

THIS DRAFT DOCUMENT IS BEING RELEASED TO SUPPORT THE FEBRUARY 18, 2022, ADVISORY COMMITTEE ON REACTOR SAFEGUARDS (ACRS) 10 CFR PART 50/52 RULEMAKING ACTIVITIES SUBCOMMITTEE PUBLIC MEETING. THE NRC STAFF IS NOT REQUESTING OR ACCEPTING PUBLIC COMMENTS ON THIS DRAFT DOCUMENT. THIS DRAFT DOCUMENT HAS NOT BEEN SUBJECT TO NRC MANAGEMENT OR LEGAL REVIEWS AND APPROVALS, AND ITS CONTENTS SHOULD NOT BE INTERPRETED AS OFFICIAL AGENCY POSITIONS. FOLLOWING THE PUBLIC MEETING WITH THE ACRS, THE NRC STAFF PLANS TO CONTINUE WORKING ON THIS DOCUMENT AND TO CONSIDER OPTIONS FOR INVITING PUBLIC PARTICIPATION IN THE RULEMAKING ACTIVITY.

U.S. NUCLEAR REGULATORY COMMISSION

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Proposed Revision 3 to Regulatory Guide 5.66

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Revision 2



REGULATORY GUIDE

OFFICE OF NUCLEAR REGULATORY RESEARCH#

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REGULATORY GUIDE 5.66

(This is an administratively changed version of Revision 1, issued July 2009)

ACCESS AUTHORIZATION PROGRAM FOR NUCLEAR POWER PLANTS

A. INTRODUCTION

Purpose

This RG is being issued in draft form to involve the public in the development of regulatory guidance in this area. It has not received final staff review or approval and does not represent an NRC final staff position. Public comments are being solicited on this DG and its associated regulatory analysis. Comments should be accompanied by appropriate supporting data. Comments may be submitted through the Federal rulemaking Web site, <http://www.regulations.gov>, by searching for draft regulatory guide DG-5067 or **Docket ID NRC-XXXX-XXXX**. Alternatively, comments may be submitted to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Comments must be submitted by the date indicated in the *Federal Register* notice.

Electronic copies of this DG, previous versions of DGs, and other recently issued guides are available through the NRC's public Web site under the Regulatory Guides document collection of the NRC Library at <https://nrcweb.nrc.gov/reading-rm/doc-collections/reg-guides/>. The DG is also available through the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, under Accession No. ML21145A433. The regulatory analysis may be found in ADAMS under Accession No. ML21159A069.

This regulatory guide (RG) describes a method that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable to implement the requirements in Title 10, of the *Code of Federal Regulations*, Section (10 CFR) 73.56, “Personnel Access Authorization Requirements” ~~access authorization requirements for Nuclear Power Plants~~ access authorization requirements for nuclear power plants” (10 CFR 73.56) (Ref. 1), and 10 CFR Part 26, “Fitness for Duty Programs” (Ref. 2), related to an access authorization program.

Applicability

This RG applies to each applicant for an operating license under the provisions of 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities” (Ref. 3), and each holder of a combined license under the provisions of 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants” (Ref. 4).

Applicable Regulations

- 10 CFR Part 26 prescribes requirements and standards for the establishment, implementation, and maintenance of fitness-for-duty programs.
- 10 CFR Part 50 provides regulations for licensing production and utilization facilities.
- 10 CFR Part 52 governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities.
- 10 CFR Part 73, “Physical Protection of Plants and Materials,” governs requirements for the establishment and maintenance of a physical protection system that will have capabilities to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material.
 - 10 CFR 73.55, “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,” ensures licensees establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to public health and safety.
 - 10 CFR 73.56 ensures the licensee’s or applicant’s access authorization program provides high assurance that individuals are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.
 - 10 CFR 73.56(a)(3) states, in part, each applicant for an operating license under 10 CFR Part 50, and each holder of a combined license under 10 CFR Part 52, shall implement the requirements of 10 CFR 73.56 before initial fuel load into the reactor.
 - 10 CFR 73.57, “Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility, a non-power reactor, or access to Safeguards Information,”
 - 10 CFR 73.57(b)(1) states, in part, that each licensee subject to the provisions of 10 CFR 73.57 shall fingerprint each individual who is permitted unescorted access to the

nuclear power facility, or access to safeguards information. The licensee will then review and use the information received from the Federal Bureau of Investigation and, based on the provisions contained in 10 CFR 73.57, determine either to continue to grant or to deny further unescorted access to the nuclear power facility, or access to safeguards information, for that individual. Individuals who do not have unescorted access or access to safeguards information shall be fingerprinted by the licensee, and the results of the criminal history records check shall be used before making a determination for granting unescorted access to the nuclear power facility or to safeguards information.

