

in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

#### List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

For the reasons set out in the preamble, part 391 of title 9 of the Code of Federal Regulations is amended as follows:

#### PART 391—FEES AND CHARGES FOR INSPECTION SERVICES AND LABORATORY ACCREDITATION

1. The authority citation for Part 391 continues to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 et seq.; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, 391.4 and paragraph (a) in § 391.5 are revised to read as follows:

##### § 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be \$37.00 per hour, per program employee.

##### § 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be \$36.84 per hour, per program employee.

##### § 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be \$50.88 per hour, per program employee.

##### § 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be \$1,500 per accreditation.

\* \* \* \* \*

Done in Washington, DC on: April 20, 1999.

**Thomas J. Billy,**  
Administrator.

[FR Doc. 99–10239 Filed 4–20–99; 3:49 pm]

BILLING CODE 3410–DM–U

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 55

RIN 3150–AF62

##### Initial Licensed Operator Examination Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to allow nuclear power facility licensees to prepare, proctor, and grade the required written examinations and to prepare the required operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at those plants. The amendment requires facility licensees that elect to prepare the examinations to prepare the examinations in accordance with NRC operator licensing examination standards for power reactors; establish, implement, and maintain procedures to control examination security and integrity; submit, upon approval by an authorized representative of the facility licensee, each examination and test to the NRC for review and approval; and proctor and grade the written examinations upon NRC approval. In making this final rule change, the NRC will continue to administer (i.e., manage and oversee) the initial operator licensing examination process by: Developing the generic fundamentals examinations (which are also proctored by facility licensees); reviewing and approving the facility-developed, site-specific written examinations and operating tests; and independently conducting and grading both the dynamic simulator and walk-through portions of the operating test, which is considered the most performance-based aspect of the licensing process and permits the NRC to evaluate the operator and senior operator applicants' competence under normal and abnormal plant conditions. The amendment preserves the NRC's authority to prepare the examinations and tests in lieu of licensees and to exercise its discretion and reject a power reactor facility licensee's determination to prepare, proctor, and grade the written examinations and prepare the operating tests. The Commission is concerned with examination integrity; therefore, the amendment will also revise the regulations to ensure that applicants, licensees, and facility licensees understand the scope of the regulation.

**EFFECTIVE DATE:** This final rule is effective on October 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1056; e-mail: [sxg@nrc.gov](mailto:sxg@nrc.gov).

##### SUPPLEMENTARY INFORMATION:

##### Background

Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for an operator's license, to prescribe uniform conditions for licensing these individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR Part 55 requires an applicant for an operator license to pass an examination that satisfies the basic content requirements specified in the regulation. The licensing examination consists of the following parts: (1) A written generic fundamentals examination (covering reactor theory, thermodynamics, and components) that license applicants have to pass as a prerequisite for taking the site-specific examination; (2) a site-specific written examination covering plant systems, emergency and abnormal plant procedures, and plant-wide generic knowledge and abilities; and (3) a site-specific operating test consisting of three categories, including a crew-based, dynamic simulator performance demonstration, an individual, task-based walk-through covering control room and in-plant systems, and various plant administrative requirements. Although neither the AEA nor Part 55 specifies who must prepare, proctor, or grade these examinations, the NRC has traditionally performed those tasks itself or through its contract examiners. The NRC and its contract examiners have used the guidance in NUREG–1021, "Operator Licensing Examination Standards for Power Reactors," once titled "Operator Licensing Examiner Standards," to prepare the initial operator licensing examinations. This document has been revised as experience has been acquired in preparing the examinations. The current version is designated Revision 8.<sup>1</sup>

In accordance with 10 CFR 170.12(i), the NRC's staff and contractual costs are recovered from facility licensees that receive examination services. In Fiscal

<sup>1</sup> Copies are available for inspection or copying for a fee from the NRC Public Document Room (PDR) at 2120 L Street NW, Washington, DC 20555–0001; the PDR's mailing address is Mail Stop LL–6; telephone is 202–634–3273; fax is 202–634–3343. Revision 8 of NUREG–1021 is also available for downloading from the internet at <http://www.nrc.gov>.

Year (FY) 1995, the NRC spent approximately \$3 million on contractor support for the preparation and administration of the initial operator licensing examinations and for support of requalification program inspections. On March 24, 1995, in SECY-95-075, "Proposed Changes to the NRC Operator Licensing Program," the staff advised the Commission of its intent to eliminate the use of contractors by allowing facility licensees to prepare the examinations. The NRC staff's proposal was motivated by the general improvement in the performance level of power reactor facility licensees' training programs, the NRC's continuing efforts to streamline the functions of the Federal government, and the need to accommodate anticipated resource reductions.

On April 18, 1995, the Commission approved the NRC staff's proposal to initiate a transition process to revise the operator licensing program and directed the NRC staff to consider carefully the experience from pilot examinations before fully implementing the changes. On August 15, 1995, the NRC issued Generic Letter (GL) 95-06, "Changes in the Operator Licensing Program,"<sup>1</sup> outlining the revised examination development process and soliciting volunteers to participate in pilot examinations to evaluate and refine the methodology.

Between October 1, 1995, and April 5, 1996, the NRC reviewed and approved 22 operator licensing examinations, including both the written examinations and the operating tests, prepared by facility licensees as part of a pilot program. These examinations were prepared using the guidance in Revision 7 (Supplement 1) of NUREG-1021<sup>1</sup> and the additional guidance in GL 95-06.

The results of the pilot examinations were discussed in SECY-96-123, "Proposed Changes to the NRC Operator Licensing Program," dated June 10, 1996. Based on the results of the pilot program, the NRC staff recommended that the Commission approve the implementation of the new examination process on a voluntary basis until rulemaking could be completed to require all power reactor facility licensees to prepare the entire initial operator licensing examination and to proctor and grade the written portion of the examination. On July 23, 1996, the Commission authorized the staff to continue the pilot examination process on a voluntary basis and directed the staff to develop a rulemaking plan to justify the changes that would be necessary to 10 CFR Part 55. The Commission also directed the staff to address a number of additional items

(e.g., pros, cons, and vulnerabilities) regarding the revised examination process to facilitate a Commission decision on whether to implement the revised process on an industrywide basis.

With Commission approval, the NRC staff resumed conducting pilot-style examinations on August 19, 1996, and by the end of June 1998 had reviewed, approved, and administered 80 additional examinations that were developed by facility licensees. This raised the total number of examinations completed using the pilot process to 102.

