Docket ID: NRC-2020-0073-Draft Regulatory Information Summary (RIS) - Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants

Comment No. 1
Source: Anonymous
Posted to Regulations.gov website April 14, 2020

"The U.S Nuclear Regulatory Commission (NRC), in collaboration with the Department of Homeland Security (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 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 NRC and DHS cannot allow this! Foreign nationals do not necessarily care about the health and safety of the U.S. Such foreign nationals are highly susceptible to being enticed to imperil the U.S. nuclear industry for monetary or political gain. aka, espionage. These "licensees" should lose their status, be fined and imprisoned for so callously jeopardizing the safety of the U.S.' nuclear industry, its citizenry and its mere existence."

NRC Response to Comment No. 1

The NRC agrees that there were several cases where a licensee did not verify the correct immigration status of foreign nationals seeking unescorted access (UA) or unescorted access authorization (UAA) at a nuclear facility. NRC staff from the Office of Nuclear Security and Incident Response and the Office of Investigation coordinated with the DHS to investigate these incidents and take appropriate action. The NRC's review and oversight of this matter is continuing.

The NRC has the authority to impose penalties, including civil monetary penalties, on licensees for violations of NRC regulatory requirements. The NRC does not have the authority to imprison licensees for violations of the NRC's regulatory requirements. Investigating acts of espionage conducted against NRC-licensed nuclear facilities is the responsibility of other federal agencies. Should the NRC discover incidents that raise suspicion of espionage, it will coordinate with these other agencies as appropriate.

The NRC has made no changes to the Regulatory Information Summary (RIS) based on this comment.

Comment No. 2
Source: Susan Perkins, Nuclear Energy Institute (NEI)
Posted to Regulations.gov website April 14, 2020

"In a *Federal Register* Notice dated March 31, 2020, the U.S. Nuclear Regulatory Commission requested that stakeholder comments be submitted by April 30, 2020. The Nuclear Energy Institute (NEI) requests an extension of the comment period by 90 days to Monday, June 29, 2020. We believe this extension is necessary to permit adequate stakeholder engagement on

this important topic, since key industry stakeholders will remain focused on the response to the COVID-19 pandemic."

NRC Response to Comment No. 2

After careful review of NEI's request to extend the comment period by 90 days, the NRC extended the comment period by 45 days, from April 30, 2020, to June 15, 2020. The NRC determined that an additional 45 days would provide sufficient time for comments and facilitate the issuance of the final RIS.

The NRC has made no changes to the RIS based on this comment.

Comment No. 3
Source: William L. Parks, Florida Power & Light Company
Posted to Regulations.gov website June 26, 2020

"…on behalf of itself and of its affiliates, NextEra Energy Seabrook, LLC, NextEra Energy Duane Arnold, LLC, and NextEra Energy Point Beach, LLC (collectively, "NextEra"). The NRC published the Draft RIS for comment in the *Federal Register* on March 31, 2020 (85 Fed. Reg. 17770). The NRC's notice requests public comments by April 30, 2022. Verifying the true identity of individuals seeking access to nuclear plants is important to NextEra. However, this spring, the NextEra Access Authorization/Fitness for Duty staff has been focused on supporting multiple refueling outages across the NextEra fleet during the challenging Covid-19 pandemic and will not be able to supply substantive comments by April 30. Therefore, NextEra requests an extension of the time to comment to May 29, 2020."

NRC Response to Comment No. 3

As noted in the NRC's response to comment 2 above, the NRC extended the comment period from April 30, 2020, to June 15, 2020.

The NRC has made no changes to the RIS based on this comment.

Comment No. 4
Source: Anonymous
Posted to Regulations.gov website April 23, 2020

"The NRC and DHS should not allow for foreign nationals, who are not verified, to have any access to the U.S. It clearly states, "licensees shall take responsible 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 statues." If the 'licensees' do not take these proper steps, it allows for non-verified workers, who are foreign nationalist and not claiming to be immigrants, that do not claim immigration statues to be in the U.S. and work. They are allowing for these non-verified foreign nationalists to use visas to work at the nuclear plants that are not even meant for (1) foreign nationalist the right to work, and (2) they are using the system illegally. DHS and the NRC need to realize this can cause for some people to enter into the country and handle some of the most reactive materials in the world while being unchecked. If they are not verified than they should not be allowed to work in the U.S."

NRC Response to Comment No. 4

The NRC agrees with the commenter that only properly vetted foreign nationals who have been determined to be trustworthy and reliable should be granted UA or UAA to work at NRC-licensed facilities. The NRC has regulatory requirements set forth in 10 CFR Part 73 that govern how licensees determine who is granted UA or UAA. Consistent with these requirements, licensees must conduct a background check on individuals seeking UA or UAA, including verifying that a foreign national's claimed non-immigration status is correct. This background check includes an F.B.I. criminal history check, credit history check, review of employment history, a drug and alcohol test, a psychological test, and other checks. The purpose of the background check is to ensure that an individual granted UA or UAA to an NRC-licensed nuclear facility is trustworthy and reliable and does not pose a risk to the public health and safety or the common defense and security. Specifically with respect to foreign nationals, consistent with 10 CFR 73.56(d)(3) a licensee must validate that the foreign national's claimed non-immigration status is correct. As part of this validation process, the licensee must verify that the foreign national is eligible to work in the U.S. Licensee compliance with NRC regulatory requirements is subject to inspection by the NRC. Failure to comply with these requirements may subject a licensee to various penalties.

The NRC has made no changes to the RIS based on this comment.

Comment No. 5
Source: Mollie Bowman
Posted to Regulations.gov website April 23, 2020

"Licensees should always take reasonable steps to access reliable information about the applicant. However, using independent sources of information might not be the best way to go about obtaining this information because there can be an abuse of power, and also the possibility of accessing information that is confidential and not supposed to be shared. I don't see why only using the applicant's information she/he provided, and using a secured governmental source for verification, is not enough. I don't believe that licensees should be allowed to use independent sources of information."

NRC Response to Comment No. 5

The NRC agrees with the commenter that licensees should always take reasonable steps to access reliable information about individuals seeking UA or UAA at licensee facilities. The NRC disagrees with the commenter's suggestion that licensees should not be allowed to use independent sources of information and should only use a secured governmental source of information to meet the requirements in 10 CFR 73.56. Licensees must utilize reliable nongovernmental sources of information as part of the process of determining the trustworthiness and reliability of individuals seeking UA or UAA. For example, licensees must use credit reports, which are developed and maintained by private entities, as one component in determining an individual's trustworthiness and reliability.