Related Guidance

- Nuclear Energy Institute (NEI) 03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, issued May 2009 (Ref. 5), contains security-related information in accordance with 10 CFR 2.390(d)(1) (Ref. 6).

Purpose of Regulatory Guides

The NRC issues regulatory guides (RGs) to describe to the public methods that the staff considers acceptable to the staff for use in implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific problems/issues or postulated accident events, and to provide guidance to applicants. describe information that the staff needs in its review of applications for permits and licenses. Regulatory guides are not substitutes for NRC regulations and compliance with them is not required. Methods and solutions that differ from those set forth in RGs are acceptable if supported by a basis for the issuance or continuance of a permit or license by the Commission.

This regulatory guide contains information collection requirements covered by 10 CFR Part 50 that
Paperwork Reduction Act

This RG provides voluntary guidance for implementing the mandatory information collections in 10 CFR Parts 26, 50, 52, and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget (OMB) approved under), approval numbers 3150-0146, 3150-0011, 3150-0151, and 3150-0002. Send comments regarding this information collection to the FOIA, Library, and Information Collections Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to Infocollects.Resource@nrc.gov, and to the OMB control number 3150-002, reviewer at: OMB Office of Information and Regulatory Affairs (3150-0146, 3150-0011, 3150-0151, and 3150-0002), Attn: Desk Officer for the Nuclear Regulatory Commission, 17th Street, NW Washington, DC 20503; e-mail: oir_submission@omb.eop.gov.

Public Protection Notification

The NRC may neither not conduct nor sponsor, and a person is not required to respond to, an information-a collection request or requirement of information unless the document requesting document or requiring the collection displays a currently valid OMB control number. This regulatory guide is a rule as designated in the Congressional Review Act (5 U.S.C. 801-808). However, OMB has not found it to be a major rule as designated in the Congressional Review Act.

B. DISCUSSION

Reason for Revision

This revision of the guide (Revision 3) addresses changes to requirements in 10 CFR 73.56 resulting from the final rule for the “Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing” (RIN 3150–AI66). This revised guide contains information specific to personnel access authorization requirements for facilities licensed under 10 CFR Part 50 or 10 CFR Part 52.

Background

Previously, 10 CFR 73.56(a)(3) required applicants for a power reactor operating license under 10 CFR Part 50 and holders of a combined license under 10 CFR Part 52 to implement the requirements of 10 CFR 73.56 before unirradiated reactor fuel is allowed on site at nuclear power reactors (i.e., within the protected area). The NRC amended this requirement to clarify that applicants and licensees may bring unirradiated reactor fuel on site and protect it in accordance with 10 CFR 73.67, “Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance,” until initial fuel load into the reactor.

Consideration of International Standards

The International Atomic Energy Agency (IAEA) works with member states and other partners to promote the safe, secure, and peaceful use of nuclear technologies. The IAEA develops Safety Requirements and Safety Guides for protecting people and the environment from harmful effects of ionizing radiation. This system of safety fundamentals, safety requirements, safety guides, and other relevant reports, reflects an international perspective on what constitutes a high level of safety. To inform its development of this RG, the NRC considered IAEA Safety Requirements and Safety Guides pursuant to the Commission’s International Policy Statement (Ref. 7) and Management Directive 6.6, “Regulatory Guides” (Ref. 8). The NRC staff did not identify any IAEA Safety Requirements or Guides with information related to the topic of this RG.