On September 25, 1996, the NRC staff forwarded the rulemaking plan and a response to the additional items to the Commission in SECY-96-206, "Rulemaking Plan for Amendments to 10 CFR part 55 to Change Licensed Operator Examination Requirements." SECY-96-206 identified a number of areas (i.e., quality and consistency, independence and public perception, examination security, NRC resources, program stability, and examiner proficiency) in which the NRC could be more vulnerable under the revised examination process and described the measures that the NRC has taken to manage the vulnerabilities. On December 17, 1996, the Commission directed the staff to proceed with the proposed rulemaking. The NRC staff forwarded the proposed rule (SECY-97-079, "Proposed Rule—Initial Licensed Operator Examination Requirements") to the Commission on April 8, 1997, and on June 26, 1997, the Commission approved publication of the proposed rule for a 75-day comment period. The proposed rule was published in the **Federal Register** (62 FR 42426) on August 7, 1997. After the public comment period expired on October 21, 1997, 11 comment letters were received. Two additional comment letters arrived after the expiration date but were also considered in the development of the final rule.

As written, the proposed rule would have required all power reactor facility licensees to prepare their operator licensing examinations and to proctor and grade the written portion of those examinations. Although the proposed rule would have imposed new requirements on facility licensees, the NRC took the position that the backfit rule, 10 CFR 50.109, did not apply because the shift in responsibility for preparing the examinations would not: (1) Constitute a "modification of the procedures required to operate a facility" within the scope of the backfit rule; (2) affect the basic procedures for qualifying licensed operators; or (3)

require facility licensees to alter their organizational structures. However, based upon further review after issuing the proposed rule, the NRC has concluded that there is insufficient basis to support the original position. Therefore, the NRC has decided to revise the final rule so power reactor facility licensees may elect to prepare their written examinations and operating tests (and proctor and grade the written examinations) in accordance with NUREG-1021, or to have the NRC prepare the examinations, thereby making a backfit analysis unnecessary.

## Discussion

The pilot examinations demonstrated that the revised process, under which facility licensees prepare the written examinations and operating tests, is generally effective and efficient. From the time the pilot program began in October 1995 through the end of June 1998, the NRC staff reviewed, approved, and administered a total of 102 examinations that were voluntarily developed by facility licensees under the pilot examination and transition program.

Facility licensees prepared the written examinations and the operating tests, proctored the written examinations, and graded the written examinations using the guidance provided by the NRC in GL 95-06 during the early stages of the pilot program, and subsequently in interim Revision 8 of NUREG-1021, "Operator Licensing Examination Standards for Power Reactors." NRC examiners thoroughly reviewed the examinations and tests to determine if they were consistent with NRC standards, directed facility licensees to make whatever changes were necessary to achieve NRC standards if the submitted examinations and tests were deficient, and approved the examinations and tests before they were administered. NRC examiners independently administered all of the operating tests, reviewed the written examination grading, and made the final licensing recommendations for approval by NRC management.

Comments from the NRC chief examiners who evaluated the pilot examinations indicate that the quality and level of difficulty of the licensee-prepared examinations (when modified as directed by the NRC) were generally comparable to the examinations prepared by the NRC (i.e., by the staff or NRC contractors). The passing rate on the 102 pilot-style examinations administered through the end of June 1998 was only slightly lower than the passing rate on the power reactor licensing examinations administered

during FY 1995, the last year in which all examinations were prepared by the NRC. However, considering the historical fluctuation in the average examination passing rates and the other factors (e.g., training program quality and screening of applicants by facility licensees) that could be responsible for some or all of the observed difference, the Commission has concluded that the observed change in the passing rates is not significant. The average grades on the facility-prepared, NRC-approved written examinations were also comparable if slightly lower than the grades on examinations prepared by the NRC during FY 1995. These data support the conclusion that the facility-prepared examinations are discriminating at a conservative and acceptable level and that the revised examination process is effective. Therefore, the fact that some facility licensees will be preparing the examinations with NRC review and approval, should have no negative effect on the safe operation of the plants.

Although the NRC-approved examinations were comparable to NRC-prepared examinations, essentially all of the examinations prepared by facility licensees required some changes subsequent to NRC review, and many of the examinations required significant rework. The NRC had originally believed that, with training and experience, the industry would quickly gain proficiency in preparing the examinations, but the overall quality of the examinations submitted to the NRC during the pilot program did not improve as expected over time. Although approximately half of the 17 facility licensees that had prepared more than one examination by the end of FY 1997 did maintain or improve the quality of their second or third examination submittals, the quality of the other facility licensees' second or third examinations was lower. Consequently, the NRC has asked the industry to address the issue of examination quality and determine the need for additional training on examination development. The NRC will continue to: (1) Direct facility licensees that prepare their examinations to revise the examinations as necessary to achieve an acceptable level of quality and discrimination; (2) withhold approval of those examinations that do not meet NRC standards; (3) oversee the regional implementation of the operator licensing process to ensure consistency; (4) address significant deficiencies in the submitted examinations as licensee performance issues in the examination

reports, as appropriate; (5) conduct or participate in workshops, as necessary, to ensure that facility licensees understand the NRC's examination criteria; and (6) prepare the licensing examinations for those facility licensees that elect not to prepare their own examinations.

With regard to the efficiency of the revised examination process, the experience to date supports the conclusion that the average industry cost will not differ significantly from the cost of NRC-prepared examinations. Comments from the industry reflect that the cost for some facility licensees to prepare the examination was higher than it would have been for an NRC-prepared examination; however, other licensees prepared good quality examinations at lower cost than the NRC. The industry generally attributed the higher cost to the revised examination and administrative criteria under the pilot examination process. Although the NRC acknowledges that the revised criteria contribute somewhat to the elevated cost, many of the variables that affect the quality and, consequently, the cost of the examination will be under the facility licensees' control and can present an opportunity for cost savings. For example, facility licensees that elect to prepare the examinations will be able to manage the size and quality of their examination banks and the training and experience of the personnel they select to write their licensing examinations. The revised examination process allows facility licensees to control the development of the examinations and holds them responsible for their quality. If a facility licensee submits an acceptable quality examination, it is likely to save resources despite the additional administrative criteria; however, if the facility licensee submits an examination that requires many changes, it will likely cost more than if the NRC had prepared the examination.

Comments from the NRC chief examiners who worked on the pilot examinations indicate that the average amount of time spent reviewing and revising the facility-prepared examinations was generally consistent with the estimates developed before starting the pilot program. Although a number (approximately 20 percent in FY 1997) of the examinations required significantly more NRC effort than originally anticipated to bring them up to the NRC's standards, the resource burden was generally offset by other examinations that required less effort to review and revise. The increased efficiency of the revised examination process has enabled the NRC to

eliminate the use of contractors in the operator licensing program and conduct the initial operator licensing and requalification inspection programs with the existing NRC staff. Before initiating the pilot examination and transition process at the beginning of FY 1996, the NRC spent approximately \$3 million per year on contractor assistance for initial examinations and requalification inspections. In FY 1997, when facility licensees prepared approximately 75 percent of the examinations, the NRC's spending on contractor assistance for the licensing examinations and requalification inspections decreased to approximately \$0.5 million. The FY 1998 and FY 1999 budgets reflect the complete elimination of contractor support for the operator licensing program (with the exception of the generic fundamentals examination). Future resource requirements for the operator licensing program will, in large part, be driven by changes in the level of facility participation in the voluntary examination development process.

