

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR
REGULATION WASHINGTON, D.C.
20555-0001

May 27, 2022

**DRAFT NRC REGULATORY ISSUE SUMMARY 2022-XX
PERSONNEL ACCESS AUTHORIZATION REQUIREMENTS FOR NON-IMMIGRANT
FOREIGN NATIONALS WORKING AT NUCLEAR POWER PLANTS**

ADDRESSEES

All holders of and applicants for a power reactor operating license under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities."

All holders of and applicants for a power reactor early site permit or combined license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to remind licensees of the requirement in 10 CFR 73.56(d)(3), "Verification of true identity," that prior to granting or reinstating unescorted access (UA) or certifying unescorted access authorization (UAA) to non-immigrant foreign nationals for the purpose of performing work, licensees shall validate that the foreign national's claimed non-immigration status is correct and that verifying employment eligibility is an important component of the required validation. This is important to ensure that individuals to whom a licensee intends to grant UA to nuclear power plant protected or vital areas or any individual for whom a licensee or applicant intends to certify UAA, 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.

This RIS does not transmit any new requirements and does not require any specific action or written response on the part of addressees.

BACKGROUND INFORMATION

In October 2017, the NRC's Office of Investigations, in collaboration with the U.S. Department of Homeland Security, Homeland Security Investigations, identified several instances where foreign nationals were granted UA or UAA at U.S. nuclear power plants for the purpose of work using visa categories that do not permit foreign nationals to work in the U.S.

The issue of verifying the employment eligibility of a foreign national was first addressed by the NRC in RIS 2002-13, "Confirmation of Employment Eligibility" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML021720225, August 27, 2002; not

publicly available). This RIS concluded that confirming a foreign national's employment eligibility was an important element of the background investigation undertaken to verify the true identity of an applicant seeking UA or UAA at a U.S. nuclear power plant.

To facilitate licensee verification of a foreign national's employment eligibility, on September 26, 2007, the NRC entered into a Memorandum of Understanding (MOU) with the U.S. Citizenship and Immigration Services (USCIS) to allow NRC licensees to use the agency's Systematic Alien Verification for Entitlements (SAVE) electronic database. Use of the SAVE database is one acceptable means of verifying a foreign national's employment eligibility as part of validating the foreign national's true identity. There is no charge to licensees to use this service.

SUMMARY OF ISSUE

The regulatory requirements in 10 CFR 73.56(d)(3) were first promulgated in March 2009¹. Specifically, 10 CFR 73.56(d)(3) requires:

Licensees, applicants, and contractors or vendors shall verify the true identity of an individual who is applying for unescorted access or unescorted access authorization in order to ensure that the applicant is the person that he or she has claimed to be. At a minimum, licensees, applicants, and contractors or vendors shall validate that the social security number that the individual has provided is his or hers, and, in the case of foreign nationals, validate the claimed non-immigration status that the individual has provided is correct. In addition, licensees and applicants shall also determine whether the results of the fingerprinting required under § 73.57 confirm the individual's claimed identity, if such results are available.

Moreover, 10 CFR 73.56(a)(4) also requires:

The licensee or applicant may accept, in part or whole, an access authorization program implemented by a contractor or vendor to satisfy appropriate elements of the licensee's access authorization program in accordance with the requirements of this section. Only a licensee shall grant an individual unescorted access. Licensees and applicants shall certify individuals' unescorted access authorization and are responsible to maintain, deny, terminate, or withdraw unescorted access authorization.

In the Statement of Consideration's to the October 26, 2006, Power Reactor Security Requirements proposed rule, the Commission made clear that the term "validation" was being used in 10 CFR 73.56(d)(3) "to indicate that licensees, applicants and [Contractors or Vendors] would be required to take steps to access information in addition to that provided by the individual from other reliable sources to ensure that the personal identifying information the individual has provided to the licensee is authentic" (71 FR 62747). The Commission further stated that validation could be accomplished by accessing information from a variety of reliable sources, including but not limited to Federal Government databases.

¹ The NRC amended 10 CFR Parts 50, 52, 72, and 73, including Appendices B and C to Part 73, through a final rule ("Power Reactor Security Requirements") published in the *Federal Register* on March 27, 2009 (74 FR 13925).

These requirements were preceded by NRC Order EA-02-261, "Order for Compensatory Measures Related to Access Authorization [January 7, 2003]." This order established, among other things, the requirement to verify the true identity of a foreign national seeking UA or UAA. Specifically, Section B.1.3.c of the attachment to NRC Order EA-02-261 contained a requirement that: "Licensees should confirm eligibility for employment through INS [Immigration and Naturalization Service] and thereby verify and ensure, to the extent possible, the accuracy of a social security number or alien registration number."