Documents Discussed in Staff Regulatory Guidance

This RG endorses, in part, the use of one or more codes or standards developed by external organizations, and other third party guidance documents. These codes, standards and third party guidance documents may contain references to other codes, standards or third party guidance documents (“secondary references”). If a secondary reference has itself been incorporated by reference into NRC regulations as a requirement, then licensees and applicants must comply with that standard as set forth in the regulation. If the secondary reference has been endorsed in a RG as an acceptable approach for meeting an NRC requirement, then the standard constitutes a method acceptable to the NRC staff for meeting that regulatory requirement as described in the specific RG. If the secondary reference has neither been incorporated by reference into NRC regulations nor endorsed in a RG, then the secondary reference is neither a legally-binding requirement nor a “generic” NRC approved acceptable approach for meeting an NRC requirement. However, licensees and applicants may consider and use the information in the secondary reference, if appropriately justified, consistent with current regulatory practice, and consistent with applicable NRC requirements.

C. STAFF REGULATORY GUIDANCE

The NRC revised its regulations for access authorization in 10 CFR 73.56 to incorporate lessons learned during the implementation and application of the original rule published in Volume 56 of the *Federal Register* (FR), page 19007 (56 FR 19007; April 25, 1991) (Ref. 39), and to incorporate the enhanced requirements that were issued in orders following the terrorist attacks of September 11, 2001.

The access authorization program required by 10 CFR 73.56 consists of a background investigation with periodic reinvestigations, a psychological assessment with periodic reassessments for enumerated critical personnel, a behavior observation program that includes self-reporting requirements, and determinations of trustworthiness and reliability for contractors ~~that~~who support licensees in meeting these rule requirements. - The background investigation is designed to identify past actions that are indicative of an individual's current trustworthiness and reliability ~~and~~. It is supported by a periodic reinvestigation designed to maintain the required high assurance standard during continued unescorted access or unescorted access authorization. -The psychological assessment is designed to evaluate the possible impact of any noted psychological characteristics that may have a bearing on trustworthiness and reliability and is additionally supported by periodic reassessments for particular categories of employees. Behavior observation is designed to detect behavioral changes that, if left unattended, could lead to acts detrimental to public health and safety or the common defense and security. -In addition, an employee self-reporting requirement supports behavior observation.

~~The Nuclear Energy Institute (NEI) prepared NEI 03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, issued May 2009 (Ref. 4), as the industry standards (hereafter referred to as "the Standards").~~ on this topic. The Standards contain security-related information in accordance with 10 CFR 2.390(d)(1) ~~and~~; therefore, the document is not publicly available. -The Standards meet the intent and substance of ~~the regulation.~~ In 10 CFR 73.56. In that regulation, the NRC requires each applicant and holder of an operating license under the provisions of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" (Ref. 5), and each holder of a combined license under the provisions of 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants" (Ref. 6), to establish, maintain, and implement, in part, the requirements in 10 CFR 73.56 ~~before fuel is allowed on site (in a protected area).~~ initial fuel load into the reactor. The NRC established these requirements to provide high assurance that individuals granted unescorted access and those certified for unescorted access authorization are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

The Standards describe the components of these elements and include evaluation criteria for granting and maintaining unescorted access and for certifying and maintaining unescorted access authorization. -The Standards also provide details for the reinstatement of access and authorization; requirements for contractor and vendor performance ~~and~~, trustworthiness, and reliability; audits and corrective actions; protection of information; and required sharing of information between licensees and licensee contractors and vendors supporting a licensee access authorization program. ~~Revision 1 to this regulatory guide identified this guidance as an acceptable method to meet 10 CFR 73.56.~~

Revision 1 to this RG, issued April 2009, identified this guidance as an acceptable method to meet 10 CFR 73.56. The NRC ~~has prepared~~ issued Revision 2 to this guide, issued October 2011, to provide additional information to the public. ~~Revision 1 included an attachment with security related information~~ The NRC is issuing Revision 3 to this guide to address changes to the requirements in 10 CFR 73.56 resulting from NEI 03-01 the final rule for the "Alignment of Licensing Processes and therefore is not publically available. The staff has omitted the attachment Lessons Learned from

Revision 2 to this guide so that it can be made publically available. Although the regulatory position from Revision 1 has not changed, the staff has amended the wording of the license condition stated in Regulatory Position 1 to be consistent with this revision. New Reactor Licensing.” The NRC has no requirement for a licensee ~~who~~that conforms to Revision 1 or 2 to this guide to make any changes as a result of the issuance of Revision 23.