The commenter is concerned that using independent sources of information could result in an abuse of power or the accessing of information that is confidential and not supposed to be shared. The NRC notes that 10 CFR 73.56 (d)(1) "Informed consent", requires licensees to get the informed and signed consent of the individual before initiating any element of the background investigation required to inform the licensee's determination to grant UA or UAA. This consent includes the authorization to share the individual's personal information with appropriate entities

as well as the individual's right to review and correct all information collected to assure its accuracy. Additionally, NRC regulatory requirements in 10 CFR 73.56 (m), "Protection of information," and 10 CFR 73.56 (o), "Records," impose requirements on licensees to protect an individual's personal information from disclosure to unauthorized persons. The NRC is confident that these requirements effectively reduce the potential for abuse of power or the unauthorized disclosure of confidential information. The NRC further expects that entities that have information on an individual seeking UA or UAA at an NRC-licensed facility will only share that information in accordance with appropriate federal, state, and local laws governing the use and protection of such information. Therefore, the NRC has determined that licensees may use any independent relevant information, whether a government source or not, to verify an individual's true identity.

The NRC has made no changes to the RIS based on this comment.

Comment No. 6
Source: John Captain
Posted to Regulations.gov website, May 7, 2020

"Long before you allow anyone to walk into America unchecked you should allow Native American's the right to a visitor in our own Tribal lands. As of now we cannot have any visitors unless we build an airport and then you will all cry..."

NRC Response No. 6

This comment raises an issue that is outside the scope of the draft RIS. Therefore, the NRC is not taking any further action in response to this comment.

The NRC has made no changes to the RIS based on this comment.

Comments Nos. 7 & 9
Source: John Galvano
Posted to Regulations.gov website, May 13, 2020

"I believe that it is necessary to safeguard nuclear plants and ensure that people who are granted access to them have the proper credentials. However, I worry that this rule issue summary is being used as an excuse to tighten restrictions on granting visas to foreign nationals seeking to work in the U.S. as part of the administrations broader tightening of immigration restrictions. This stricter enforcement may prove to be a burden on the nuclear industry, so the NRC should wait for comment from industry stakeholders before proceeding. Furthermore, the NRC should clarify whether they are requiring licensees to use the USCIS database for visa verification in this rule issue summary. If the NRC determines that licensees are required to use USCIS channels for verification, then the NRC is likely proposing a new rule rather than reinforcing existing requirements as they claim. The NRC should provide further clarification on the issue if they are proposing new requirements so stakeholders in the nuclear industry can better assess the proposed changes and have more time to either prepare for the required changes, comment on the rule, or challenge the rule."

NRC Response to Comment Nos. 7 & 9

The NRC does not agree with the commenter's assertion that the NRC is using the draft RIS to tighten restrictions on granting visas to foreign nationals. The draft RIS reminds nuclear power plant licensees that they must verify the employment eligibility of certain foreign nationals. The NRC does not have the authority to issue or deny visas or place new restrictions on the issuance or denial of visas. That authority is vested in other agencies within the Federal government.

The NRC disagrees with the commenter's assertion that the draft RIS establishes a new requirement. With respect to foreign nationals, it reminds nuclear power plant licensees of the long-standing NRC requirement now codified in 10 CFR 73.56(d)(3) that licensees, applicants, and contractors or vendors shall validate that the foreign national's claimed non-immigration status is correct. The draft RIS also reminds licensees that part of the process of validating a foreign national's non-immigration status is confirming the foreign national's eligibility for employment in the U.S..

The NRC disagrees with the commenter's assertion that the draft RIS mandates that licensees use the U.S. Citizenship and Immigration Services (CIS) Systematic Alien Verification of Entitlements System (SAVE) database to verify a foreign national's employment eligibility. As stated in the draft RIS, the SAVE program is one method that licensees may use to confirm a foreign national's eligibility to work in the U.S. Licensees may use other independent and reliable sources of information that will allow them to verify a foreign nationals employment eligibility. Consequently, the RIS is not establishing a new requirement and therefore no rulemaking is necessary.

The NRC has made no changes to the RIS based on this comment.

Comment No. 8
Source: Anonymous
Posted to Regulations.gov website, May 13, 2020

"Foreign Nationals should not be working in U.S. nuclear sites and certainly not unescorted. Any who work at a nuclear site should be accompanied and have high security clearance. It is often easy to scrutinize Americans, but those born and raised abroad - U.S. citizens or not - arrive as a blank slate, and sometimes change their names. Thus, you, the NRC, need to work with Interpol and U.S. Intelligence services to evaluate anyone born and raised outside of the U.S. - U.S. Citizen or not - before they enter a U.S. nuclear facility - whether dealing with operating reactors or nuclear waste. I hope that this is already the case, but fear that it is not. Those who already have unescorted access should be double checked, and not grandfathered in. It should be the responsibility of the U.S. NRC and the DHS to vet those working at U.S. nuclear facilities.

I agree with this comment that says: "The NRC, in collaboration with the Department of Homeland Security, 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 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 NRC and DHS cannot allow this!

Foreign nationals do not necessarily care about the health and safety of the U.S. Such foreign nationals are highly susceptible to being enticed to imperil the U.S. nuclear industry for monetary or political gain. aka, espionage. These "licensees" should lose their status, be fined and imprisoned for so callously jeopardizing the safety of the U.S. nuclear industry, its citizenry and its mere existence." https://www.regulations.gov/document?D=NRC-2020-0073-0003.

I didn't think that there was anything left to shock me about the U.S. nuclear industry. However, the fact that illegal workers were allowed unescorted access to U.S. nuclear power stations still tends to shock me. I am happily surprised that you are even bothering to address the matter. But please address it thoroughly with the help not only of the SAVE database but also of Interpol and U.S. intelligence services and DHS."

NRC Response No. 8

The NRC does not agree with the commenters suggestion that all foreign nationals should be prohibited from working at NRC-licensed nuclear facilities. Some foreign nationals possess unique skills that are needed to facilitate the continued and safe operation of nuclear facilities in the U.S. The NRC has established access authorization requirements to determine if foreign nationals seeking UA or UAA at nuclear facilities are trustworthy and reliable and do not pose an unreasonable risk to public health and safety or the common defense and security. These requirements include a background check composed of an F.B.I. criminal history check, credit history check, review of employment history, a drug and alcohol test, a psychological test, and other checks. The NRC' s access authorization requirements are complemented and supported by other NRC regulatory requirements, including, for example, a behavioral observation program and fitness-for-duty program that are applicable to all individuals who are granted UA or UAA at nuclear power plants. The NRC also does not agree that foreign nationals granted UA or UAA at NRC-licensed nuclear facilities should be required to have a security clearance and always be escorted while onsite. The NRC's access authorization requirements are designed to ensure that persons granted UA or UAA and NRC-licensed nuclear power plants are trustworthy and reliable and do not pose an unreasonable risk to public health and safety or the common defense and security. The NRC has a robust inspection program to help ensure that licensees comply with these access authorization requirements.

