

**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

January 12, 2023

11:00am – 12:30pm



Agenda



Time

Topic

11:00 AM - 11:15 AM
11:15 AM - 11:45 AM
11:45 AM - 12:25 PM
12:25 PM - 12:30 PM

Introduction and Opening Remarks
Regulatory and Technical Issues
Open Discussion with Stakeholders
Closing Remarks

Introductions and Opening Remarks

Background



First 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

Second draft RIS

- **June 13, 2022:** NRC published in Federal Register ([87 FR35798](#))
- **August 9, 2022:** NRC held public meeting seeking public participation and comment
- **August 12, 2022:** Public comment period closed

Third draft RIS

- **December 20, 2022** – NRC published in ADAMS [[ML22354A108](#)]

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.
- Use of UCIS SAVE database is one acceptable method to meet the regulatory requirements.

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.”

Contractor or Vendor Requirement

10 CFR 73.56(a)(4)



“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.”

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

Claimed Non-Immigration Status



- As part of this obligation, licensees must validate that the claimed non-immigration status is correct.
- The claimed non-immigration status refers specifically to the purpose for which the foreign national was granted access into the U.S. and this purpose is denoted on the Visa as the visa category.
- The visa category or also known as class of admission (COA) determines employment eligibility.

Significance of Validation

- Relying solely on visual inspection of documents provided by a foreign national does not meet the intent of the requirement in 10 CFR 73.56(d)(3) to verify that the visa category on those documents matches the visa category initially provided by an applicant UA or UAA because it does not allow the licensee to verify that the visa category authorizes the type of work for which access is being granted.
 - The licensee or C/V are not taking the necessary steps and verifying that the visa category authorizes the foreign national to perform the type of work for which UA or UAA is being granted.
- 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 for employers, e.g. contractor) would reasonably be expected to enable a licensee to verify a foreign national's employment eligibility.

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)

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 access authorization requirements in Order EA-02-261, including employment eligibility, had been incorporated into the regulatory requirements codified in the 2009 Power Reactor Security Requirements Final Rule

Public Comments

To summarize the public comments received from 2022 RIS. The staff binned the main themes:

1. Some commenters stated the RIS proposes a new interpretation of 10 CFR 73.56(d)(3) substantially expanding the existing requirement to verify the true identity of non-immigrant foreign nationals that apply for unescorted access and, if imposed on licensees, would constitute a backfit.
2. Some commenters stated draft RIS inappropriately interprets the Commission's regulations and reflects a misunderstanding of the capabilities of the SAVE program.
3. Some commenters stated draft RIS confuses rather than clarifies the requirement to verify the true identity of foreign nationals contained in 10 CFR 73.56(d)(3).
4. One commentor stated the draft RIS introduces regulatory instability, but it does so in a quest for “high assurance.”

December 2022 Draft RIS Revisions

Staff revised the RIS based on public comments received to provide clarity on the use of SAVE to determine ‘employment eligibility’ and the interpretation of visa categories.

- An example of an acceptable approach for meeting 10 CFR 73.56(d)(3) was added utilizing the SAVE database and visual verification to validate the claimed non-immigration status that the individual has provided is correct.
- Two new enclosures were added to provide step-by-step guidance for licensees to obtain, verify, and interpret visa category information.

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 to perform the type of work for which UA or UAA is being sought.
- 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 **correct.**

Discussion/Questions/Comments

Closing Remarks