C. STAFF REGULATORY GUIDANCE

NEI 03-01 contains security related information in accordance with 10 CFR 2.390(d)(1) and, therefore, is not publicly available. The NRC staff considers conformance with the provisions of NEI 03-01 an acceptable approach to meet the requirements in 10 CFR 73.56 and 10 CFR Part 26 that relate to granting and maintaining unescorted access and to certifying and maintaining unescorted access authorization, subject to the following condition:

- 1. — Licensees ~~who~~that adopt this regulatory guide RG, and its endorsement of NEI_03-01, should include the following statement in their physical security plans:

All elements of Regulatory Guide 5.66, Revision 23, have been implemented to satisfy the requirements of 10 CFR 73.56 and 10 CFR Part 26, related to unescorted access and unescorted access authorization.

D. IMPLEMENTATION

The purpose of this section is to provide information on how applicants and licensees¹ NRC staff may use this guide and information regarding the NRC's plans for using this regulatory guide. In addition, it describes how the NRC staff complies with the Backfit Rule (10 CFR 50.109) and any applicable finality provisions regulatory guide as a reference in 10 CFR Part 52.

Use by Applicants and Licensees

Applicants and licensees may voluntarily² its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this document to demonstrate compliance with the underlying NRC regulations. Methods or solutions that differ from those described in this regulatory guide may be deemed acceptable if they provide sufficient basis and information for the NRC staff to verify that the proposed alternative demonstrates compliance with the appropriate NRC regulations. Current licensees may continue to use guidance the NRC found acceptable for complying with the identified regulations as long as their current licensing basis remains unchanged.

Licensees may regulatory guide to support NRC staff actions in a manner that would constitute backfitting as that term is defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," (Ref. 10), nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." The staff also does not intend to use the information in this regulatory guide for actions which do not require guidance to support NRC review and approval such as changes to a facility design under 10 CFR 50.59. Licensees may use the information in this regulatory guide or applicable parts to resolve regulatory or inspection issues.

Use by NRC Staff

The staff may discuss with licensees, various actions consistent with staff positions in this regulatory guide, as one acceptable means of meeting the underlying NRC regulatory requirement. Such discussions would not ordinarily be considered backfitting even if prior versions of this regulatory guide are part of the licensing basis of the facility. However, unless this regulatory guide is part of the licensing basis for a facility, the staff may not represent to the licensee a manner that the licensee's failure to comply with the positions in this regulatory guide constitutes a violation.

If an existing licensee voluntarily seeks a license amendment or change and (1) the NRC staff's consideration of the request involves a regulatory issue directly relevant to this new or revised regulatory guide and (2) the specific subject matter of this regulatory guide is an essential consideration in the staff's determination of the acceptability of the licensee's request, then the staff may request forward fitting as that the licensee either follow the guidance in this regulatory guide or provide an equivalent alternative process that demonstrates compliance with the underlying NRC regulatory requirements. This is not

¹— In this section, "licensees" refers to licensees of nuclear power plants under 10 CFR Parts 50 and 52; and the term "applicants," refers to applicants for licenses and permits for (or relating to) nuclear power plants under 10 CFR Parts 50 and 52, and applicants for standard design approvals and standard design certifications under 10 CFR Part 52.

²— In this section, "voluntary" and "voluntarily" means that the licensee is seeking the action of its own accord, without the force of a legally binding requirement or an NRC representation of further licensing or enforcement action.

considered backfitting as defined in 10 CFR 50.109(a)(1) or a violation of any of the issue finality provisions in 10 CFR Part 52. term is

~~The~~ NRC staff does not intend or approve any imposition or backfitting of the guidance in this regulatory guide. The NRC staff does not expect any existing licensee to use or commit to using the guidance in this regulatory guide, unless the licensee makes a change to its licensing basis. The NRC staff does not expect or plan to request licensees to voluntarily adopt this regulatory guide to resolve a generic regulatory issue. The NRC staff does not expect or plan to initiate NRC regulatory action which would require the use of this regulatory guide. Examples of such unplanned NRC regulatory actions include issuance of an order requiring the use of the regulatory guide, requests for information under 10 CFR 50.54(f) as to whether a licensee intends to commit to use of this regulatory guide, generic communication, or promulgation of a rule requiring the use of this regulatory guide without further backfit consideration.

Additionally, an existing applicant may be required to adhere to new rules, orders, or guidance if 10 CFR 50.109(a)(3) applies.