In order to maintain the integrity of the operator licensing written examinations required by 10 CFR 55.41 and 55.43 and the operating tests required by 10 CFR 55.45, the Commission has amended the final rule by adding a requirement for those power reactor facility licensees that elect to prepare, proctor, and grade the written examinations and prepare the operating tests, to establish, implement, and maintain procedures that control the security and integrity of those examinations and tests. The Commission's regulations in 10 CFR 55.49 already prohibit applicants, licensees (operators), and facility licensees from engaging in any activity that compromises the integrity of any examination or test required by 10 CFR 55. However, based on the number of examination security incidents that have occurred since the pilot examination program began, the Commission has concluded that applicants, licensees, and facility licensees may not be aware that the requirements of 10 CFR 55.49 cover more than just those activities directly involving the physical administration of an examination or test. In that regard, the Commission considers the integrity of an examination or test to be compromised if any activity occurs that could affect the equitable and consistent administration of the examination or test, regardless of whether the activity takes place before, during, or after the administration of the examination or test. Therefore, in addition to requiring certain facility licensees to establish,

implement, and maintain procedures that control the security and integrity of the examinations and tests, the Commission is also amending 10 CFR 55.49 to clarify the scope of that regulation.

Revision 8 of NUREG-1021 identifies a number of examination security and integrity guidelines (e.g., physical security precautions, including the use of simulators and the mailing of examination materials) that the affected facility licensees (i.e., those that elect to prepare their own written examinations and operating tests) should consider when establishing their procedures. Although the security and integrity guidelines in NUREG-1021 are not regulatory requirements, once a facility licensee has established its required procedures, the Commission intends to monitor this area to ensure that the procedures are implemented and maintained.

Consistent with the examination security and integrity guidelines in NUREG-1021, facility employees with specific knowledge of any NRC examination before it is given should not communicate the examination contents to unauthorized individuals and should not participate in any further instruction of the students scheduled to take the examination. Before they are given access to the examination, facility employees are expected to sign a statement acknowledging their understanding of the restrictions. When the examinations are complete, the same employees are expected to sign a post-examination statement certifying that they have not knowingly compromised the examination.

NRC examiners are expected to be attentive to the facility licensee's examination security measures, to review the security expectations with the facility licensee at the time the examination arrangements are confirmed, and to report any security concerns to NRC management. If the NRC determines during its preparation that an examination may have been compromised, it will not administer the examination until the scope of the potential compromise is determined and measures can be taken to address the integrity and validity of the examination. Pursuant to 10 CFR 55.51, the NRC must make a determination before issuing a license that the test or examination is valid, meeting the requirements of the AEA and the Commission's regulations. If the compromise is discovered after the examination has been administered, the NRC will not complete the licensing action for the affected applicants until

the NRC staff can make a determination regarding the validity of the examination. If the compromise is not discovered until after the licensing action is complete, the NRC will reevaluate the licensing decision. If the NRC determines that the original licensing decision was based on an invalid examination, it will take appropriate action pursuant to 10 CFR 55.61(b)(2).

As a separate action, the Commission is modifying its "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy) to provide examples of violations that may be used as guidance in determining the appropriate severity level for violations involving the compromise of an examination or test. The NRC staff will evaluate all potential compromises of an examination or test required by 10 CFR 55 to determine whether a violation of 10 CFR 55.49 has occurred. A compromise that is not detected before a license is issued would be considered a significant regulatory concern and categorized at least at Severity Level III. However, depending on the circumstances as explained in the Enforcement Policy, the severity level may be increased or decreased. The NRC intends to utilize its enforcement authority including, as warranted, civil penalties and orders against individuals and facility licensees who: (1) Compromise the integrity of an 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, cases involving willful violations may be referred to the Department of Justice for criminal prosecution.

The Commission has reviewed the vulnerabilities and costs associated with the revised examination process and considered the measures that the NRC staff has taken to mitigate the vulnerabilities. With regard to examination quality and level of difficulty, the Commission acknowledges that the effectiveness of the revised examination process is contingent on the NRC staff's review of the facility-proposed examinations to ensure that NRC standards are achieved. The Commission has concluded, based on the results of the pilot examination program, that the controls implemented by the NRC staff will provide reasonable assurance that the examinations that are administered to the license applicants will provide a valid and consistent basis upon which to make the licensing decisions regardless of whether the examinations were prepared by the

facility licensee or the NRC. The Commission also realizes that the frequency of examination security incidents and the risk of undetected compromises may increase for those examinations that are prepared by facility licensees. However, the Commission is confident that the measures discussed above will sufficiently control the vulnerability in this area.

The Commission is aware that the original expectation that facility licensees would eventually realize cost savings under the revised process as they gain proficiency in preparing the examinations has not yet been realized. However, the Commission has concluded that neither the increased vulnerabilities nor the absence of clear industry cost benefit provides sufficient basis for discontinuing the revised examination process. The Commission also finds that the revised examination process is more consistent with the NRC's other oversight programs because it requires NRC examiners to review materials prepared by facility licensees. The revised process enables NRC examiners to focus more on the psychometric quality of examinations (e.g., the cognitive level at which the questions are written and the plausibility of the distractors or wrong answer choices) prepared by the facility licensees than on the technical accuracy of the examinations, which was their primary focus when the examinations were prepared by NRC contractors. This shift in the NRC examiners' focus, coupled with the facility licensees' technical expertise, has the potential to improve the overall quality of the facility-prepared licensing examinations.

In the proposed rule, the NRC took the position that the backfit rule (10 CFR 50.109) did not apply to this rulemaking. However, in its review of the final rule, the Committee To Review Generic Requirements (CRGR) opined that it was inclined to view the rule as a backfit and recommended that the provisions of the proposed rule be implemented on a voluntary basis, which would not constitute a backfit. Although the NRC had considered and dismissed that alternative during the proposed rulemaking because of concerns regarding resource planning, it has since concluded that the benefits of the revised examination process (e.g., improved regulatory efficiency and greater licensee control over the examination costs) remain substantial even if every facility licensee is not required to prepare its own examinations. Rather than terminate the pilot program and resume the NRC-

prepared examination process on an industrywide basis, the NRC has decided to amend the final rule to give facility licensees the option to prepare their own examinations or to have them prepared by the NRC.

### Summary of Public Comments

The 75-day public comment period began when the notice of proposed rulemaking was published in the **Federal Register** (62 FR 42426) on August 7, 1997, and closed on October 21, 1997. The notice (FRN) requested public comment on the proposed rule, on the implementation guidance in interim Revision 8 of NUREG-1021, and on the following two questions:

1. Are there portions of the operator exams that are common to all licensees, and would, therefore, be more efficiently developed by the NRC?

