

DRAFT REGULATORY ISSUE SUMMARY ON PERSONNEL ACCESS AUTHORIZATION REQUIREMENTS FOR NON-IMMIGRANT FOREIGN NATIONALS WORKING AT NUCLEAR POWER PLANTS

Office of Nuclear Security and Incident Response
August 9, 2022



Agenda

Time	TOPIC
10:00 a.m. – 10:15 a.m.	Introductions and Opening Remarks
10:15 a.m. – 10:55 a.m.	Background and RIS Purpose (Verification of True Identity)
10:55 a.m. – 11:55 a.m.	Open Discussion with Stakeholders
11:55 a.m. – 12:00 p.m.	Closing Remarks

Introductions and Opening Remarks

Key Messages

- This Regulatory Issue Summary (RIS) reminds licensees that verifying employment eligibility is an important component of the requirement to validate that a foreign national's claimed non-immigration status is correct.
- Licensees are required to take steps to access information in addition to that provided by the individual from other reliable sources to validate the information is authentic.
- Visual inspection of documents alone does not meet the intent of the requirement in 10 CFR 73.56(d)(3) to validate a foreign national's claimed non-immigration status.

Verification of True Identity

10 CFR 73.56(d)(3)

“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.”

Background



Initial draft RIS

- **March 31, 2020** – NRC published in Federal Register ([85 FR17770](#))
- **April 28, 2020** – NRC held public meeting seeking public participation and comment
- **June 15, 2020** – Public comment period closed (15 comments)

Second draft RIS

- **June 13, 2022** – NRC published in Federal Register ([87 FR35798](#))
- **August 12, 2022** – Public comment period closes

Early Operating Experience and Commission Actions

- **2002** – A foreign national used a fraudulent SSN and alien registration card to gain unescorted access to the protected area of a nuclear power plant
- **August 27, 2002** – NRC issues RIS 2002-13, “Confirmation of Employment Eligibility” (ML021720225, non-public)
- **December 17, 2002** – Commission approved Order EA-02-261 imposing access authorization enhancements (including employment verification); Issued **January 7, 2003** ([ML030060360](#))
- **September 26, 2007** – NRC entered into an MOU with USCIS SAVE to facilitate licensee validation that the non-immigrant status a foreign national has provided is correct (ML072490209, non-public)

Early Operating Experience and Commission Actions (continued)

- **March 27, 2009** – Power Reactor Security Requirements Final Rule ([74 FR 13926](#))
- **November 28, 2011** – Order EA-02-261 rescinded because all of the requirements for access authorization in Order EA-02-261, to include employment eligibility, had been incorporated into the regulatory requirements codified in the 2009 Power Reactor Security Requirements Final Rule

Validation of Claimed Non-Immigration Status

- In the Statements of Consideration for the Power Reactor Security Proposed Rule the Commission made clear what it meant when using the term “validate:”

“that licensees, applicants and C/Vs [contractors/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.**” [October 26, 2006 - 71 FR 62747]
- Validation could be achieved through a variety of means, including accessing information from Federal Government databases

Significance of Validation

- The visual inspection of documents provided by a foreign national alone does not meet the intent of the requirement in 10 CFR 73.56(d)(3) because visual examination alone may not detect fraudulent documents
- The use of visual examination of a passport or visa along with other methodologies such as the use of a Federal database (e.g., SAVE or E-Verify) would reasonably be expected to enable a licensee to verify employment eligibility and thereby validate that a foreign national's claimed non-immigration status is correct

Current Operating Experience and Enforcement Status

- Since codification of the requirement in March 2009 – three instances have been identified in the 2017-2018 timeframe; no other adverse trends or inspection violations were noted
- 2017 – U.S. Department of Homeland Security (DHS) / NRC Office of Investigations (OI)
 - Assessed the security significance and determined that there is no immediate concern
 - OI Director Comments
- Based on those events, Enforcement Guidance Memorandum 20-001, Rev.2 in place and expires in June 2023

Summary

The RIS reminds licensees of the requirement that verifying employment eligibility is an important component in validating that a foreign national's claimed non-immigration status is correct

- 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.
- Licensees are required to take steps to access information from other reliable sources in addition to that provided by the individual to **validate** the information is **authentic**
- **Only the licensee can grant access authorization.** A licensee can rely on a contractor or vendor to satisfy appropriate elements of its access authorization program, but the licensee remains responsible for the accuracy of the information it relies upon when making an access authorization determination

Discussion/Questions/Comments

Public Comment Submission

The 60-day public comment period on the draft RIS published on June 13, 2022, in the Federal Register ([87 FR 35798](#)) closes on **August 12, 2022**

The NRC encourages electronic comment submission by:

- Going to the Federal rulemaking website (<https://www.regulations.gov>)
and
- Searching for Docket ID: NRC–2022–0119

Closing Remarks