The commenter suggests that licensees that fail to comply with the NRC's access authorization requirements should "lose their status," be fined and be imprisoned. The NRC interprets the phrase "lose their status" to mean that these licensees should have their license revoked. The Commission has the authority under Section 186 of the Atomic Energy Act of 1954, as amended, to revoke a license. The Commission also has the authority under Section 234 of the Atomic Energy Act of 1954, as amended, to impose civil monetary penalties for, among other reasons, any violation of an NRC regulation. The NRC has established processes for determining the severity of a violation of NRC regulations and the nature of the penalty that should be imposed as a result of the infraction. The NRC does not have the authority to imprison licensees for violations of the NRC's regulatory requirements. Investigating acts of espionage conducted against NRC-licensed nuclear facilities is the primary responsibility of other federal agencies. Should the NRC discover incidents that raise suspicion of espionage, it will coordinate with these other agencies as appropriate.

The NRC has made no changes to the RIS based on this comment.

Comment No. 10
Source: William Gross
Posted to Regulations.gov website, June 26, 2020

"On behalf of its members, the Nuclear Energy Institute (NEI)[1] appreciates the opportunity to review and comment on the Draft Regulatory Issue Summary (RIS) related to personnel access authorization requirements for non-immigrant foreign nationals working at U.S. nuclear power plants. The draft RIS was published for comment in the Federal Register on March 31, 2020.[2] We also appreciated the opportunity to participate in the public meeting held on April 28, 2020. After carefully reviewing the draft RIS, we do not believe that the NRC should finalize the document.

As written, the draft RIS would substantially expand the existing requirement to verify the true identity of non-immigrant foreign nationals that apply for unescorted access[3] to include a detailed validation of the employment eligibility of such individuals. Specifically, the draft RIS states: 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 nonimmigrant foreign national is authorized with the correct visa category to perform the specific work in the U.S. for which UA or UAA is granted.[4]

Both the draft RIS and the associated Enforcement Guidance Memorandum[5] argue that the language in 10 CFR 73.56(d)(3) supports such an expanded interpretation. We disagree.

Industry is committed to complying with the requirements of 10 CFR 73.56, "Personnel access authorization requirements for nuclear power plants," which are designed to provide high assurance that individuals subject to access authorization programs are trustworthy and reliable, and do not pose an unreasonable risk to public health and safety or the common defense and security.[6]

This general objective is achieved through licensee implementation of security plans and compliance with the substantive requirements of Section 73.56, which include background investigations, psychological assessments, behavioral observations, and self-reporting of legal actions.[6] In addition to the provisions listed above, Section 73.56 includes specific requirements covering granting unescorted access,[7] maintaining unescorted access, access to vital areas, trustworthiness and reliability of background screeners and access authorization personnel,

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[1] The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the U.S., nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

[2] "Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants," 85 Fed. Reg. 17,770 (March 31, 2020).

[3] For purposes of this letter, the term "unescorted access" includes certification of "unescorted access authorization."

[4] Draft RIS, at pg. 4.

[5] "Enforcement Guidance Memorandum (EGM) 2020-001, Enforcement Discretion not to Cite Certain Violations of 10 CFR 73.56 Requirements," Feb. 13, 2020 (EGM-20-001). [6] 10 CFR 73.56(c).

[6] 10 CFR 73.56 (d)(1)-(7), (e), (f), and (g).

[7] For purposes of this letter, the term "unescorted access" includes certification of "unescorted access authorization." [9] See 10 CFR 73.56(h)-(o).

review procedures, protection of information, audits and corrective action, and records management.[9]

Section 73.56(d)(3) fits into this larger regulatory framework as one element of the requirement to conduct background investigations on applicants for unescorted access. Read in context, Section 73.56(d)(3) and the associated guidance are clearly focused on ensuring "that the applicant is the person that he or she has claimed to be,"[8] not on performing an exhaustive investigation into the applicant's employment eligibility to ensure "the non-immigrant foreign national is authorized with the correct visa category to perform the specific work in the U.S. for which UA or UAA is granted."[910] In order to achieve verification of true identity, the regulations require that, at a minimum, the entity responsible for making an access authorization decision must "validate the claimed non-immigration status that the individual has provided is correct."[12] This provision of the regulations does not require the type of detailed validation of employment eligibility described in the draft RIS. Further, it is our understanding that power reactor licensees do not generally conduct the type of detailed employment eligibility investigation described in the draft RIS as part of their access authorization programs.[11] This includes licensees that are using the Systematic Alien Verification for Entitlements (SAVE) database to verify an applicant's true identity.

The draft RIS seems to point to Supplement 1 of Revision 3 to NEI 03-01, "Nuclear Power Plant Access Authorization Program" as support for the new and expansive interpretation of Section 73.56(d)(3) put forward in the draft RIS. But Supplement 1 does not support this interpretation. First, the language quoted in the draft RIS and attributed to section B.1.c.3 of Supplement 1 appears to simply be quoting section B.1.c.3 of EA-02-261, "Order for Compensatory Measures Related to Access Authorization," issued by the NRC on January 7, 2003. We note that EA-02-261 was rescinded in full on November 28, 2011 and replaced by the requirements in Section 73.56.[12]

Also, although the language quoted in Supplement 1 does suggest (using permissive as opposed to mandatory language) that licensees "should confirm eligibility for employment through the U.S. Citizenship and Immigration Services (CIS),"[13] it is clear that the purpose of such confirmation was "to verify and ensure to the extent possible, the accuracy of a social

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[8] 10 CFR 73.56(d)(3).

[9] Draft RIS, at pg. 4.

[10] CFR 73.56(d)(3).

[11] Licensees, like other employers, must comply with the requirements of 8 CFR 274a. The point here is that compliance with those requirements are not accomplished via the access authorization program required by 10 CFR 73.56. This issue is discussed in more detail later in these comments.

[12] Letter from E.J. Leeds (NRC), "Rescission of Partial Rescission of Certain Power Reactor Security Orders Applicable to Nuclear Power Plants," November 28, 2011.

[13] Nuclear Power Plant Access Authorization Program (Supplement 1), Rev. 3, May 2009, at pg. 1 (emphasis added). [16] Id. The full statement from Supplement 1 reads: "…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 [or] alien registration number…" Id. at pg. 1 (emphasis added). Notably, while the requirement to confirm a foreign national's alien registration number was included in the proposed rule promulgating the current iteration of Section 73.56(d)(3), that language was removed from the final rule and replaced with the current requirement to "validate that the claimed non-immigration status that the individual has provided is correct." Thus, the reference to the alien registration number provided in the rescinded EA-02-261 and in Supplement 1 to NEI-03-01 is no longer contained in the regulations.

security number [or] alien registration number."[16] In contrast to the statements in the draft RIS, the purpose of the eligibility confirmations discussed in Supplement 1 was not to fulfill a licensee obligation to ensure that a non-immigrant's immigration status authorizes that individual to perform specific tasks once unescorted access is granted. Rather, when read fairly, the eligibility confirmations referenced in Supplement 1 were intended to verify the accuracy of information provided by the applicant for unescorted access (i.e., a social security number or alien registration number), which is consistent with the purpose of Section 73.56(d)(3) (i.e., to ensure that the applicant for unescorted access is the person that he or she claims to be).

