

March 30, 1999

SECY-99-096

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: Staff Proposal to Amend Supplement I, "Reactor Operations," of the Enforcement Policy by Adding Examples of Violations Involving the Compromise of an Application, Test, or Examination Required by 10 CFR Part 55

PURPOSE:

To obtain Commission approval of a staff proposal to amend Supplement I, "Reactor Operations," of the Enforcement Policy by adding examples of violations involving the compromise of an application, test, or examination required by 10 CFR Part 55. The purpose of the proposed revision is to give the staff guidance that may be used to determine an appropriate severity level for a compromise of an application, test, or examination required by 10 CFR Part 55.

BACKGROUND:

On February 9, 1999, the Commission approved a final rule amending 10 CFR Part 55 which will allow power reactor facility licensees to prepare, proctor, and grade operator licensing examinations. As a part of the rule-making package, the staff proposed to amend Supplement I, "Reactor Operations," of the Enforcement Policy by adding examples of violations involving the compromise of an application, test, or examination required by 10 CFR Part 55. The purpose for adding the proposed example violations to the Enforcement Policy was to provide guidance to the staff when determining the appropriate severity level for a violation of 10 CFR Part 55.49, "Integrity of Examinations and Tests." The Commission disapproved the staff's recommended example violations and directed the staff to reevaluate its proposal. The Commission also directed the staff to submit its revised proposal to the Commission for review prior to implementation. In response to the Commission's directives, the staff is submitting its proposed revision to the Enforcement Policy for approval prior to implementation.

CONTACT: J. Lieberman, OE, 415-2741
V. Beaston, OE, 415-2989

The integrity of licensing examinations is essential to the safe operation of civilian nuclear facilities. In general, there are two types of licensing examinations required by 10 CFR Part 55: initial licensing examinations and requalification examinations. The results of initial licensing examinations are relied upon by the staff to make initial licensing decisions. The results of requalification examinations are relied upon by the staff to periodically verify the continued competence of licensed operators and senior operators after they have been granted an NRC license. Since both types of examinations are essential to the safe operation of civilian nuclear facilities, the staff proposed that a notice should be published in the *Federal Register* to inform the Commission's licensees and the public that the Commission intends to use its enforcement authority to emphasize that a compromise of an application, test, or examination required by 10 CFR Part 55 cannot be accepted.

DISCUSSION:

In accordance with the Commission's recommendations, the staff has prepared the attached notice for publication in the *Federal Register*. The notice is intended to inform the Commission's licensees and the public that the NRC is amending its Enforcement Policy to conform to the changes made by the final rule amending 10 CFR Part 55, which allows power reactor facility licensees to prepare, proctor, and grade operator licensing examinations. The notice informs the Commission's licensees and the public that:

1. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 will normally be categorized at Severity Level III if the compromise:
 - (a) in the case of initial operator licensing, contributes to an individual being granted an operator or a senior operator license, or
 - (b) in the case of requalification, contributes to an individual being permitted to perform the functions of an operator or a senior operator; and
2. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 will normally be categorized at Severity Level IV if the compromise:
 - (a) in the case of initial operator licensing, is discovered and reported to the NRC before an individual is granted an operator or a senior operator license, or
 - (b) in the case of requalification, is discovered and reported to the NRC before an individual is permitted to perform the functions of an operator or a senior operator, or
 - (c) constitutes more than minor concern.

The point of demarcation between escalated and non-escalated enforcement in the attached notice is consistent with the guidance provided to the staff by the Commission. The notice does not contain examples of willful compromises of an application, test, or examination required by 10 CFR Part 55, but it does inform the Commission's licensees and the public that willful acts to compromise an application, test, or examination required by 10 CFR Part 55 will add to the

significance of the compromise and may result in the compromise being categorized at a higher severity level than that stated above, in accordance with the guidance in Section IV.C. of the Enforcement Policy.

