

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

Month XX, 2020

NRC REGULATORY ISSUE SUMMARY 2020-XX
**CLARIFICATION OF 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 United States Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to reinforce the existing requirement 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 satisfy the requirements in 10 CFR 73.56(d)(3), "Verification of true identity." The regulation in 10 CFR 73.56(d)(3) requires that "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 that the claimed non-immigration status that the individual has provided is correct." Although foreign nationals may not have a social security number, licensees should verify the true identity of the individual through the process endorsed in Regulatory Guide 5.66, "Access Authorization Program for Nuclear Power Plants," Revision 2, dated October 2011, and NEI-03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, dated May 2009. Specifically, Section 7.3.a.2 in NEI-03-01, Rev.3, states that licensees are responsible for "validating, through cross-referencing of BI [Background Information]-developed information e.g., fingerprint results or other means that the social security number that the individual has provided is his or hers," if foreign nationals have a social security number. Supplement 1 to NEI 03-01, Revision 3, further states at B.1.3.c, "...Licensees should confirm eligibility for employment through U.S.Citizenship and Immigration Service (CIS) [USCIS] and thereby verify and ensure to the extent possible, the accuracy of a social security number of [or] alien registration number...."

To comply with NRC's Personnel Access Authorization requirements for power plants under 10 CFR 73.56, licensees must take reasonable steps to access reliable, independent sources of information, in addition to the information provided by the applicant, to verify the applicant's claimed non-immigration status. By accessing the Systematic Alien Verification for Entitlements (SAVE) database and through other reliable sources of information discussed herein, the claimed non-immigrant status can be determined. As described in NEI 03-01, Revision 3, licensee use of the SAVE Program can be used for the purpose of verifying the non-immigration

status of foreign nationals being granted UA or certifying their UAA. Access to the SAVE database provides licensees the ability to determine whether a foreign national is eligible to work in the United States, to verify whether the alien registration number is his/hers, and to determine whether the visa category is correct to perform the work for which UA is being granted or UAA is certified. Additionally, use of the SAVE database can be initiated for non-United States citizens prior to their arrival at the site for efficiency of in-processing of workers when needed.

10 CFR 73.56(d)(3) supports the general performance objective of 10 CFR 73.56(c), "General performance objective," which states, in part, that the licensee's or applicant's access authorization program must provide 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.

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

On October 19, 2017, the United States Department of Homeland Security (DHS), Homeland Security Investigations (HSI) requested that the NRC's Office of Investigations (OI) determine whether licensee employees violated NRC regulations and plant procedures by granting a foreign national and potentially other foreign nationals UA and/or UAA to a nuclear plant, and as part of this process knowingly created incomplete and inaccurate records material to the NRC. This violation was substantiated and established that both a licensee employee and a foreign national had deliberately submitted inaccurate information in the licensee submitting incomplete and inaccurate UAA records material to the NRC.

On November 3, 2017, the Nuclear Energy Institute (NEI) issued System Administrator Bulletin 2017-09 (Verification of Non-immigration Status) to NEI Personnel Access Data System (PADS) Points of Contact. The purpose of the bulletin was to provide a reminder to licensee facilities that the verification of a foreign worker's non-immigration status is an integral part of the industry background investigation program as described in NEI 03-01, Revision 3 and its Supplement 1. The bulletin re-stated the regulatory requirement that licensees should verify that the claimed non-immigration status provided by a foreign national is correct as a part of the background investigation required by 10 CFR 73.56. NEI-03-01, Rev. 3, Supplement 1, further states in Section B.1.3.c that licensees "should confirm eligibility for employment through U.S. Citizenship and Immigration Service (CIS) [USCIS] and thereby verify and ensure to the extent possible, the accuracy of a social security number of [or] alien registration number...." Additionally, "Use of 'CIS [USCIS] Save' is a verification of employment eligibility that can be initiated for non-U.S. citizens prior to their arrival at the site."

As an outcome of the initial investigation, the NRC conducted a 5-year retrospective review of foreign nationals granted UA and UAA at NRC-licensed nuclear power plants. The purpose of this review was to determine whether other instances occurred where foreign nationals were granted UA or UAA using visa categories that did not permit them to perform the type of work in the United States for which they were granted UA or UAA. In the course of the NRC's review, two other instances were investigated where foreign nationals had been granted UA contrary to the requirements of 10 CFR 73.56(d)(3). In one instance, a foreign national contract employee deliberately provided inaccurate information on his personnel history questionnaire to gain UA to work in the plant without the proper visa category. At another plant, a foreign national

possessing a visa category not authorizing the foreign national to work in the United States deliberately failed to provide complete and accurate information to the licensee in order to gain UA at that nuclear plant.