We agree that "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."[14] As articulated in System Administrator Bulletin 2017-09, which is referenced in the draft RIS, two compliance methodologies have been in place "since the inception of the non-immigration verification performance requirement." Those two methodologies are:

1. The use of the Department of Homeland Security U.S. Citizenship and Immigration Services (DHSUSCIS) Systematic Alien Verification for Entitlements (SAVE) program; and
2. The licensee's inspection of passport and visa information identifying the status of the individual upon arrival at the licensee facility.[15]

These two methods continue to be valid, independent means of complying with the requirements of Section 73.56(d)(3). Use of the SAVE database, which is designed to "[allow] federal, state, and local benefit granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship,"[16] is one acceptable method of validating non-immigration status. But, as indicated in System Administrator Bulletin 2017-09, it is not the exclusive method of compliance.

The draft RIS also points to regulations promulgated by the Department of Homeland Security (DHS) that do require detailed checks on employment eligibility to be conducted by the employer that hires a foreign national employee.[17][18] Specifically, Title 8 of the Code of Federal Regulations includes Part 274a, "Control of Employment of Aliens." Subpart A to Part 274a, which is entitled "Employer Requirements," includes section 274a.2, "Verification of identity and employment authorization." In turn, 8 CFR 274a.2(b) imposes requirements on a person or entity that hires an individual to verify that individual's eligibility for employment.

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[14] Draft RIS, at pg. 1.

[15] "System Administrator Bulletin 2017-09 – Verification of Non-Immigrant Status," Nov. 3, 2017. See also, Draft RIS, at pg. 2 (citing and describing System Administrator Bulletin 2017-09).

[16] https://www.uscis.gov/save (last accessed May 28, 2020).

[17] See Draft RIS, at pg. 4 (describing DHS' regulations found at 8 CFR 274a. "Control of Employment of Aliens").

[18] CFR 274a.1(g)("The term employer means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the U.S. for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor[.]")(emphasis added); See also, 8 CFR 274a.1(f)(" The term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section. . . .")(emphasis added).

The terms “hire,” “employment,” “employer,” “employee,” and “independent contractor” are all defined in 8 CFR 274a.1 and the regulation clearly distinguishes “employees” and “employers” from “independent contractors.” Without providing a detailed exposition of these regulations, it seems clear that to the extent licensees are hiring individuals for employment – as those terms are defined in section 274a.1 – the requirements contained in 274a.2 would apply. But licensee programs to comply with these requirements are part of the human resources hiring processes, not the process for verification of true identity under the licensee’s access authorization program. To the extent, however, that the licensee is securing the services of an independent contractor – as that term is defined in section 274a.1 – the requirements contained in Section 274a.2 would apply to the “independent contractor or contractor and not the person or entity using the contract labor.”[21]

The point here is not to diminish the importance of the requirements provided in 8 CFR 274a. They serve an important purpose and employers must comply with them. But they serve a different purpose than the NRC’s identity verification requirements and, depending on the circumstances, may not even apply to the licensee responsible for making the access authorization decision. In our view, the draft RIS inappropriately conflates the requirements in 8 CFR 274a.2 with the access authorization requirements in 10 CFR 76.56(d)(3).

Further, even if the language in Section 73.56(d)(3) could be stretched to accommodate the interpretation provided in the draft RIS, such a reading would clearly constitute “imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position.”[19] This is especially true when the draft RIS is considered in light of EGM-20-001. Specifically, both EGM-20-001 and the draft RIS point to a lack of clarity with respect to appropriate methods of complying with Section 73.56(d)(3).[20] A lack of clarity does not, however, give the agency license to impose new or different interpretations of existing regulations, without first complying with the Commission’s backfitting requirements. EGM-20-001 clearly communicates that the NRC’s efforts to “clarify” this issue will require changes to the processes used to grant unescorted access,[21] and that the NRC intends to enforce such requirements six months after issuance of new “clarifying” guidance.[22] The Commission’s access authorization requirements have existed in their current form for over a decade, and the detailed investigation of employment eligibility described in the draft RIS has simply not been required to meet the requirements of Section 73.56(d)(3) up to this point.

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[19] 10 CFR 50.109(a)(1).

[20] See, e.g., EGM-20-001, at pg. 1 (“[T]he NRC has identified the need to clarify existing regulatory requirements that licensees are required to meet to demonstrate compliance.); Draft RIS, at pg. 1 (entitled “Clarification of Personnel Access Authorization Requirements for Nonimmigrant Foreign Nationals Working at Nuclear Power Plants”).

[21] EGM-20-001, at pg. 3. “Recently, the Office of Enforcement has become aware that NRC Inspection Procedure (IP) 71130.01, “Access Authorization,” lacks the requisite clarity with which inspectors are required to verify that licensees take the necessary steps to obtain sufficient information to determine the true identity of applicants for UA and UAA. A reevaluation of current UA holders is not expected as a result of this issue. <u>However, moving forward a change to the UA and UAA processes</u> <u>should be implemented for subsequent AA evaluations</u>.” Id. (emphasis added).

[22] Id. “In accordance with Section 3.5, Violations Involving Special Circumstances, of the NRC Enforcement Policy, the agency will exercise enforcement discretion and will not cite NRC licensees for past or future violations of 10 CFR 73.56(d)(3) as specifically described in this memorandum for a period of six months from the date of issuance of new regulatory guidance.” (internal quotations omitted).

Instead, it appears that the NRC is proceeding to reinterpret and expand those requirements in response to recent operating experience.[23] But if the NRC believes that operating experience requires the imposition of a new or different interpretation of the existing identity verification requirement, which, in turn, will require changes to the current process used by licensees to grant unescorted access (a proposition with which we disagree), then such changes must be properly evaluated and justified pursuant to the requirements of 10 CFR 50.109 prior to being issued to licensees.

As the NRC's General Counsel has clarified, in situations where "the NRC staff's expectation that licensees voluntarily adopt . . . guidance constitutes the basis (or a part of the bases) for resolution of a safety or regulatory issue . . . the NRC's policy is that compliance with the Backfit Rule's provisions should not await the imposition of guidance, but should be addressed as part of the preparation and issuance of such guidance."[24] The boilerplate backfitting language in the draft RIS ignores the fact that, as stated in EGM20-001, the NRC does expect changes to unescorted access processes "going forward,"[25] and those changes will presumably be based upon the "clarifications" provided in the draft RIS and changes to the relevant inspection guidance.[26] Use of boilerplate language is only meaningful where the language accurately describes the facts at hand. That is not the case here. The lack of meaningful consideration of the backfitting implications of the draft RIS is not consistent with NRC's substantial efforts to improve implementation of its backfitting requirements over the past several years and the draft RIS should not be finalized without serious consideration of the Commission's backfitting requirements.

