], the U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the preliminary results of the [operating test, written examination, or operating test and written examination] taken by you on [date(s)], in connection with your application for a [reactor operator, senior reactor operator, or limited senior reactor operator] license for the [facility name]. Upon review of the additional information that you supplied, the staff has determined that you did not pass the [operating test, written examination, or operating test and written examination]. The results of the review are provided in the enclosed copy of the staff's administrative review report. Consequently, the preliminary results of your [operating test, written examination, or operating test and written examination] now become the final results and a denial of your license application.

Under Title 10 of the *Code of Federal Regulations* (10 CFR) 55.33, "Disposition of an initial application," the NRC will approve an initial application for [a reactor operator license/a senior reactor operator license] if it finds that (1) the applicant's medical condition and general health will not adversely affect the performance of assigned operator job duties or cause operational errors endangering public health and safety and (2) the applicant has passed the requisite written examination and operating test. Your application was denied because the NRC determined that you did not pass [the written examination/the operating test/either the written examination or the operating test].

Under 10 CFR 55.35, "Re-Applications," you may file a new application [2/6/24] months after the date of this letter.

[Because you passed the written examination but did not pass the operating test, you may request, in the new application, to be excused from reexamination on the written examination. The NRC may grant this request at the agency's discretion if it determines that sufficient justification is presented.]

[Because you passed the operating test but did not pass the written examination, you may request, in the new application, to be excused from reexamination on the operating test. The NRC may grant this request at the agency's discretion if it determines that sufficient justification is presented.]

[Because you passed the written examination and the (administrative topics, control room/in-plant systems, simulator) part of the operating test but did not pass the remainder of the operating test, you may request, in the new application, to be excused from reexamination on the written examination and the (administrative topics, control room/in-plant systems, simulator) part of the operating test. The NRC may grant this request at the agency's discretion if it determines that sufficient justification is presented.]

[Because you did not pass either the written examination or the operating test, you will be required to retake both the written examination and the operating test.]

Under 10 CFR 2.103(b)(2), you may demand a hearing on this denial of your application within 20 days after the date of this letter. Under 10 CFR 2.307(a), you may request an extension of this time limit if you can show good cause.

A demand for a hearing shall be filed in accordance with 10 CFR Part 2, "Agency Rules of Practice and Procedure," which is accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Generally, a demand for a hearing should explain why you believe that the NRC's denial of your application was in error and why you believe that you have, in fact, satisfied the requirements for license issuance.

[Consult with the Office of the General Counsel/regional counsel for the most up-to-date E-Filing language.]

A demand for a hearing must be filed in accordance with the NRC's E-Filing rule (Volume 72 of the *Federal Register*, page 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or, in some cases, to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov or by telephone at 301-415-1677 to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating and (2) advise the Secretary that the participant will be submitting a demand for a hearing. Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a demand for a hearing. Submissions must be in Portable Document Format (PDF). Additional guidance

on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide

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home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If you have any questions, please contact me at [telephone number].

Sincerely,

[Name], Chief
[Branch]
[Division]

Docket No.: 55-[number]

Enclosure: As stated

cc w/o enclosure: [Senior facility representative who signed the applicant's NRC Form 398]

cc w/enclosure: [Training representative who signed the applicant's NRC Form 398]

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

ATTACHMENT 4: Sample Administrative Review Report for a Written Examination

ADMINISTRATIVE REVIEW REPORT - ROBERT C. NUCLEAR
SENIOR REACTOR OPERATOR APPLICANT - PWR UNITS 1 and 2

In response to the applicant's letter dated April 2, 2000, the U.S. Nuclear Regulatory Commission (NRC) staff reconsidered the preliminary written examination results issued on March 24, 2000 and reviewed the grading of the written examination administered to the applicant on March 5, 2000. Upon review of the applicant's arguments, the staff has determined that the applicant passed the written examination. The results of the staff's review are outlined below.