RECOMMENDATION:

The staff recommends that the Commission approve the attached notice for publication in the *Federal Register*. Upon publication, the notice will revise the Enforcement Policy to conform to the changes made by the Commission's final rule amending 10 CFR Part 55.

William D. Travers
Executive Director for Operations

Enclosure: Proposed Federal Register Notice Revising the Enforcement Policy

The Commissioners

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Proposed Federal Register Notice Revising the Enforcement Policy

REVISED AS OF: MARCH 15, 1999

NUCLEAR REGULATORY COMMISSION

[NUREG-1600, Rev. 1]

Revision of NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy) to conform to the amendments to the regulations that govern operators' licenses published in the *Federal Register* as a separate action. Those amendments allow nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at the facility licensees' plants. Moreover, the amendment requires facility licensees that elect to prepare their own examinations to establish, implement, and maintain procedures to control examination security and integrity, and it clarifies the regulations to ensure that applicants, licensees, and facility licensees understand what it means to compromise the integrity of a required test or examination. Therefore, the Enforcement Policy is being amended to add examples of violations that may be used as guidance in determining the appropriate severity level for violations involving the compromise of applications, tests, and examinations.

EFFECTIVE DATE: This action is effective [insert date of publication in the *Federal Register*], while comments are being received. Submit comments on or before [insert date 30 days from date of publication in the *Federal Register*].

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555-0001. Copies of NUREG-1600 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Copies are also available for inspection and copying for a fee in the NRC Public Document Room.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: (301) 415-2741; e-mail: jxl@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On May 13, 1998

(63 FR 26630), the Enforcement Policy was revised in its entirety and was also published as NUREG-1600, Rev. 1. The Enforcement Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in the Enforcement Policy in footnote 3 to Section I, "Introduction and Purpose," and in Section X, "Enforcement Action Against Non-Licensees."

By a separate action published in the *Federal Register*, the NRC is amending its regulations in 10 CFR Part 55 to allow nuclear power facility licensees to prepare, proctor, and grade the written examinations and prepare the operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at the facility licensees' plants. Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for operator licenses, to prescribe uniform conditions for licensing such individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR Part 55 requires applicants for operator licenses to pass an examination that satisfies the basic content requirements specified in the regulation. Because the NRC considers the integrity of the licensing tests and examinations to be essential to the safe operation of nuclear facilities, the NRC is also amending 10 CFR 55.49 to clarify that the integrity of a test or examination required by 10 CFR Part 55 is considered compromised if any activity, regardless of intent, affected, or but for detection, would have affected the equitable and consistent administration of the test or examination. Moreover, the NRC is amending 10 CFR Part 55 to require power reactor facility licensees that elect to prepare their own examinations to establish, implement, and maintain procedures to control examination security and integrity.

The NRC intends to use its enforcement authority to emphasize that a compromise of an application, test, or examination required by 10 CFR Part 55 cannot be accepted. Therefore, the NRC is amending the Enforcement Policy by adding examples of violations in Supplement I, "Reactor Operations," to provide guidance in determining the appropriate severity level for violations involving the compromise of an application, test, or examination used to evaluate the competence of individuals applying for operator licenses or to evaluate the continued competence of licensed operators. In the case of initial operator licensing, a non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that contributes to an individual being granted a license is considered significant and will be categorized normally at least at Severity Level III. Similarly, in the case of requalification, a non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that permits an individual to perform the functions of an operator or a senior operator is also considered significant and will be categorized normally at least at Severity Level III. A non-willful compromise that is discovered and reported to the NRC before an individual is granted a license, or before an individual is permitted to perform the functions of an operator or a senior operator, will be categorized normally at Severity Level IV, as will other violations of 10 CFR 55.49 that are of more than minor concern, such as failures to establish, implement, or maintain procedures to control the security of the examination process or failures to take adequate corrective action in response to a previous compromise.