Although we disagree with issuance of the RIS, NEI and its members are willing to work expeditiously with the NRC to more clearly articulate acceptable methods of complying with Section 73.56(d)(3). We believe the most appropriate way to achieve additional clarity would be for NEI to revise the current industry guidance provided in Supplement 1 to NEI 03-01 and submit those revisions to the NRC for review and endorsement. The goal would be to consolidate and clearly describe the acceptable methods that licensees are currently using to comply with the requirements of Section 73.56(d)(3). Once the changes to NEI 03-01 are endorsed, EGM-20-001 can be closed.[27]

If the NRC agrees with this approach, we believe we could have a targeted, draft revision to Supplement 1 to NEI 03-01 ready for discussion within two weeks of the date of this letter. This

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[23] See, e.g., Draft RIS, at pg. 3 (summarizing the results of NRC's investigation of a specific incident and a resultant "5-year retrospective review of foreign nationals granted UA and UAA at NRC-licensed nuclear power plants."); EGM-20-001, at pg. 1
(explaining that the NRC's Office of Investigations "conducted several investigations into potential violations of NRC regulations and associated wrongdoing by licensees implementing the requirements in 10 CFR 73.56(d)(3), "Verification of true identity." As a result of these efforts, the NRC has identified the need to clarify existing regulatory requirements that licensees are required to meet to demonstrate compliance.).

[24] Letter from S.G. Burns (NRC) to E.C. Ginsberg (NEI), July 14, 2010 (internal quotation marks omitted).

[25] EGM-20-001, at pg. 3.

[26] See EGM-20-001, at pg. 4. "The Office of Nuclear Security and Incident Response (NSIR) will (1) develop and issue revised guidance describing an acceptable approach for complying with 10 CFR 73.56(d)(3), and (2) update applicable inspection guidance accordingly. To ensure this matter is broadly understood by the nuclear industry, NSIR will also develop and issue a generic communication product to inform or clarify to affected NRC licensees the means by which "true identity" must be validated in accordance with 10 CFR 73.56(d)(3) requirements."

[27] Although we disagree with many of the assertions made in EGM-20-001 and would prefer that they be corrected to avoid further confusion, at this point in the evolution of this issue we believe it would be prudent to continue the enforcement discretion provided in the EGM until greater clarity is achieved via the planned revision to NEI 03-01.

approach will provide the clarity that the NRC is seeking, while avoiding the backfitting implications posed by the approach provided in EGM-20-001 and the draft RIS. "

NRC Response No.10

Consistent with 10 CFR 73.56(c), the purpose of a licensee's access authorization program is to provide high assurance[28] that individuals granted UA or UAA at a licensee's facility are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security. Individuals seeking such access must be subject to a background investigation. The then existing 2002 regulatory requirement in 10 CFR 73.56(b)(2)(i) stated that the required background investigation must, in part, verify an applicant's true identity.

The NRC does not agree with the commenter's assertion that the draft RIS is promulgating a regulatory staff position interpreting the NRC's access authorization requirements that is new or different from a previously applicable staff position and is therefore inconsistent with the NRC's backfitting requirements in 10 CFR 50.109. Since 2002, the NRC has clearly stated that licensees must verify a foreign national's eligibility for employment in the U.S. as part of verifying the true identity of a foreign national seeking unescorted access (UA) or unescorted access authorization (UAA) at an NRC-licensed nuclear power plant.

In early 2002, the NRC discovered that an individual had been granted unescorted access to the protected and vital areas of a nuclear power reactor through the use of a fraudulent social security number and an alien registration card. The NRC consulted with the Immigration and Naturalization Services (INS) to better understand immigration law and INS requirements to understand how these requirements would apply to individuals seeking employment at nuclear power plants. Following these discussions, on August 27, 2002, the NRC issued RIS 2002-13, "Confirmation of Employment Eligibility." This RIS was issued to all holders of operating licenses for nuclear power reactors.

As stated in the RIS, the NRC determined that as a result of a lapse in security, and given the existing threat environment, it was crucial that licensees exercise greater diligence in implementing their access authorization programs. The RIS further stated that the NRC was pursuing an agreement with INS to allow each power reactor licensee to use the INS Systematic Alien Verification for Entitlements (SAVE) program. Use of this program would allow "licensees and licensee contractors the opportunity to electronically confirm 'authorization for employment' status with INS…." (RIS 2002-13, page 2). RIS 2002-13 makes clear that the NRC considered verifying a foreign national's eligibility for employment in the U.S. to be an important component in establishing a foreign national's true identity. The RIS stated the NRC's position on verifying a foreign national's employment eligibility, but it could not and did not establish a regulatory requirement.

[28] In 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)

On January 7, 2003, the NRC issued NRC Order EA-02-261, "Order for Compensatory Measures for Access Authorization," to all holders of operating licenses for nuclear power reactors. This order established, among other things, requirements for verifying the true identity of individuals seeking UA or UAA. Section B.1.3.c of Attachment 2 of the order states in relevant part that "Licensees should confirm eligibility for employment through INS and thereby verify and ensure to the extent possible, the accuracy of a social security number or alien registration number." Accordingly, this order established an explicit requirement that licensees of nuclear power plants work with INS to confirm the employment eligibility of foreign nationals seeking UA or UAA as part of determining the foreign national's true identity.

In the October 26, 2006, Power Reactor Security Requirements proposed rule (71 FR 62664), the NRC proposed adding a new § 73.56(d)(3) to the access authorization regulations enhancing the then existing requirement that licensees, applicants and contractors/vendors verify an individual's true identity. The proposed § 73.56(d)(3) would have required, in relevant part, that licensees, applicants and contractors/vendors validate the alien registration number provided by a foreign national. In the Statement of Consideration's (SOCs) 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 (emphasis added)). The Commission further stated that validation could be accomplished by accessing a variety of reliable sources, including but not limited to, Federal Government databases. The Commission received comments on the new § 73.56(d)(3) pointing out that some foreign nationals were permitted to work in the U.S. without either an alien registration number or an INS I-94 Form. The Commission agreed with these comments and revised the rule text in 10 CFR 73.56(d)(3) to state, in part, that "in the case of foreign nationals, validate that the claimed non-immigration status that the individual has provided is correct."
The requirements in 10 CFR 73.56(d)(3) were promulgated in a final rule on March 27, 2009.

In May 2009, the Nuclear Energy Institute (NEI) issued NEI 03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, approximately two months after the new rule language was promulgated. NEI 03-01 provides licensees with standard industry guidance on the implementation of the NRC's access authorization requirements. Supplement 1 to NEI-03-01 states in Section B.1.3.c:

> Licensees should confirm eligibility for employment through U.S. Citizenship and Immigration Services (CIS) and thereby verify and ensure to the extent possible, the accuracy of a social security number of [sic] an alien registration number…
>
> - Use of "CIS SAVE" is a verification of employment eligibility that can be initiated for non-U.S. citizens prior to their arrival at site.