NUREG-1021 Passing Scores:	SRO-only \geq 70.00%	Total \geq 80.00%
Applicant's original scores (after NRC regional office resolution of facility licensee post-examination comments):	68.00% (17/25)	78.57% (77/98)

The applicant contested the grading of four questions as discussed below, and the review resulted in the following:

Q#	Applicant's Answer	Original Answer Key	Applicant's Arguments	NRC Staff's Conclusion
12	B	D	Answer choice B is also a correct answer.	Agree. Both answer choices B and D will be accepted as correct.
14	C	B	Answer choice C is also a correct answer.	Disagree. Answer choice B is the only correct answer.
92	B	A	Answer choice B is the correct answer.	Partially agree with applicant's arguments; however, upon further review the question is deleted.
96	D	B	Delete the question; no correct answer.	Disagree. Answer choice B is the only correct answer.

Applicant's final scores, as a result of this review:	SRO-only	Total
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	70.83% (17/24)	80.41% (78/97)
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Examination Question #12: (K/A 076K3.01 (3.4/3.6))

Given the following plant conditions:

- Unit #1 is operating at 100%.
- All systems aligned normal.
- Loss ERCW Supply header 2A occurs due to a rupture in the yard.

Which ONE (1) of the following describes indications the Unit 1 operator would see in the main control room in this event? (Assume no operator actions).

- A. Ice condenser chillers trip.
- B. Immediate containment pressure increase.
- C. General ventilation chillers trip.
- D. CCS surge tank level increasing with auto makeup valve closed.

Original Answer Key: D

Applicant's Answer: B

Applicant's Arguments:

Candidate contends that answer B is also correct. Since the 1A & 2A ERCW supply trains are cross-tied (Attachments 12b & 12c), the cooling water to the Unit 1 containment coolers will be interrupted, and resulting in a prompt rise in containment temperature and pressure. The scenario of the 2A ERCW yard rupture was performed on the simulator on 4/01/00, with facility instructors and myself in attendance. Containment pressure began to increase immediately when the rupture occurred (Attachments 12d). Containment pressure is constantly monitored on PNL 1-M-6 to maintain compliance with T.S. 3.6.1.4 (Attachment 12e), which has a one hour action statement that is applicable in Modes 1-4. This is what the Unit 1 operator would see while remaining in his area of responsibility (Attachment 12f).

NRC Staff's Conclusion:

The NRC staff agrees with the applicant's arguments. The question will be retained, with both answer choices B and D accepted as a correct answer.

NRC Staff's Analysis:

Based on a review of system drawings, procedure AOP-M.01, "Loss of Essential Raw Cooling Water," and the information provided by the applicant, the NRC staff agrees with the applicant. The 1A and 2A ERCW supply trains are cross connected, such that a yard rupture on the 2A supply train would result in flow out the rupture from BOTH the 1A and 2A ERCW supply trains. This would result in a reduction in the heat removal capability provided by BOTH the 1A and 2A ERCW trains. Since the Unit 1 "A" and "C" Upper and Lower Containment coolers are cooled by the 1A ERCW train, a reduction in Unit 1 containment cooling could occur, depending on which containment coolers were in service at the time. A reduction in Unit 1 containment cooling would result in an increase in Unit 1 containment temperature and pressure.

Examination Question #14: (K/A 103G2.1.12 (2.9/4.0))

Which ONE (1) of the following conditions represents a loss of primary containment integrity per Technical Specification 3.6.1.1, Containment Integrity?

- A. With the reactor at 100% power, an electrician opens the outer airlock door.
- B. With the RCS average coolant temperature 250°F, an inspection of the equipment hatch determines that the hatch is NOT sealed.
- C. During an operability test of two normally open, redundant containment isolation valves at 100% power, one of the valves fails to close.
- D. During an Integrated Leakage Rate Test in Mode 5, containment leakage exceeds the maximum allowable Technical Specification leakage rate.