SUMMARY OF ISSUE

The NRC, in collaboration with DHS, has identified several instances where a licensee has failed to appropriately verify, in the case of foreign nationals seeking UA and/or UAA, that the claimed non-immigration status that the individual has provided is correct. Consequently, foreign nationals have been granted UA and UAA at United States nuclear power plants for the purpose of work using visa categories that do not permit foreign nationals to work in the United States.

NRC regulations at 10 CFR 73.56(a)(1) require that each licensee of a nuclear power plant licensed under 10 CFR Part 50 implement the requirements of this section through revisions to its Commission-approved Physical Security Plan. The NRC's regulations at 10 CFR 73.56(a)(2) require that each applicant for an operating license under Part 50 or each holder of a combined license under part 52 implement the requirements of this section through revisions to its Commission-approved Physical Security Plan.

Further, 10 CFR 73.56(a)(4) states that, "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." Moreover, contractors can provide the verification for their employees but the licensee is ultimately responsible for verifying the true identity and validating the non-immigrant foreign national's eligibility to work with the correct visa category when granting UA or certifying UAA.

Under 10 CFR 73.56(d)(3), verifying the employment eligibility of foreign nationals seeking unescorted access to nuclear power plants in the United States is consistent with the intent of the Commission's direction to verify that the claimed non-immigration status of applicants seeking UA or UAA is correct. The non-immigration status of an applicant requesting UA and/or UAA directly impacts the types of activities that an applicant is legally permitted to perform while in the United States. In May 2009, the NEI issued NEI 03-01, Revision 3, Supplement 1, which recommends that licensees use the USCIS SAVE program to confirm the eligibility of foreign nationals for employment in the United States.

As previously stated, this RIS reinforces NRC's expectations with regard to verifying that non-immigrant foreign nationals being granted or reinstated with UA or UAA have the correct visa category to perform the type of work at a nuclear power plant for which the access is granted. The issue and expiration dates shown on the visa determine its validity, and it can only be used within those dates for the sole purpose for which it was issued. For example, a B-2 visa issued for tourism in the United States cannot also be used for employment purposes in the United States.

A listing of visa categories and the attendant purposes for the visa can be accessed at the following DHS and United States Department of State URLs:

<https://www.dhs.gov/immigration-statistics/nonimmigrant/NonimmigrantCOA>

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>

As codified in DHS immigration regulations (8 CFR § 274a.2, “Verification of identity and employment authorization”), employers must check to make sure all employees, regardless of citizenship or national origin, are allowed to work in the United States. Having an Employment Authorization Document (EAD) is one way to prove that an individual is allowed to work in the United States for a specific time period. With some exceptions cited below, the non-immigrant should have a current USCIS form I-766 (EAD) that is issued by the USCIS, and have it in their possession to work in the United States. Below is an example of an EAD:



Some exceptions for a non-immigrant foreign national needing a work authorization document (Form I-766 sample above) in order to work in the United States include, but may not be limited to, the following visa categories :

- TN -The North American Free Trade Agreement (NAFTA) that has been superceded by the United States-Mexico-Canada Agreement created special economic and trade relationships for the United States, Canada and Mexico. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.
- H-1B - Specialty Occupations, Department Of Defense Cooperative Research and Development Project Workers, and Fashion Models.
- L-1B - Intracompany Transferee Specialized Knowledge (requires United States Department of Labor approval process)

Within the SAVE database there is a Resources tab that when accessed provides the user with Guidance and Manuals in which the user can access Class of Admission tables and EAD Codes to determine what the visa category is and whether its attendant purpose authorizes the work for which the foreign national is requesting UA and or UAA. Together, the resources referenced above in this discussion provide the means by which licensees can verify that the claimed non-immigration status of a foreign national is correct.

To reiterate, although a non-immigrant foreign national may be employed by a licensee contractor and/or vendor, the licensee granting UA or certifying UAA is responsible for ensuring the non-immigrant foreign national is authorized with the correct visa category to perform the specific work in the United States for which UA or UAA is granted.

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* (XXXXX) on Month XX, 2020. The agency received comments from X commenters. The staff considered all comments, which resulted in XXXX to the RIS. 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. MLXXXXXXXXXX.

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.

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, <http://www.nrc.gov>, under NRC Library/Document Collections.

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PERSONNEL ACCESS AUTHORIZATION REQUIREMENTS FOR NON-IMMIGRANT
FOREIGN NATIONALS WORKING AT NUCLEAR POWER PLANTS
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