Significantly, Section B.1.3.c of NEI 03-01 reiterates the NRC position that licensees should confirm a foreign national's eligibility for employment through the U.S. Citizenship and Immigration Services (successor agency to the INS).

As noted in RIS 2002-13, in 2002 the NRC entered into negotiations with INS to enable NRC licensees to use the INS SAVE program. These negotiations culminated in a September 26, 2007, Memorandum of Understanding (MOU) with the USCIS ML072490209 setting forth a process allowing NRC licenses to use the SAVE program to verify a foreign national's eligibility for employment in the U.S. The NRC would not have entered into this MOU if it did not expect licensees to make such a verification. The NRC has developed a program for enabling licensees to make such verifications at no cost.

The NRC does not agree with the commenter's assertation that the draft RIS relies on Section B.1.3.c of NEI 03-01 as support for a new and expansive interpretation of Section 73.56(d)(3). The commenter mischaracterizes the NRC's references to NEI 03-01. The NRC is referencing NEI 03-01, Supplement 1 in the draft RIS to show that at the time 10 CFR 73.56(d)(3) was promulgated, industry understood that verifying a foreign national's eligibility for employment in the U.S. was a regulatory requirement that had to be met as part of verifying a foreign national's true identity. In 2011, consistent with the NRC's longstanding position that verifying a foreign national's employment eligibility was an important component in verifying a foreign national's true identity, the NRC issued a revision to Regulatory Guide (RG) 5.66, "Access Authorization Program for Nuclear Power Plants." This revision endorsed NEI 03-01, Revision 3, which included guidance in Section B.1.3.c of Supplement 1, that licensees could use the USCIS SAVE program to verify a foreign national's employment eligibility. Through this endorsement, the NRC indicated that it found the use of SAVE to be one acceptable means of verifying foreign national's eligibility for employment in the U.S. and thereby complying with the regulatory requirement in 10 CFR 73.56(d)(3). Furthermore, NRC endorsement of NEI 03-01, Revision 3, is yet another example of the NRC's consistent position since 2002 that verifying a foreign national's employment eligibility is an important component in verifying a foreign national's' claimed non-immigration status. The NRC has not endorsed subsequent revisions to NEI 03-01 that do not contain this provision.

NRC Order EA-02-261 was still in effect at the time 10 CFR 73.56(d)(3) was promulgated, including the provision requiring licensees to work with INS to verify a foreign national's employment eligibility. On November 28, 2011, the NRC issued a letter to licensees of operating power reactors rescinding certain security orders, including NRC Order EA-02-261 ML112840300 The letter stated that all of the requirements in Order EA-02-261, which would have included the requirement to verify employment eligibility, were incorporated into the NRC's 2009 Power Reactor Security Requirements rulemaking. The only discussion in the NRC's security regulations of a licensee's responsibility to validate that a foreign national's claimed non-immigration status is correct is found in 10 CFR 73.56(d)(3). Therefore, consistent with the rescission letter's statement that all of the EA-02-261 requirements were incorporated into the NRC's security regulations, the only logical place where the requirement to verify a foreign national's employment eligibility could be located is 10 CFR 73.56(d)(3). Accordingly, the process of validating that a foreign national's claimed non-immigration status is correct must include verifying the foreign national's eligibility for employment. If validating a foreign national's claimed non-immigration status does not include verifying employment eligibility, then contrary to the NRC's rescission letter not all the requirements of EA-02-261 will have been incorporated into the NRC's security regulations.

The commenter, citing language in a Personnel Access Database System "System Administrator Bulletin 2017-09 – Verification of Non-Immigrant Status," issued on November 3, 2017, asserts that a licensee's examination of passport and visa information presented by an individual upon arrival at the licensee's facility is an acceptable method of complying with the regulatory

requirement to validate the claimed non-immigration status of a foreign national. System Administrator Bulletin 2017-09 also notes that utilization of the U.S. Citizenship and Immigration Services SAVE program is an acceptable methodology for validating a foreign national's claimed non-immigration status. The NRC disagrees with the commenter's assertion that visual inspection of a foreign national's passport and visa upon arrival at a licensee's facility is an acceptable methodology to meet the requirement in 10 CFR 73.56(d)(3). System Administrator Bulletins are industry documents; they are not prepared by or endorsed by the NRC. As noted above, the Commission made clear in the 2006 proposed rule SOCs that the validation process used to determine that the "personal identifying information the individual has provided to the licensee is authentic" would encompass more than a mere visual verification of the identifying documents provided by a foreign national. It is clear from this discussion in the proposed rule that rather than just relying on information presented by an applicant for UA or UAA, the Commission expects licensees to take steps to obtain additional information to independently authenticate a foreign national's claimed non-immigration status.

Based on the foregoing, the NRC does not agree with the commenter's assertion that issuance of the draft RIS constitutes the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position. As the regulatory history makes clear, issuance of the 2002 RIS, 2003 NRC Order EA-02-261, the 2009 Power Reactor Security Requirements rule and subsequent endorsement of NEI guidance to licensees on acceptable methods for implementing those requirements, and the NRC's 2011 letter rescinding Order EA-02-261, demonstrates the NRC's consistent position that verifying employment eligibility is an important component in validating a foreign national's "claimed non-immigration status" and thereby verifying the foreign national's true identity. Notably, the commenter does not provide any statements or other evidence that the NRC has articulated any different or contradictory position. The draft RIS does not articulate a new or different staff position and is therefore not inconsistent with the NRC's backfitting requirements in 10 CFR 50.109. Therefore, there is no need for notice-and-comment rulemaking and the NRC does not agree that the RIS should be withdrawn.

The commenter points to language in the draft RIS discussing the regulatory requirements in 8 CFR Part 274a promulgated by the Department of Homeland Security (DHS). The DHS requirements address, in part, the requirement for employers to verify the identity and eligibility for employment of foreign nationals. The commenter asserts, apparently based on the discussion of these DHS requirements in the RIS, that the draft RIS conflates the DHS regulatory requirements with the requirements in 10 CFR 73.56(d)(3). The NRC disagrees with this assertion. The fact that another federal agency has promulgated regulatory requirements addressing an issue does not, absent some specific statutory provision, prohibit the NRC from promulgating regulatory requirements on that same issue if that issue is within the scope of the NRC's regulatory jurisdiction. Ensuring the integrity of licensee access authorization programs is within the scope of the NRC's regulatory jurisdiction. Accordingly, issuance of the order and then codifying the order requirements in NRC regulations was appropriate notwithstanding the existence of related regulatory requirements in DHS regulations that serve purposes different from protecting the integrity of a licensee's access authorization program. However, the NRC has determined that the discussion of the 8 CFR Part 274a regulatory requirements in the draft RIS is not necessary to inform licensees of relevant NRC access authorization requirements and may potentially cause confusion. Therefore, the NRC intends to remove the discussion of 8 CFR Part 274a from the final RIS.