Original Answer Key: B

Applicant's Answer: C

Applicant's Arguments:

"The candidate contends that C is also correct for the following reasons:

The definition of containment integrity per the Tech Spec definitions (Attachment 14b) states that 'All penetrations required to be closed during accident conditions are ... Capable of being closed by an operable containment isolation valve system ...' and 'all equipment hatches are closed and sealed.'

So, by definition, both B & C are correct. The one hour action of TS 3.6.1.1 (Attachment 14c) only states that 'without primary containment integrity, restore containment integrity within 1 hour or be in hot standby within the next six hours and in cold shutdown within the next 30 hours.'

NRC Staff's Conclusion:

The NRC staff does not agree with the applicant's arguments and does not change the question's grading. The question will be retained, with only answer choice B accepted as the correct answer.

NRC Staff's Analysis:

Based on a review of the applicable Technical Specifications (TS), TS definitions, TS bases (TS 3.6.1.1, 3.6.3, 1.7) and discussions with facility licensee personnel, the NRC staff has determined that the conditions of answer choice C do not represent a loss of primary containment integrity. Since only one of the redundant containment isolation valves failed to close, the penetration can still be closed by the other redundant valve. The penetration is therefore capable of being closed by an operable containment automatic isolation valve system. If answer choice C conditions existed, TS 3.6.1.1, "Containment Integrity," would not be entered, and TS 3.6.1.1 actions within one hour would not be required. Instead, TS 3.6.3, "Containment Isolation Valves," would be entered, and would require the isolation of the "penetration within 4 hours by use of at least one closed deactivated automatic valve, closed manual valve, blind flange, or check valve with flow through the valve secured..."

ATTACHMENT 5 Sample Administrative Review Report for an Operating Test

ADMINISTRATIVE REVIEW REPORT - ROBERT C. NUCLEAR
SENIOR REACTOR OPERATOR APPLICANT - PWR UNITS 1 and 2

In response to the applicant's letter dated April 2, 2000, the U.S. Nuclear Regulatory Commission (NRC) staff reconsidered the preliminary operating test results issued on March 24, 2000 and reviewed the grading of the operating test administered to the applicant on March 6 - 9, 2000. Upon review of the applicant's arguments, the staff has determined that the applicant did not pass the operating test. The results of the staff's review are outlined below.

Overall Summary

The applicant requested a review of his performance on Job Performance Measure (JPM) NRC-ADMIN-JPM-01A/SRO, "Perform a Shutdown Margin with a Dropped Rod." The applicant's performance on this JPM was originally determined to be UNSATISFACTORY. The findings of this review agree with the original grading. Since the applicant also demonstrated unsatisfactory performance on topics A.1 and A.4, his overall performance on the Administrative Topics section of the operating test was determined to be UNSATISFACTORY.

Review Details for JPM NRC-ADMIN-JPM-01A/SRO, "Perform a Shutdown Margin with a Dropped Rod"

This administrative JPM required the applicant to perform a shutdown margin (SDM) calculation. The applicant was provided the necessary references, a calculator, and the following initial conditions and initiating cue:

Initial Conditions:

"Unit One is stable at 90% power.
A dropped rod occurred 5 minutes ago.
RCS temperature is stable at 567°F.
Core age is 7521 MWD/MTU.
'D' bank rod height is currently 191 steps.
RCS boron concentration is 900 ppm as measured 2 hours ago, no borations or dilutions have occurred since."

Initiating Cue:

"The Unit One SRO has requested you perform an independent shutdown margin to verify the Shutdown Margin calculated by the shift STA. Here is a verified current copy of 1-OP-RX-001, SHUTDOWN MARGIN (CALCULATED AT POWER). You are requested to perform an at power shutdown margin calculation."

Original Grading:

The applicant was expected to calculate that the SDM was -2453.9 pcm, with an allowed error band of ± 37.5 pcm (i.e., allowed SDM between **-2491.4 and -2416.4 pcm**).

However, the applicant determined that the SDM was **-2512.9 pcm**, which was outside the JPM's allowed range. The applicant's calculated SDM was outside the JPM allowed SDM band due to an error in his determination of power defect.