2. Is the conclusion in the regulatory analysis correct that it would be less costly for each licensee to prepare its own initial operator examinations to be reviewed, revised, and administered by the NRC, than to have one NRC contractor prepare these exams for all licensed operators with the costs to be reimbursed by licensee fees?

The NRC received 13 comment letters on the proposed rule; two of the letters arrived after the comment period closed, but they were considered nonetheless. The respondents included three NRC examiners, one contract examiner, five nuclear utilities and one utility employee, one nonpower reactor facility licensee, the State of Illinois, and the Nuclear Energy Institute (NEI), which submitted its comments on behalf of the nuclear power industry. Copies of the public comments are available in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, and on the internet at "[http://ruleforum.llnl.gov/cgi-bin/rulemake?source=OE\\_PRULE](http://ruleforum.llnl.gov/cgi-bin/rulemake?source=OE_PRULE)".

Seven of the respondents (three NRC examiners, one contract examiner, one utility employee, one nonpower facility licensee, and the State of Illinois) recommended that the rule change be disapproved. Five of the industry respondents (NEI and four utilities) supported the rule change; however, one utility endorsed NEI's comments but stated that it did not agree with the proposed rule in its present form. NEI and two of the utilities stated that they would rather continue with a voluntary program because it would allow greater flexibility for those facility licensees with small training staffs. However, they would support mandatory participation with the rule change rather than return to the previous process under which

NRC contractors wrote most of the examinations.

Those comments related to the two specific questions raised in the proposed rule and those that have a direct bearing on the rule are discussed below. The comments are categorized as they relate to reactor safety and the vulnerabilities discussed in SECY-96-206 (i.e., quality and consistency, independence and public perception, security, NRC resources, and examiner proficiency). The NRC received no comments related to program stability.

One NRC examiner, NEI, four of the utilities, and the utility employee also provided specific comments and recommendations regarding the implementation guidance in interim Revision 8 of NUREG-1021. Those comments are addressed in Attachment 1 of the Commission (SECY) paper associated with this rulemaking. A copy of the SECY is available in the NRC Public Document Room, on the internet at <http://www.nrc.gov>, or from Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, at 301-415-1056 or e-mail at [sxg@nrc.gov](mailto:sxg@nrc.gov).

*Comment:* With regard to the first specific question included in the proposed rulemaking, 2 of the 13 respondents (NEI and one utility) stated that all of the common material is already included in the generic fundamentals examination (GFE) and that the remaining elements are best covered as part of the site-specific examination.

*Response:* It appears that the current allocation of topics between the GFE and site-specific written examinations is generally perceived to be an efficient method of covering the topics required by 10 CFR 55.41 and 55.43. Therefore, the Commission finds no basis for changing the process to have the NRC separately develop portions of the initial examination that would be common to all facilities.

*Comment:* Seven of the 13 respondents (NEI, two utilities, a utility employee, and three examiners) directly or indirectly addressed the second specific question in their letters. NEI and one utility stated that the revised examination criteria in interim Revision 8 of NUREG-1021 have increased the level of effort and will result in higher licensing fees regardless of who prepares the examinations. However, NEI and another utility agreed that comparing the cost of facility-prepared examinations to those prepared by the NRC is difficult, but they concluded that it should be less costly for facility licensees to prepare the examinations

than to have the NRC prepare them under the same criteria.

NEI also stated that the relative cost of the two examination processes should not be the only factor in deciding whether to proceed with the rulemaking that would have required all power reactor facility licensees to prepare their licensing examinations. NEI indicated that preparing higher cognitive level questions requires detailed plant knowledge, better provided by facility licensees, and that the revised process (which has eliminated the use of NRC contractors to administer the operating tests) will allow NRC staff to evaluate each applicant without relying on third-party observers.

Two NRC examiners, one contract examiner, and a utility employee asserted that the facility licensees' cost has increased under the revised examination process. They cited various reasons for the increased cost, including training personnel to write the examinations and then restricting them from training the applicants, and upgrading equipment to maintain examination security. The NRC examiners based their comments on feedback from facility training personnel; one examiner indicated that it took facility licensees an average of 700 hours to prepare each examination. The utility employee stated that the rule change will simply transfer the cost of contractors from the NRC to the utilities.

*Response:* The NRC acknowledges that the revised administrative criteria in particular (e.g., the restrictions on which facility training personnel would be allowed to write the pilot examinations and the need to document the source of the test items) have probably caused the cost of preparing the examinations to be somewhat higher than it would have been if facility licensees had been allowed to prepare the examinations using the same criteria that applied to the NRC and its contractors before starting the pilot program. However, when the NRC first developed the revised examination process, with its additional administrative criteria, the NRC still believed that the cost for facility licensees to prepare the examinations would be offset by the reduction in the licensing fees and that a cost savings could be realized as facility licensees gained experience with the process. Many of the facility licensees that participated in the pilot program demonstrated that it is possible to prepare an acceptable quality examination at the same or lower cost than the NRC or its contractors could prepare a comparable examination. The

fact that a number of facility licensees did not prepare acceptable examinations may be as much an indication of the licensees' inefficiency and inexperience as it is a symptom of deficiencies in the examination criteria. Those facility licensees that did not initially submit acceptable examinations, eventually paid more in fees because of the additional effort required for the NRC to review, and the licensees' staffs to rewrite, the examinations. Finally, it is possible that the magnitude of the increase in effort and cost may be perceived to be higher than it actually is because the industry had originally expected to save money if the NRC would have allowed facility licensees to prepare the examinations using the version of NUREG-1021 that was in effect before beginning the pilot program.

With regard to the additional security costs cited by the examiners, the Commission has stressed the importance of maintaining examination security, but the NRC has not required facility licensees to invest in additional physical security systems. However, the frequency of security incidents since beginning the pilot examination program has prompted the NRC to: (1) clarify the intent of 10 CFR 55.49 in the final rule; (2) amend the final examination rule to require facility licensees that elect to prepare their examinations to establish, implement, and maintain procedures to control examination security and integrity; and (3) include additional security guidance in the final version of Revision 8 of NUREG-1021. These actions will help ensure, among other things, that facility licensees understand their responsibility for maintaining control over the examination process.

The pilot examinations demonstrated that some of the people assigned by facility licensees to develop the examinations did not have sufficient expertise required to prepare good quality examination materials consistent with NRC standards. As noted earlier, the NRC has asked the industry to address the issue of examination quality and the need for additional training on examination development. The NRC acknowledges that the restrictions on the use of instructors to prepare the licensing examinations may be partially responsible for limiting the availability of qualified examination preparers. Moreover, the NRC has concluded that the restrictions have placed an unnecessary burden on facility licensees with minimal benefit and, therefore, has revised the personnel restrictions in the final version of Revision 8 of NUREG-1021 to allow facility instructors to

prepare the licensing examinations (including the written and operating test outlines, the written examination questions, and the operating test details) without regard to the amount of time they spent training the license applicants. However, the instructors will still be precluded from instructing the applicants once they begin working on the licensing examination. This change is consistent with NRC policy regarding instructor participation in requalification examinations and should provide licensees that elect to prepare their examinations with increased flexibility in managing their resources and possibly reduce their costs.