Conclusion

This regulatory guide is not being imposed upon current licensees and may be voluntarily used by existing licensees. In addition, this regulatory guide is issued in conformance with all applicable internal NRC policies and procedures governing backfitting. Accordingly, the NRC staff issuance of this regulatory guide is not considered backfitting, as defined in 10 CFR 50.109(a)(1), nor is it deemed to be in conflict with any of the issue finality provisions in 10 CFR Part 52.

and described in Management Directive 8.4. If a licensee believes that the NRC is either using this regulatory guide or requesting or requiring the licensee to implement the methods or processes in this regulatory guide in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a ~~backfit~~backfitting or forward fitting appeal with the NRC in accordance with the ~~guidance~~process in NUREG-1409 and NRC Management Directive 8.4.

REFERENCES⁴³

1. ~~10 CFR Part 73, U.S. Code of Federal Regulations (CFR) “Physical Protection of Plants and Materials,” U.S. Nuclear Regulatory Commission, Washington, DC, Part 73, Chapter 1, Title 10, “Energy.”~~
- 10- 2. ~~CFR Part 26, “Fitness for Duty Programs,” U.S. Nuclear Regulatory Commission, Washington, DC, Part 26, Chapter 1, Title 10, “Energy.”~~
3. ~~59 FR 19007, Federal Register, Volume 56, p. 19007, Washington, DC, April 25, 1991.~~
4. ~~NEI 03-01, “Nuclear Power Plant Access Authorization Program,” Revision 3, Nuclear Energy Institute, Washington, DC, May 2009.² (not publically available)~~
3. ~~10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” Part 50, Chapter 1, Title 10, “Energy.”~~
4. ~~CFR, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” Part 52, Chapter 1, Title 10, “Energy.”~~
5. ~~Nuclear Energy Institute (NEI), “Nuclear Power Plant Access Authorization Program,” NEI 03-01, Revision 3, Washington, DC, May 2009. (Not Publicly Available)⁴~~
6. ~~CFR, “Agency Rules of Practice and Procedure,” Part 2, Chapter 1, Title 10, “Energy.”~~
7. ~~U.S. Nuclear Regulatory Commission, “Nuclear Regulatory Commission International Policy Statement,” Federal Register, Vol. 79, No. 132, July 10, 2014, pp. 39415-39418.~~
- 5-8. ~~U.S. Nuclear Regulatory Commission, Washington, DC “Regulatory Guides,” Management Directive 6.6.~~
- 6-9. ~~10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” U.S. Nuclear Regulatory Commission, Washington, DC “10 CFR Part 73, RIN 3150-AA90, Access Authorization Program for Nuclear Power Plants,” Federal Register, Vol. 56, No. 80, April 25, 1991, pp. 18997-19008.~~

⁺ ~~Publicly available NRC published documents are available electronically through the NRC Library on the NRC’s public Web site at <http://www.nrc.gov/reading-rm/doc-collections/>. The documents can also be viewed on line or printed for a fee in the NRC’s Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD; the mailing address is USNRC PDR, Washington, DC 20555; telephone 301 415 4737 or (800) 397 4209; fax (301) 415 3548; and e-mail pdr.resource@nrc.gov.~~

² ~~This document contains security-related information in accordance with 10 CFR 2.390(d)(1), and therefore is not publicly available. Copies of this non-NRC document may be requested from the publishing organization.~~

3 ~~Publicly available NRC published documents are available electronically through the NRC Library on the NRC’s public Web site at <http://www.nrc.gov/reading-rm/doc-collections/> and through the NRC’s Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>. The documents can also be viewed online or printed for a fee in the NRC’s Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD. For problems with ADAMS, contact the PDR staff at (301) 415-4737 or (800) 397-4209; fax (301) 415-3548; or e-mail pdr.resource@nrc.gov.~~

4 ~~This document contains security-related information, in accordance with 10 CFR 2.390(d)(1), and therefore is not publicly available. Publications from the Nuclear Energy Institute (NEI) are available at their Web site: <http://www.nei.org>, or by contacting the headquarters at Nuclear Energy Institute, 1776 I Street NW, Washington, DC 20006-3708, Phone: (202) 739-8000, Fax (202) 785-4019.~~

10. U.S. Nuclear Regulatory Commission, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” Management Directive 8.4.

PRE-DECISIONAL