Applicant's Arguments:

The applicant argues that this JPM was graded too severely, in that the allowed band for SDM was too restrictive. The applicant provided the following statements to support this position:

In the initiating cues of the JPM the following statement was made, "The Unit One SRO has requested you to perform an independent shutdown margin to verify the shutdown margin calculated by the Shift STA.", this implies that the applicant was to corroborate the general correctness of the STA's calculation. The shutdown margin was for a dropped rod, which requires a SDM to be performed within one hour, and the STA would have already consumed a portion of that clock. Therefore, with this in mind, a quick verification of the accuracy of the STA's results would be prudent in order to meet the T.S. [Technical Specification] requirement. If the SDM had been close to or below the requirement, the correct action would be to increase the SDM and not take the time to pinpoint the exact numerical value of the SDM at that time. The deviation between the acceptable value, -2453.9 pcm, and the calculated -2512.9 pcm, is negligible when considering the deviation from the limit of -1770 pcm.

1-OP-RX-001, "Shutdown Margin Calculated at Power" allows for a greater deviation for Power Defect than was allowed for the examination. On Page 6 step 5.1.1 in 1-OP-RX001 (enclosed), the boron concentration is allowed to be within ± 50 ppm of actual boron concentration. This allowance in boron concentration can translate to a difference of ± 50 pcm for the power defect and has been deemed acceptable for determining a shutdown margin. Applying the allowed deviation for boron concentration to the presented boron concentration would give a +32 and -44 pcm range (derived from Power Defect Curve in 1-DRP-003 PWR Unit 1 Cycle 17 enclosed- see pg. 64). Procedurally this sets the range from -1792 pcm to -1716 pcm for the Power defect. In reading the graph there is the allowed ± 25 pcm for interpolation variances, which will then set the band from -1817 pcm to -1691 pcm. This band represents a band both accepted from a procedural tolerance and a graph reading tolerance. The answer of -1700 pcm now falls within the more accurate and fair band. The final shutdown margin's band, with the new band for Power Defect, would then be -2535.4 pcm to -2384.4 pcm, which would make -2512.9 pcm a correct answer.

The applicant only deviated from the calculated shutdown margin of -2453.9 pcm by 46.5 pcm. This represents a 1.89 percentage deviation that would have no adverse impact on the operation of the plant. The deviation of 46.5 pcm is also less than the allowed deviation due to boron concentration, which could represent a 100 pcm difference.

The applicant summarized his position in the following paragraph:

It is the applicants view that the requirements of 10CFR55.45(a)(12), 'Demonstrate the knowledge and ability as appropriate to the assigned position to assume the responsibilities associated with the safe operation of the facility,' was clearly met with the performance of the shutdown margin correctly and as accurately as allowed by procedure and available material.

NRC Staff's Conclusion:

The NRC staff does not agree with the applicant's arguments and does not change the JPM's grading. The applicant's performance on this JPM remains UNSATISFACTORY.

NRC Staff's Analysis:

The applicant's position that his calculated SDM should be considered acceptable can be summarized as three arguments:

1. Only a quick verification or a corroboration of the STA's SDM was required. Due to the one-hour technical specification (TS) requirement to calculate SDM, an exact numerical calculation of SDM was not required.
2. The JPM's allowed band for SDM was overly restrictive. The procedure for calculating SDM (1-OP-RX-001) allows for a larger band for SDM.
3. The deviation between the applicant's calculated value of SDM (-2512.9 pcm) and the allowed band for SDM (-2491.4 and 2416.4 pcm) was negligible. The applicant's calculation would result in no adverse impact to plant operations.

The NRC staff does not agree with these arguments and discusses each below.

Argument #1: Only a quick verification or a corroboration of the STA's SDM was required.