The NRC has revised the regulatory analysis in response to the public comments and lessons learned from the pilot program. The NRC has also reevaluated the additional administrative criteria in interim Revision 8 of NUREG-1021 and considers them reasonable and essential to mitigate the vulnerabilities (e.g., quality, security, and conflict of interest) of the new examination process and to facilitate the NRC staff's review of the proposed examinations. These criteria are retained in the final version of Revision 8 of NUREG-1021.

The issue of cost has lost much of its importance because the NRC has decided to continue the revised examination process on a voluntary basis rather than require each power reactor facility licensee to prepare the examinations. It will be up to each facility licensee to compare the cost of preparing its own examinations in accordance with the criteria in the effective revision of NUREG-1021 with the cost of having the NRC staff prepare the examinations and then make a decision based on its available resources (and other considerations).

*Comment:* Two NRC examiners with pilot-examination experience asserted that the quality of the simulator and walk-through tests has decreased significantly and that, in most cases, the quality and difficulty of the submitted examinations have been below NRC standards. All four examiners who submitted comments cited various reasons why the quality and difficulty of the facility-prepared examinations might be lower than examinations prepared by the NRC or its contract examiners, including: (1) the facility licensees' tendency to narrow the scope of the operating test to those procedures that the facility believes are important (and emphasized in the training program); and (2) the belief that most facility training personnel do not have the expertise to develop valid test items. Two NRC examiners asserted that the

quality of the examinations has not improved during the pilot program and is not likely to improve because there is nothing to prevent licensees from using different people to develop successive examinations. A utility employee asserted that the utilities' limited contact with the process by preparing an examination once every 18 to 24 months will not foster consistency or develop skilled examination writers.

Two NRC examiners asserted that the elimination of NRC contract examiners who participated in examinations across the four NRC regions will be detrimental to examination consistency. One NRC examiner asserted that the guidance in interim Revision 8 of NUREG-1021 is not sufficiently prescriptive to ensure nationwide consistency in the level of knowledge tested and the level of difficulty of the examinations and that several specific changes should be included in NUREG-1021 to address his concerns.

The State of Illinois asserted that the quality and consistency of the written examination questions can be maintained because the NRC can change and approve the questions before they are used. However, the State also recommended that the NRC should compile the examination questions and proctor the examinations (refer to the conflict-of-interest discussion below).

According to NEI, the recent facility-prepared examinations were of higher quality than the examinations prepared by the NRC before the pilot program started. Many of the NRC-prepared examinations had to be revised in response to the facility licensees' technical reviews.

*Response:* Essentially all of the facility-prepared examinations required some changes and many required significant changes to make them conform to the NRC's standards for quality and level of difficulty. According to the questionnaires completed by the NRC chief examiners responsible for the pilot examinations, the average facility-prepared written examination required approximately 10 to 20 changes, which is consistent with the number of changes often required on examinations prepared by NRC contract examiners. Most NRC chief examiners judged the final examinations (with the NRC's changes incorporated) to be comparable to recent NRC-prepared examinations in terms of quality and level of difficulty. Moreover, the fact that the passing rate on the facility-prepared examinations is generally consistent with the historical passing rate on examinations prepared by the NRC suggests that the NRC-approved examinations have discriminated at an

acceptable level and that they have provided an adequate basis for licensing the applicants at those facilities.

Although the NRC expected that the proposed examination quality would improve as facility licensees gained experience and familiarity with the NRC's requirements and expectations, the overall quality of examinations submitted to the NRC during the transition process did not improve appreciably over time. Although approximately half of the 17 facility licensees that had prepared more than one examination by the end of FY 1997 did maintain or improve the quality of their second or third examination submittals, the quality of the other facility licensees' second or third examinations was lower. Although it is unclear to what extent the problems with proposed examination quality and difficulty have been caused by a lack of sufficient expertise on the part of the examination writers, the NRC has asked the industry to address this issue. Furthermore, the NRC staff has conducted and participated in a number of public meetings and workshops in an effort to communicate its expectations to the facility employees who will be preparing the examinations. Additional NRC and industry workshops will be conducted to address examination quality and solicit industry feedback.

In SECY-96-206, the NRC staff discussed the issues of examination quality and consistency and how they might be affected when a large number of facility employees assume the role that had been filled by a smaller number of experienced NRC and contract examiners. The NRC staff's comprehensive examination reviews versus the examination criteria in NUREG-1021, in combination with supervisory reviews and the examination oversight activities conducted by the Office of Nuclear Reactor Regulation, should mitigate the vulnerability in this area. Moreover, the industry and staff initiatives to improve the expertise of the examination writers should eventually enhance the quality and consistency of the facility-prepared examinations.

*Comment:* All four examiners who submitted comments, a nonpower reactor facility licensee, and the State of Illinois asserted that allowing the facility licensees to prepare the operator licensing examinations decreases the level of independence and creates a conflict of interest for facility personnel having responsibility for training and licensing the operators. Their letters maintained that the new process makes it possible for the utilities to "teach the examination," to test applicants only on

what was taught, or to avoid testing in areas with known difficulties. One NRC examiner noted that the new process places training managers in a no-win situation because if applicants fail the examination, the managers look like poor trainers, and if the examination is too easy, the NRC gives them a bad report. He and another NRC examiner asserted, based on their experience during the pilot examinations, that some facility personnel openly admitted that they would develop the easiest possible examination to ensure that all their applicants would pass.

One NRC examiner noted that the NRC review and approval process cannot adequately compensate for the conflict-of-interest problems inherent in the revised examination process and recommended a change to interim Revision 8 of NUREG-1021 that would limit the licensees' latitude in selecting topics for the examination outline. The State of Illinois suggested that the NRC should compile the questions and proctor the examination to maintain more of the checks and balances that existed under the old process.

The nonpower reactor facility licensee noted that most professional licensing examinations are developed by independent agencies, and that this fosters a sense of professionalism in the license applicants.

*Response:* The NRC agrees that the revised examination process decreases the level of independence in the licensing process and may create a potential conflict of interest for facility personnel involved in preparing the examination. However, the Commission has concluded that restricting the training activities of those individuals when they become involved in preparing the licensing examination, in combination with the NRC's enforcement authority, will adequately mitigate the vulnerability in this area. Although the NRC has amended the final version of Revision 8 of NUREG-1021 to allow instructors to participate in the examination development regardless of their involvement in training the license applicants (as discussed above in response to comments concerning the industry burden under the revised examination process), the NRC has also amended NUREG-1021 to include an expectation that facility licensees will use an objective, systematic process for preparing the written examination outlines. This process enhancement should limit the potential for bias in the selection of topics to be evaluated on the written examination.

