

NOTATION VOTE

RESPONSE SHEET

TO: John C. Hoyle, Secretary

FROM: CHAIRMAN JACKSON

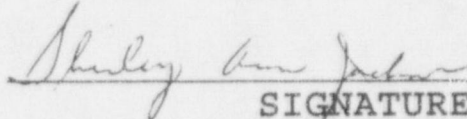
SUBJECT: SECY-97-079 - PROPOSED RULE - INITIAL
LICENSED OPERATOR EXAMINATION REQUIREMENTS

Approved x ^{with} comments Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

See attached comments.


SIGNATURE

Release Vote / x /

May 21, 1997

DATE

Withhold Vote / /

Entered on "AS" Yes x No _____

CHAIRMAN JACKSON'S COMMENTS ON SECY-97-079

In SECY-97-079, the staff asked the Commission to:

- ▶ Approve the proposed rule for publication
- ▶ Certify requirements of Regulatory Flexibility Act have been satisfied
- ▶ Determine that the Backfit Rule does not apply
- ▶ Determine that neither an EIS nor an EA has been prepared because this proposed rule is eligible for categorical exclusion per 10 CFR 51.22(c)

I approve the notice of proposed rulemaking for publication in the Federal Register subject to the following (i.e., items (a) through (e) listed below should be addressed prior to publication of the proposed rule):

- (a) The staff should provide additional discussion, in the FRN, explaining the safety benefits of this proposed rulemaking. Irrespective of the applicability of the backfit rule, NRC cost savings alone should not be the only basis for imposing a new requirement on licensees.
- (b) The staff should discuss, in greater detail, the relationship between operator competence and operator performance. If appropriate, the staff should highlight that, under the proposed rule, the NRC focus on operator performance will improve through more direct (i.e., NRC staff replacing contractor personnel) involvement in simulator and walkthrough examinations.
- (c) Recognizing that there are additional security issues associated with a process that requires licensees to develop examinations, the staff should provide a more robust discussion of examination security and consider incorporating more specific security requirements (e.g., codify security guidance contained in NUREG-1021) into 10 CFR Part 55 to help further ensure the integrity of examinations and tests. Integrity of the examination process should be explicitly reviewed by NRC examiners.
- (d) Weaknesses in the backfit discussion should be addressed. I remain concerned that our determination with regard to the applicability of the backfit rule is too narrow an interpretation. The NRC's Backfitting Guidelines, NUREG-1409, convey that the NRC backfit process, including the Committee to Review Generic Requirements Charter and NRC Management Directive 8.4, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants," is defined on the principle that new positions or requirements are to meet the standards of the backfit rule before they are issued to licensees. Although, I recognize that, as a legal matter, one can argue that the Backfit Rule does not apply, the arguments presented in the proposed rulemaking package do not, in my opinion, provide 1) a persuasive justification for backing away from this principle or 2) sufficient analysis to make a determination regarding the applicability of the backfit rule. Therefore, before I determine whether the backfit rule applies to this rulemaking, the staff should provide additional legal analysis regarding the basis for determining that this rulemaking does not meet the definition of "Backfitting" particularly with regard to modification of or addition to "the procedures or organization required to design, construct, or operate a facility." This analysis should be used, if possible, to strengthen the staff's position on applicability of the backfit rule in the proposed rulemaking package.

- (e) With regard to the Regulatory Flexibility Act, the staff should determine whether the discussion needs to consider the economic impact of this proposed rulemaking on businesses (small entities, if any) that are currently contracted with the NRC to support the initial operator examination program.

I agree with the staff's determination that this proposed rulemaking meets the criterion for categorical exclusion of environmental review as defined in 10 CFR 51.22(c)(1). Further, I determine that no special circumstances exist and therefore do not request that an environmental impact statement or an environmental assessment accompany this rulemaking activity.

For the longer term, the staff should:

- ▶ consider the development of criteria for determining when the NRC will assume the responsibility for writing the operator initial and requalification written examination. These criteria could be linked, for example, to the overall performance of the training program or identified programmatic training weaknesses.
- ▶ consider whether NUREG-1021, as a regulatory reference document, is sufficient to ensure consistency in licensed operator examinations and whether additional regulatory guidance for staff review and training or for licensee implementation (e.g., Standard Review Plan, Regulatory Guide) is warranted to help ensure consistency in NRC review and in licensee development of initial examinations.
- ▶ assess the relationship between operator initial qualification and requalification programs and the performance of operators. One of the goals of this assessment should be to determine if improvements can be made to the licensed operator qualification program (both initial and requalification) to help improve the performance of operators.

I concur with Commissioner McGaffigan's suggested modifications to the Congressional letters contained in SECY-97-079.