The commenter further asserts that it complies with immigration laws and checks the employment eligibility of its employees. However, in the case of workers provided by contractors/vendors, the commenter relies on these contractors/vendors to ensure that the provided workers are authorized to work in the U.S. As stated in 10 CFR 73.56(b)(1)(i), a licensee's access authorization program applies to any individual to whom a licensee intends to grant unescorted access to a nuclear power plant protected area or vital area or certify unescorted access authorization. The regulation makes no distinction between individuals who are employees of a licensee and individuals who are not employees of a licensee. A licensee must determine that all individuals, not just employees, granted unescorted access or unescorted access authorization are trustworthy and reliable. This determination requires, in part, verifying the true identity of an individual applying for UA or UAA, and includes with respect to foreign nationals verifying their employment eligibility. Consistent with 10 CFR 73.56(a)(4), a licensee may accept, in whole or in part, an access authorization program implemented by a contractor or vendor if the program satisfies the requirements of 10 CFR 73.56. However, only a licensee may grant unescorted access. Therefore, if a contractor or vender's access authorization program does not verify a foreign national's employment eligibility, it does not satisfy the NRC's regulatory requirements in 10 CFR 73.56(d)(3) and a licensee may not rely on that program to meet those requirements. Accordingly, it would be prudent for a licensee to determine that any contractor or vendor relied upon to satisfy appropriate elements of the licensee's access authorization program is cognizant of and complies with the relevant NRC regulatory requirements. A licensee may be subject to enforcement action for relying on erroneous information provided by a contractor or vendor and improperly granting an individual unescorted access to a nuclear power plant.

In response to these comments, the NRC has removed the discussion of the 8 CFR Part 274a regulatory requirements from the final RIS. Additionally, in response to these and similar comments, the NRC has included a discussion of the regulatory history relating to the development of NRC's access authorization requirements applicable to foreign nationals to add context to the discussion in the final RIS.

Comment No. 11
Source: Michael Dilorenzo
Posted to Regulations.gov website, June 26, 2020

"Arizona Public Service (APS) appreciates the opportunity to review and provide comments for consideration by the U.S. Nuclear Regulatory Commission (NRC) on the Draft Regulatory Issue Summary (RIS) related to personnel access authorization requirements for non-immigrant foreign nationals working at nuclear power plants. APS is an owner and the operator of the three-unit Palo Verde Nuclear Generating Station (PVNGS) in Arizona. APS has been an active participant in industry discussions and development of comments, and hereby endorses the comments provided by the Nuclear Energy Institute (NEI) on the Draft RIS.

APS is committed to continued compliance with the requirements of 10 CFR 73.56, "Personnel access authorization requirements for nuclear power plants," which are designed to provide high assurance that individuals subject to access authorization programs are trustworthy and reliable, and do not pose an unreasonable risk to public health and safety or the common defense and security.1 Included within these requirements is the "verification of true identity," required by 10 CFR 73.56(d)(3), which is the subject of the Draft RIS.

APS agrees with the Draft RIS that “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,”2 which it currently does through the use of the Department of Homeland Security U.S. Citizenship and Immigration Services (CIS) Systematic Alien Verification for Entitlements (SAVE) program. The use of SAVE is not universal in the nuclear industry and it is our understanding that consistent with APS, when SAVE is used, it traditionally has not been used by access authorization organizations to confirm that the specific visa category of an individual matches the work they will perform, which is a separate area of personnel scrutiny not related to true identity. Furthermore, the NRC has performed inspections at APS and at power plant licensees throughout the U.S. and based on our research, the positions presented in the Draft RIS have not been stated, nor enforced by the NRC until now.

In that light, the Draft RIS, substantially expands this validation process by requiring review of the individual’s immigration and employment status. By doing so, the Draft RIS inappropriately and unnecessarily integrates employment and immigration law into unescorted access authorization programs. It likewise inappropriately places requirements on a licensee’s reviewing official to become trained immigration specialists with an understanding of the various work eligibility codes. It does so even when most licensees – such as APS – are generally not the direct employer of the subject foreign national. APS believes that vetting a foreign national’s visa is important and does so separate and apart from the PVNGS access authorization program when APS is the employer of that foreign national as is required of employers pursuant to DHS regulations at 8 CFR 274a.2. This is a separate and distinct requirement from the NRC’s requirements of 10 CFR 73.56, and should remain so.

Additionally, the Draft RIS states that it “reinforces NRC’s expectations” that licensees verify that a non-immigrant foreign national possesses a visa in the correct visa category to perform the type of work for which access is granted. However, as detailed in NEI’s comments, both the Draft RIS and related EGM-20-0013 point to the fact that NRC’s expectations with respect to appropriate methods for complying with the true identity requirement in 10 CFR 73.56(d)(3) have lacked clarity. Adding to this regulatory uncertainty is EGM-20-001, which clearly communicates that the NRC’s efforts to “clarify” the issue will require changes to licensees’ access authorization processes. For the NRC to now require this additional activity and to infer that not performing this activity warrants enforcement discretion because it is a violation6, is inconsistent with the NRC’s backfitting regulations at 10 CFR 50.109.

For the reasons described above, APS endorses NEI’s comments and does not believe that the NRC should finalize the Draft RIS. Although APS disagrees with issuance of the RIS, APS supports NEI’s proposal to work expeditiously with the NRC to more clearly articulate acceptable methods of complying with Section 73.56(d)(3) as described in NEI’s comments. If the NRC decides that the Draft RIS should be finalized, then the backfitting implications of the expansive position currently communicated in the Draft RIS must be addressed in compliance with 10 CFR 50.109.

NRC Response to Comment No. 11

The commenter repeats many of the assertions made by the commenter in Comment 10. To the extent that this comment raises the same or similar assertions, the NRC reiterates its response to these assertions made in Comment 10.

The commenter asserts that the use of the USCIS SAVE program is not universal in the nuclear industry and not traditionally used by licensee access authorization programs to confirm that the specific visa category of an individual matches the work they will perform. The NRC notes that the NRC's regulations, and the draft RIS specifically, do not mandate the use of the SAVE program. The draft RIS reminds licensees that confirming a foreign national's employment eligibility is an important element in validating that foreign national's true identity. The draft RIS states that the SAVE program is one acceptable method for meeting that requirement. Licensees are free to use other methods that meet the regulatory requirement.