The NRC will continue to monitor the facility licensees' examination

development programs and implement additional restrictions, as necessary, if actual bias problems are identified. Moreover, if the NRC determines that a facility licensee has intentionally biased the scope, content, or level of difficulty of an examination (i.e., compromised its integrity contrary to 10 CFR 55.49) to enhance the chances that its applicants would pass the examination, the NRC will utilize its enforcement authority including, as warranted, civil penalties, orders against the individuals involved, and charging the individuals involved with deliberate misconduct pursuant to 10 CFR 50.5.

Concerns regarding the potential for conflict of interest and the frequency of security incidents since beginning the pilot examination program have prompted the NRC to review the clarity of 10 CFR 55.49. The regulation encompasses not only activities like cheating and lapses in security but also activities that compromise the integrity or validity of the examination itself (e.g., noncompliance with the criteria designed to limit the potential for bias in the selection of topics to be evaluated on the written examination). Therefore, the NRC has concluded that it would be beneficial to amend 10 CFR 55.49 to clarify its intent and to amend the examination rule to require power reactor facility licensees that elect to prepare their licensing examinations to establish procedures to control examination security and integrity.

*Comment:* Three NRC examiners and the State of Illinois asserted that the revised examination process increases the threat to examination security. One examiner noted that the examination is onsite for a longer period of time, thereby proportionally increasing the risk of being compromised. Another examiner cited the fact that a number of examination reports have documented problems with security.

*Response:* As discussed in SECY-96-206 and SECY-97-079, the Commission is aware of the vulnerability in this area because several security incidents have occurred since beginning the pilot examination program. Therefore, based on the comments received and the experience with security incidents, the NRC has: (1) clarified 10 CFR 55.49 in the final rule to ensure that applicants, licensees, and facility licensees understand the scope and intent of the regulation; (2) amended the final examination rule to require facility licensees that elect to prepare their licensing examinations to establish, implement, and maintain procedures to control examination security and integrity; (3) strengthened the discussion of examination security in

the final version of Revision 8 of NUREG-1021; and (4) modified NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions," to address enforcement action against parties subject to the requirements in 10 CFR 55.49. NRC examiners are expected to review the NRC's physical security guidelines and the facility licensee's specific plans for ensuring examination security at the time the examination arrangements are confirmed with the designated facility contact. Furthermore, the NRC has issued an Information Notice to advise power reactor facility licensees of the NRC's perspective and expectations regarding the integrity of examinations developed by the facility licensees' employees and representatives, and it has asked NEI to take the initiative in developing a model for securing examinations.

As a separate action, the NRC will not administer any examination that may have been compromised until the scope of the potential compromise is determined and measures can be taken to address the integrity and validity of the examination. If the compromise is discovered after the examination has been administered, the NRC will not complete the licensing action for the affected applicants until the staff can make a determination regarding the impact that the compromise has had on the examination process. If the compromise is not discovered until after the licensing action is complete, the NRC will reevaluate the licensing decision pursuant to 10 CFR 55.61(b)(2) if it determines that the original licensing decision was based on an invalid examination.

*Comment:* One NRC examiner disagreed with the conclusion in the proposed rulemaking that the facility-prepared examination process is an efficient use of NRC resources when compared to the NRC-prepared or contractor-prepared examinations. He noted that, in most cases, the quality and difficulty of the proposed examinations have been below NRC standards (as discussed above) and that it has taken a significant effort on the part of the NRC chief examiner to achieve an acceptable product.

An NRC contract examiner asserted that NRC cost-saving is a poor reason for changing the rule, since the utilities pay for the examinations anyway. He noted that the pilot examination process has led to a loss of certified examiners and contends that those NRC examiners who are left will become more dissatisfied with their jobs and will leave because they will be required to travel more to compensate for the loss of contractors.

*Response:* The NRC acknowledges that many of the facility-prepared examinations (about 20 percent in FY 1997) required significantly more NRC examiner time than desired or planned in order to achieve NRC quality standards. However, questionnaires filled out by NRC chief examiners for the pilot examinations indicate that the average amount of time spent on reviewing and upgrading the examinations is generally consistent with the estimates developed before starting the pilot program (i.e., approximately 170 examiner-hours). As noted in SECY-97-079, the NRC has issued a memorandum to its regional administrators emphasizing the importance of: (1) Assigning adequate resources to carry out the operator licensing task; (2) completing a review of every facility-prepared examination; and (3) not administering any examination that fails to meet NRC standards for quality and level of difficulty. Furthermore, all the time that NRC examiners spend reviewing an examination and modifying it so that it meets NRC standards is ultimately billed to the facility licensee.

The Commission acknowledges that facility licensees bear the cost of preparing the licensing examinations whether or not the NRC performs this function. However, this rule will give facility licensees more control over the cost of licensing operators at their facility, and the pilot examination program has demonstrated that some facility licensees will save resources if they elect to prepare their own licensing examinations.

The NRC's budget cuts have necessitated agencywide downsizing, which can be expected to increase the burden of travel for many NRC employees, not just the operator licensing examiners. The number of NRC full-time equivalent (FTE) license examiners has remained essentially constant throughout the pilot program and, aside from normal attrition and staff turnover, the loss of certified examiners has been limited to NRC contractors.

*Comment:* Two NRC examiners expressed concern that examiner proficiency will decrease as a result of implementing the revised examination process. One of the examiners stated that examination reviewers will not maintain the same base of knowledge as examination writers maintained and that they will lose their familiarity with plant operating procedures.

*Response:* The Commission has concluded that the revised examination process affords sufficient NRC staff involvement that NRC examiners will

maintain an acceptable level of proficiency. An NRC examiner will review and approve every facility-prepared examination before it is administered to ensure that it conforms to the criteria specified in NUREG-1021 for content, format, quality, and level of knowledge and difficulty. NRC examiners will also continue to independently administer and grade both the dynamic simulator and the plant walk-through portions of the operating tests. Because NRC examiners will be administering all of the operating tests, the Commission believes that the revised process will enable the examiners to accrue more experience in a shorter period of time and to maintain their proficiency. New NRC license examiners will still be required to complete a standardized training program, including the development of a written examination and operating test, as part of their qualification process. Moreover, the NRC will ensure that the in-house capability to prepare the examinations is maintained by: (1) Requiring a regional supervisor to review and approve every examination and the Office of Nuclear Reactor Regulation to conduct periodic examination reviews; (2) conducting examiner refresher training; and (3) convening an operator licensing examiners' training conference at intervals not to exceed 24 months. Although experience during the voluntary pilot program and informal feedback from the industry suggests that facility licensees are likely to request the NRC to prepare a sufficient number of examinations to maintain the proficiency of its examiners, each region will be required to write at least one initial operator licensing examination per calendar year.