For purposes of determining whether a particular compromise contributed to an individual being granted a license, or contributed to an individual being permitted to perform the functions of an operator or a senior operator, the NRC will presume that an individual involved in a compromise was able to pass the test or examination in question only because of the advantage received as a result of the compromise. For example, consider a situation where an individual answered eighty-three out of one hundred questions correctly on a licensing

examination and that as a result of answering more than eighty questions correctly the individual was either granted a license or considered eligible to performed the duties of an operator or a senior operator. Under the policy announced above, if it is later determined that a compromise of the examination gave the individual an advantage, the NRC will presume that but for the compromise the individual would have failed the examination. Unless the licensee can conclusively demonstrate that the individual involved would have answered at least eighty out of the one hundred examination questions correctly irrespective of the compromise, the compromise will be categorized at least at Severity Level III.

Willful acts to compromise an application, test, or examination required by 10 CFR Part 55 will add to the significance of the compromise and may result in the compromise being categorized at a higher severity level in accordance with the guidance in Section IV.C. of the Enforcement Policy. Consistent with that guidance, in determining the severity level of a compromise involving willfulness, the NRC will consider such factors as the degree of willfulness on the part of any individual involved in the compromise, the positions and levels of responsibility of the individuals involved, the number of individuals involved in the compromise, the scope of the compromise, the advantage received by any individual as a result of the compromise, the timing of the compromise, when the compromise was detected, and the facility licensee's response to the compromise. Depending on the circumstances of the compromise, there may be a difference in the severity level of the violation issued to any individual involved in the compromise and the facility licensee. The NRC intends to utilize its enforcement authority, as warranted, and issue notices of violation, civil penalties, and orders to individuals and facility licensees who (1) compromise an application, test, or examination in violation of 10 CFR 55.49, (2) commit deliberate misconduct in violation of 10 CFR 50.5, or (3) provide incomplete or inaccurate information to the NRC in violation of 10 CFR 50.9. In addition, willful acts to compromise an application, test, or examination required by 10 CFR Part 55 may be referred to

the Department of Justice for criminal prosecution.

In addition to issuing notices of violation, civil penalties, and orders, the NRC may require an individual involved in a particular compromise of an application, test or examination required by 10 CFR Part 55 to be retested or reexamined prior to performing the functions of an operator or a senior operator. The NRC recognizes that it may be difficult in certain situations to determine whether an individual received an advantage as a result of a particular compromise or whether but for the compromise the individual would not have been granted a license or permitted to continue to perform the functions of an operator or a senior operator. Therefore, in any situation where there is some doubt as to whether an individual received an advantage as a result of a particular compromise, the NRC may require an individual to be retested or reexamined to verify that the individual is qualified to perform the functions of an operator or a senior operator. When determining whether an individual must be retested or reexamined prior to performing the functions of an operator or a senior operator, the NRC will make its determination irrespective of the severity level of the compromise or any enforcement action to be taken against the individual or facility licensee as a result of the compromise.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, Supplement I--Reactor Operations of Appendix B of the NRC Enforcement Policy is revised to read as follows:

APPENDIX B: SUPPLEMENTS - ENFORCEMENT EXAMPLES

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SUPPLEMENT I--REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

C. *Severity Level III* - Violations involving for example:

* * * * *

- 5. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:
 - (a) in the case of initial operator licensing, contributes to an individual being granted an operator or a senior operator license, or
 - (b) in the case of requalification, contributes to an individual being permitted to perform the functions of an operator or a senior operator.

D. *Severity Level IV* - Violations involving for example:

* * * * *

- 2. A non-willful compromise of an application, test, or examination required by 10 CFR Part 55 that:
 - (a) in the case of initial operator licensing, is discovered and reported to the NRC before an individual is granted an operator or a senior operator license, or
 - (b) in the case of requalification, is discovered and reported to the NRC before an individual is permitted to perform the functions of an operator or a senior operator, or
 - (c) constitutes more than minor concern.

Dated at Rockville, MD, this _____ day of _____, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.