The applicant argues that due to the one-hour time constraint contained in TS, only a quick verification of SDM was required. The applicant further argues that part of this clock has

already been consumed during the STA's calculation. The NRC staff disagrees with this argument for three reasons:

1. This JPM was not time critical, i.e., there was no preset time limit for the satisfactory completion of the JPM. As long as the applicant was making progress, he would have been allowed to continue. Any time pressure perceived by the applicant was *created* by the applicant.
2. Even if the applicant did perceive time pressure (due to the one-hour TS clock), he would have had 55 minutes to complete his calculation, which was ample time to accurately calculate SDM. Although the STA may have already consumed a portion of the one-hour TS clock, the initial conditions clearly state that "a rod dropped 5 minutes ago," which indicated that there were 55 minutes left on the one-hour clock.

3. The JPM's initiating cue clearly states, on two occasions, to perform an SDM calculation:

"The Unit One SRO has requested you perform an independent shutdown margin..."

"You are requested to perform an at-power shutdown margin calculation."

The JPM did not ask the applicant to perform a "quick verification" or "corroboration."

Argument #2: The JPM's allowed band for SDM was overly restrictive. The procedure allows for a larger band for SDM.

The applicant supports this argument based on the following:

1. The procedure (1-OP-RX-001) allows for the boron concentration to be used in the calculation to be within ± 50 ppm of actual boron. This allowance for boron concentration can translate into a ± 50 pcm deviation in power defect.
2. In reading the power defect graph, there is an allowed variance of ± 25 pcm.

By adding the variances of 1 and 2 above, the applicant argues for a larger band for allowed SDM.

The NRC staff disagrees with this argument for two reasons:

1. The allowed error in boron concentration of ± 50 ppm is exactly that - an allowed error in boron concentration. The allowed error in boron concentration does not somehow translate into other allowed operator calculation errors, such as errors associated with reading the power defect graph. If it was assumed that the operator miscalculated power defect by the equivalent of 50 ppm boron, then there would be no margin for error

in allowed boron concentration, which is contrary to the ± 50 ppm boron error allowed in procedure 1-OP-RX-001.

2. The JPM's original band for allowed SDM was properly determined. The JPM properly accounted for all graph reading tolerances ($\pm \frac{1}{2}$ division), including reading the power defect graph (± 25 pcm).

Argument #3: The applicant's calculated SDM should be graded as acceptable, since there was no adverse impact to plant operations associated with his calculation.

The applicant supported this argument by stating that:

1. His calculated value differed from the allowed value by a negligible amount (46.5 pcm or 1.89%).
2. Given that the TS limit on SDM is -1770 pcm, there was no adverse impact associated with his determination of SDM (-2512.9 pcm).

The NRC staff agrees with this argument in that there was no adverse impact on the plant due to the applicant's calculation. However, the NRC staff disagrees that this should make the applicant's calculated SDM acceptable:

1. As stated above in argument #2, the JPM's original band for allowed SDM was properly determined. The JPM properly accounted for all graph reading tolerances ($\pm \frac{1}{2}$ division) and interpolations.
2. Both the NRC Chief Examiner and facility licensee personnel agreed upon the JPM's allowed SDM band prior to examination administration.
3. The applicant incorrectly determined power defect. Based on a careful examination of the power defect graph, the applicant's determination of -1700 pcm for power defect was clearly in error.
4. If "adverse plant impact" was the only grading basis, then an applicant could be in error by several hundred pcm. Allowing a several hundred pcm error would clearly not be a proper criterion for determining operator competence and would not allow the JPM to discriminate between competent and non-competent operators.

Summary:

The NRC staff does not agree with the applicant's arguments. The JPM was originally graded using a properly determined allowable band for SDM. In no way did the JPM ask the applicant to only perform a quick verification of SDM, nor did the JPM contain any time constraints.

Although in this particular case the applicant's error would not have resulted in an adverse impact to the plant, there could be other situations in which his error would have resulted in adverse effects. This JPM, as written and including its original grading criteria, was a proper measure of operator competence. Therefore, the grade of UNSATISFACTORY is not changed.