*Comment:* A utility employee asserted that the revised examination process will not enhance the competency of the operators or reactor safety because the facilities' training resources will be diverted from their primary purpose (i.e., training the applicants) as much as six months before the examination date. Three NRC examiners also took issue with the conclusion in the proposed rulemaking that the NRC staff's focus on operator performance and its core of experience will improve under the pilot examination process because contractors will no longer be used to administer the operating tests. Two of the examiners asserted that the reduction in the amount of procedural research by examiners will result in the identification and correction of fewer procedural problems. Two of the examiners also stated that the contract

examiners help maintain examination consistency across the NRC regions and that their contribution to the operator licensing program goes beyond simple task completion.

**Response:** The Commission expects that those training departments that cannot readily and safely absorb the examination development work will use the funds that they were previously paying to the NRC through the fee recovery program to secure the additional personnel to do the extra work or request the NRC to prepare the examinations. If a facility licensee decides to prepare the examination and, as a result, places insufficient resources on either training or testing, the quality of its proposed licensing examinations or the passing rate on those examinations would most likely suffer. Although many of the facility-prepared examinations have required significant changes to achieve NRC quality standards, the examination results, to date, are generally consistent with the results on previous NRC-prepared examinations, suggesting that the quality of the facility licensees' training programs has not been affected. Therefore, the fact that facility licensees will have the option of preparing the examinations is not expected to have a negative effect on reactor safety.

The NRC acknowledges that the contract examiners identified procedural and training problems in addition to their primary responsibility for preparing and administering the licensing examinations, and that they helped maintain examination consistency by working on examinations in each of the NRC's regions. As noted in connection with the discussion of examination quality, the Commission realizes that the revised examination process increases the possibility of inconsistency, but it believes that the examination criteria in the final version of Revision 8 of NUREG-1021, in combination with the NRC's examination oversight programs, will minimize these inconsistencies so that they remain within acceptable limits.

When the NRC initiated the pilot program, its goal was to eliminate the need for NRC contract examiners without compromising the existing levels of reactor safety. Because NRC examiners will be administering all of the operating tests, the revised process will enable the NRC examiners to accrue more experience in a shorter period of time and may improve the consistency of the operating test evaluations and the licensing decisions. Although the total number of procedures reviewed in the process of developing examinations may

be fewer under the revised method, NRC examiners will still be expected to review and identify discrepancies in the procedures that will be exercised during the walk-through portion of the operating test and during the simulator scenarios.

#### Other Comments

Since beginning the pilot examination program, the NRC has sought to obtain up-to-date insights regarding the effectiveness of the revised examination process based on the staff's growing body of experience in reviewing the facility-prepared examinations. Many of the staff comments received have paralleled the public comments and require no further attention in this notice. However, one recommendation to amend the wording of the proposed regulation is considered worthy of discussion and incorporation. Specifically, it was recommended that the rule should indicate that a key manager would be responsible for submitting the examination because that individual would be in a position to ensure that the facility licensee's operations and training departments apply sufficient resources to prepare a quality examination. The NRC finds that the recommendation is consistent with normal NRC practice and the analogous regulatory requirement in § 55.31(a)(3), which requires "\* \* \* an authorized representative of the facility licensee by which the applicant will be employed \* \* \*" to submit a written request that examinations be administered to the applicant. Therefore, the wording of the final examination rule has been amended to require an authorized representative of the facility licensee to approve the written examinations and operating tests before they are submitted to the NRC for review and approval.

#### Availability of Guidance Document for Preparing Operator Licensing Examinations

As a consequence of preparing and administering the initial operator licensing examinations over a number of years, the NRC has developed a substantial body of guidance to aid its examiners. That guidance has been published in various versions of NUREG-1021, the latest version of which (final Revision 8) incorporates lessons learned since interim Revision 8 was published in February 1997, as well as refinements prompted by the comments submitted in response to the FRN of August 7, 1997 (62 FR 42426), which solicited public comments in conjunction with the proposed rulemaking. A copy of the final version of Revision 8 of NUREG-1021 will be

mailed to each facility licensee; in accordance with NRC practice, revisions of NUREG-1021 are announced in the **Federal Register** when they are issued and become effective six months after the date of issuance. Copies may be inspected and/or copied for a fee at the NRC's Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Final Revision 8 of NUREG-1021 is also electronically available for downloading from the internet at "<http://www.nrc.gov>."

The NRC will prepare, administer, and grade initial operator licensing examinations when requested by facility licensees and at least four times a year to maintain the proficiency of its examiners. NRC examiners will use the criteria in the effective version of NUREG-1021 to evaluate whether an applicant meets the Commission's regulations. In this regard, NUREG-1021 is comparable to the Standard Review Plan (SRP), which establishes the criteria that the NRC uses to evaluate Part 50 license applications. Licensees that elect to prepare their own licensing examinations will also be required to use the guidance in the effective version of NUREG-1021. As provided in NUREG-1021, licensees may identify differences from the NUREG-1021 examination criteria and evaluate how the proposed alternatives provide an acceptable method of complying with the Commission's regulations. The NRC staff will review any proposed alternatives and make a decision regarding their acceptability. The NRC will not approve any alternative that would compromise its statutory responsibility of prescribing uniform conditions for the operator licensing examinations.

#### Final Rule

This regulation adds a new section, § 55.40, "Implementation," to Subpart E of 10 CFR Part 55. Paragraph (a) of § 55.40 states the NRC's intent to use the criteria in the version of NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," in effect six months before the examination date when preparing and evaluating the written examinations required by §§ 55.41 and 55.43, and the operating tests required by § 55.45. The NRC uses the criteria in NUREG-1021 to evaluate whether an applicant meets the Commission's regulations. In this regard, NUREG-1021 is comparable to the Standard Review Plan, which establishes the criteria that the NRC uses to evaluate Part 50 license applications. Pursuant to Section 107 of the AEA of 1954, as amended, the NRC must prescribe uniform conditions for

licensing individuals applying for operator licenses.

Based on the success of the pilot examination program, paragraph (b) of § 55.40 allows power reactor facility licensees to prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and to prepare the operating tests required by § 55.45, subject to the following conditions:

(1) To ensure uniformity pursuant to the AEA, the facility licensee shall prepare the examinations and tests in accordance with NUREG-1021;

(2) To minimize the possibility that the required written examinations and operating tests might be compromised, the facility licensee shall establish, implement, and maintain procedures to control the security and integrity of the examinations and tests;

(3) To ensure that the facility licensee's operations and training departments apply sufficient resources to prepare a quality examination, an authorized representative of the facility licensee shall approve the examinations before they are submitted to the NRC for review and approval; and

(4) To ensure that NRC standards for quality are maintained, the facility licensee must receive Commission approval of its proposed written examinations and operating tests before they are given.