The NRC rescinded NRC Order EA-02-261 by letter dated November 28, 2011 (ML112840300). The rescission letter stated that the power reactor security rulemaking (10 CFR 73.56) incorporated all requirements set forth in the power reactor security order EA-02-261, "Order for Compensatory Measures Related to Access Authorization," dated January 7, 2003. Thus, the rescission of NRC Order EA-02-261 did not remove or modify the requirement to verify a foreign national's eligibility of employment.

Industry guidance from the Nuclear Energy Institute (NEI) in NEI-03-01, "Nuclear Power Plant Access Authorization Program" Revision 3, Supplement 1 dated May 2009, as endorsed by NRC², states the following:

B.1.3.c "...Licensees should confirm eligibility for employment through U.S. Citizenship and Immigration Service (CIS) and thereby verify and ensure to the extent possible, the accuracy of a social security number [sic] alien registration number..."

On November 3, 2017, NEI issued Personnel Access Data System (PADS) System Administrator Bulletin 2017-09 (Verification of Non-immigration Status). This bulletin reminded NRC licensees that for foreign workers they should verify the claimed non-immigration status that the individual has provided is correct as a part of the background investigation. However, in part, it contained ambiguous language inconsistent with the Commission's requirement to validate the authenticity of the information provided by the individual.

Since the inception of the non-immigration verification performance requirement, two methodologies have been in place to satisfy the performance requirement; (1) The use of the Department of Homeland Security US Citizenship and Immigration Services (DHS-USCIS) Systematic Alien Verification for Entitlements (SAVE) program, and (2) The licensee's [visual] inspection of passport and visa information identifying the status of the individual upon arrival at the licensee facility.

This NEI bulletin was not endorsed by the NRC.

A visual verification of documents provided by a foreign national would not enable the licensee to verify employment eligibility. Relying solely on visual verification of documents does not meet the regulatory requirement in 10 CFR 73.56(d)(3) and would weaken the safety and security provided by the requirement to validate the foreign national's claimed non-immigration status as part of establishing the foreign national's true identity.

² The NRC endorsed NEI-03-01 in Regulatory Guide 5.66, "Access Authorization Program for Nuclear Power Plants," Revision 2.

CONCLUSION

Licensees must have an access authorization program that provides high assurance³ that individuals granted UA or certified UAA are trustworthy and reliable. Licensees may use any method that reliably verifies that a foreign national is eligible for employment at a nuclear power plant in the U.S. If, consistent with 10 CFR 73.56(a)(4), a licensee accepts a contractor or vendor's access authorization program to satisfy appropriate elements of the licensee's access authorization program, the licensee must ensure that the contractor or vendor reliably and effectively verifies a foreign national's employment eligibility as part of validating that the foreign national's claimed non-immigration status is correct. The licensee remains at all times responsible for certifying and granting, maintaining, denying, terminating, or withdrawing an individual's UA. This RIS reminds licensees of that requirement.

BACKFITTING AND ISSUE FINALITY DISCUSSION

This RIS does not require any action or written response on the part of any licensee or applicant. Accordingly, issuance of this RIS does not represent backfitting as defined in 10 CFR 50.109(a)(1) and is not inconsistent with any applicable issue finality provision in 10 CFR Part 52. Therefore, the NRC did not prepare a backfit analysis for this RIS, or further address the issue finality criteria in Part 52.

FEDERAL REGISTER NOTIFICATION

The NRC published a notice of opportunity for public comment on this RIS in the *Federal Register* (85 FR 1770) on March 31, 2021. The agency received comments from 15 commenters. The evaluation of these comments and the resulting changes to the RIS are discussed in a publicly available memorandum which is in ADAMS under Accession No. ML22147A097.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0002.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

³ In Staff Requirements Memorandum (SRM) SRM-SECY-16-0073, Options and Recommendations for the Force-on-Force Inspection Program in Response to SRM-SECY-14-0088, the Commission stated that "the concept of 'high assurance' of adequate protection found in our security regulations is equivalent to 'reasonable assurance' when it comes to determining what level of regulation is appropriate" (ADAMS Accession No. ML16279A345).

CONTACT

This RIS requires no specific action or written response. If you have any questions about this RIS, please contact the technical staff listed below or the appropriate NRC regional office.

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Note: NRC generic communications may be found on the NRC public Web site, <https://www.nrc.gov>, under NRC Library/Document Collections.

SUBJECT: DRAFT NRC REGULATORY ISSUE SUMMARY 2022-02 – PERSONNEL
ACCESS AUTHORIZATION REQUIREMENTS FOR NON- IMMIGRANT FOREIGN
NATIONALS WORKING AT NUCLEAR POWER PLANTS DATED MAY 27, 2022

ADAMS Accession No. ML22157A366**via email***

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