These requirements are contained in §§ 55.40(b)(1), (2), (3), and (4) respectively.

As provided in NUREG-1021, licensees may identify differences from the NUREG-1021 examination criteria and evaluate how the proposed alternatives provide an acceptable method of compliance with NRC regulations. The NRC staff will review any proposed alternatives and make a decision regarding their acceptability. However, the NRC will not approve any alternative that would compromise its statutory responsibility of prescribing uniform conditions for the operator licensing examinations. The NRC staff will review the facility-prepared written examinations and operating tests against the criteria in NUREG-1021 and direct whatever changes are necessary to ensure that adequate levels of quality, difficulty, and consistency are maintained. After the NRC staff reviews and approves a written examination, the facility licensee will proctor and grade the examination consistent with the guidance in NUREG-1021. The NRC staff will continue to independently administer and grade the operating tests, review and approve the written examination results, and make the final licensing decisions. The facility licensee will not conduct parallel operator

evaluations during the dynamic simulator or the walk-through tests.

Pursuant to the requirements in § 55.40(c), the NRC staff will prepare the licensing examinations and tests upon written request by a power reactor facility licensee in accordance with § 55.31(a)(3). In addition, the NRC may exercise its discretion to reject a power reactor facility licensee's determination to prepare the required written examinations and operating tests, and to proctor and grade the written examinations. The NRC will then prepare, proctor, and grade the written examinations and prepare the operating tests for the facility licensee. This provision of the regulation allows the NRC to maintain its proficiency and to perform these activities if the NRC questions a licensee's ability to prepare an acceptable examination.

Paragraph (d) of § 55.40 reasserts that the NRC will continue to prepare and administer the written examinations and operating tests for non-power reactor facility licensees. The NRC has taken this position because the non-power reactor community does not have an accreditation process for training and qualification or the resources to prepare the examinations.

This regulation also amends § 55.49 because the NRC has determined, since the proposed rule was published, that applicants, licensees, and facility licensees may be interpreting § 55.49 too narrowly by limiting it to actual cases of cheating. The amendment clarifies that the regulation pertains to all activities that could affect the equitable and consistent administration of the examination, including activities before, during, and after the examination is administered.

#### **Environmental Impact: Categorical Exclusion**

The NRC has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

#### **Paperwork Reduction Act Statement**

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These were approved by the Office of Management and Budget (OMB), approval number 3150-0101. The additional public reporting burden for this collection of information is estimated to average 500 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information (i.e., preparing the examinations). The additional, one-time burden for power reactor facility licensees that elect to prepare their licensing examinations to establish procedures to prevent the examinations from being compromised is not expected to exceed 100 hours per facility; and the burden of maintaining those procedures is estimated at approximately 10 hours per facility per year. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by internet electronic mail to [bjs1@nrc.gov](mailto:bjs1@nrc.gov), and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0101), Office of Management and Budget, Washington, DC 20503.

#### **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.

#### **Regulatory Analysis**

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, at 301-415-1056 or by e-mail at [sxg@nrc.gov](mailto:sxg@nrc.gov).

#### **Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" described in the Regulatory Flexibility Act or the Small Business Size Standards stated in regulations issued by the Small Business Administration at 13 CFR part 121.

### 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.

### Backfit Analysis

In the proposed rule, the NRC took the position that the backfit rule (10 CFR 50.109) did not apply because the proposed shift in responsibility for preparing the examinations: (1) Would not constitute a "modification of the procedures required to operate a facility" within the scope of the backfit rule; (2) would not have affected the basic procedures for qualifying licensed operators; and (3) would not have required facility licensees to alter their organizational structures. However, upon further review, the NRC has concluded that there is insufficient basis to support the original position. Therefore, the NRC has decided to revise the final rule so that power reactor facility licensees may elect to prepare their written examinations and operating tests (and proctor and grade the written examinations) in accordance with NUREG-1021 or to have the NRC prepare the examinations. Eliminating the requirement for all facility licensees to prepare their examinations and tests obviates the need for a backfit analysis.

### Enforcement Policy

In conjunction with this final rule, the Commission is separately publishing modifications to NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," to address enforcement action against parties subject to the requirements in 10 CFR 55.49 (i.e., Part 55 license applicants/licensees and Part 50 licensees).

### List of Subjects in 10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC adopts the following amendments to 10 CFR part 55.

### PART 55—OPERATORS' LICENSES

1. The authority citation for Part 55 continues to read as follows:

**Authority:** Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

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

2. In § 55.8, paragraph (c)(4) is revised to read as follows:

#### § 55.8 Information collection requirements; OMB approval

\* \* \* \* \*

(4) In §§ 55.40, 55.41, 55.43, 55.45, and 55.59, clearance is approved under control number 3150-0101.

\* \* \* \* \*

3. A new § 55.40 is added to read as follows:

#### § 55.40 Implementation.

(a) The Commission shall use the criteria in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors,"<sup>1</sup> in effect six months before the examination date to prepare the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45. The Commission shall also use the criteria in NUREG-1021 to evaluate the written examinations and operating tests prepared by power reactor facility licensees pursuant to paragraph (b) of this section.

(b) Power reactor facility licensees may prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and may prepare the operating tests required by § 55.45, subject to the following conditions:

(1) Power reactor facility licensees shall prepare the required examinations and tests in accordance with the criteria in NUREG-1021 as described in paragraph (a) of this section;

(2) Pursuant to § 55.49, power reactor facility licensees shall establish,

implement, and maintain procedures to control examination security and integrity;

(3) An authorized representative of the power reactor facility licensee shall approve the required examinations and tests before they are submitted to the Commission for review and approval; and

(4) Power reactor facility licensees must receive Commission approval of their proposed written examinations and operating tests.

(c) In lieu of paragraph (b) of this section and upon written request from a power reactor facility licensee pursuant to § 55.31(a)(3), the Commission shall, for that facility licensee, prepare, proctor, and grade, the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45. In addition, the Commission may exercise its discretion and reject a power reactor facility licensee's determination to elect paragraph (b) of this section, in which case the Commission shall prepare, proctor, and grade the required written examinations and operating tests for that facility licensee.

(d) The Commission shall prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45 for non-power reactor facility licensees.

4. Section 55.49 is revised to read as follows:

#### § 55.49 Integrity of examinations and tests.

Applicants, licensees, and facility licensees shall not engage in any activity that compromises the integrity of any application, test, or examination required by this part. The integrity of a test or examination 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. This includes activities related to the preparation and certification of license applications and all activities related to the preparation, administration, and grading of the tests and examinations required by this part.

Dated at Rockville, Maryland, this 19th day of April, 1999.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 99-10190 Filed 4-22-99; 8:45 am]

BILLING CODE 7590-01-P

<sup>1</sup> Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 38082, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, D.C.