The commenter further asserts that the NRC has performed inspections at licensee nuclear power plants throughout the U.S. and that the position presented in the draft RIS have not been stated by inspectors nor enforced by the NRC until now. The NRC's baseline inspection program, including the frequency of inspections, the number of activities to inspect, and how much time to spend inspecting activities in each inspectable area, are based on available risk information. In particular, the selection of activities to inspect in each inspectable area at a given facility is based on plant-specific risk information. NRC inspectors are not required or expected to inspect licensee compliance with every applicable security requirement. The fact that NRC inspectors do not inspect or otherwise address a specific regulatory requirement during the inspection process does not negate a licensee's responsibility to comply with that requirement. Furthermore, when the NRC did learn of issues with licensee compliance with the requirement to verify employment eligibility, the NRC immediately initiated an investigation and is addressing violations of that requirement through the enforcement process.

In response to these and similar comments, the NRC has included a discussion of the regulatory history relating to the development of NRC's access authorization requirements applicable to foreign nationals to add context to the discussion in the final RIS. The NRC has made no other changes to the final RIS in response to these comments.

Comment No. 12
Source: Anonymous
Posted to Regulations.gov website, June 26, 2020

"Hi NRC - something I've always wondered about is whether NRC is pronounced "Nerk" or "Enarcy." Please let me know so I can adopt the correct pronunciation.

Have you guys ever noticed how sometimes an idea gets into President Trump's tiny brain and then rattles around endlessly? For example, whenever anyone mentions a second wave of Covid-19 infections, Trump always responds by talking about "embers." Weird, huh?

What happens is that Trump initially tries out various responses to a question, but eventually all but one is voted off the island. Then we're left with "embers" in mindless repetition:

"But we may have some embers -- and we're going to put them out."
"We'll put out the embers."
"I think you're going to have embers, as I say."
"Yeah, we'll put out the embers."
"And we're going to have embers."
"Again, if you have a flare up in a certain area, if you have a -- I call them 'burning embers' -- boom, we put it out."
"So I think that we put out -- that's called 'burning embers,' too."

"We may have some embers or some ashes or we may have some flames coming, but we'll put them out. We'll stomp them out."

NRC Response No.12

This comment raises issues that are outside the scope of this draft RIS. Therefore, the NRC is not taking any further action in response to this comment.

The NRC has made no changes to the RIS based on this comment.

Comment No. 13
Source: J. Bradley Fewell
Posted to Regulations.gov website, June 26, 2020

“This letter is being submitted in response to the U.S. Nuclear Regulatory Commission’s (NRC’s) request for comments concerning draft Regulatory Issue Summary 2020-XX, "Clarification of Personnel Access Authorization Requirements for Non-immigrant Foreign Nationals Working at Nuclear Power Reactors," published in the *Federal Register* (i.e., 85FR17770, dated March 31, 2020). Exelon Generation Company, LLC (Exelon) appreciates the opportunity to comment on this draft RIS. Exelon supports the June 15, 2020 comments submitted by the Nuclear Energy Institute (NEI) related to the subject RIS.

In particular, the draft RIS erroneously attempts to incorporate employment/immigration matters into the NRC’s access authorization regulations by setting an expectation that licensees must validate "the correct visa category [for a foreign national applicant for unescorted access] to perform the type of work at a nuclear power plant" through the licensees’ access authorization programs. Imposing an expectation that licensees validate non-immigrant’s employment eligibility is inconsistent with the clear purpose and scope of the NRC’s security regulations. The subject of the draft RIS – 10 CFR 73.56(d)(3) – requires that licensees "in the case of foreign nationals, validate the claimed non-immigration status that the individual has provided is correct." The purpose of this provision is to verify an applicant’s true identity "to ensure that the applicant is the person that he or she has claimed to be." But this requirement does not exist in a vacuum – it is one piece of the NRC’s access authorization requirements, with the overall objective to "provide high assurance that individuals subject to access authorization programs are trustworthy and reliable, and do not pose an unreasonable risk to public health and safety or the common defense and security." Furthermore, a licensee’s access authorization program is part of the licensee physical protection program, which must be designed to "protect against the design basis threat of radiological sabotage" and "prevent significant core damage and spent fuel sabotage." In other words, the objective of validating an applicant’s non-immigration status is to establish true identity as part of a trustworthiness and reliability determination, which in turn helps to ensure protection of the facility from radiological sabotage.

The draft RIS fails to articulate any nexus between the prevention of radiological sabotage and verification of employment eligibility. In addition to being inconsistent with the purpose of NRC’s access authorization requirements, the interpretation provided by the draft RIS is impractical and would create a significant burden on Exelon’s Access Authorization program. Exelon’s Reviewing Officials are not immigration experts and currently do not possess the ability to collect and assess any one of the hundreds of codes associated with immigration status against an applicant’s intended employment. Furthermore, Exelon’s Reviewing Officials are not typically provided specific information about the type of work an applicant will be doing after access is

granted because it is not relevant to a trustworthiness and reliability determination. In fact, not all individuals who apply for unescorted access or unescorted access authorization will ever actually work within the protected area of a nuclear power plant.

In this light, the regulatory position reflected in the draft RIS clearly represents a new interpretation that would impose additional, unjustified burdens on licensees. Even assuming that the NRC has the legal authority to impose on licensees a requirement seemingly unrelated to radiological sabotage, the draft RIS fails to indicate that the NRC analyzed those additional burdens as required by the backfit rule at 10 CFR 50.109. To be clear, Exelon is committed to complying with all applicable immigration and employment laws and expects its contractors to do the same. It is also Exelon's highest priority to ensure the safety and security of the facilities it operates. But the NRC itself acknowledged multiple times during its April 28, 2020 meeting that it "is confident there are no security threat concerns present regarding these foreign nationals." If there is no "security threat" concern, then regulatory action is unwarranted. As such, Exelon recommends that the NRC discontinue further activity on the draft RIS and that the NRC work with industry to clarify existing guidance consistent with the scope of the NRC's access authorization regulations. If you have any questions or require additional information, please do not hesitate to contact Jason Zorn at (202) 637-0320."

NRC Response to Comment No. 13

The commenter repeats many of the assertions made by the commenter in Comment 10. To the extent that this comment raises the same or similar assertions, the NRC reiterates its response to these assertions made in Comment 10.

The NRC does not agree with the commenter's assertion that requiring licensees to validate a non-immigrant's employment eligibility is inconsistent with the clear purpose and scope of the NRC's security regulations. Consistent with 10 CFR 73.56(c), the purpose of a licensee's access authorization program is to provide high assurance that individuals granted UA or UAA at a licensee's facility are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security. Individuals seeking such access must be subject to a background investigation. The then existing 2002 regulatory requirement in 10 CFR 73.56(b)(2)(i) stated that the required background investigation must, in part, verify an applicant's true identity. An applicant seeking unescorted access to perform work at an NRC-licensed nuclear power plant without the legal authority to work in the U.S. is engaged in illegal activity. Such activity calls into question the trustworthiness and reliability of the individual seeking such access as well as the integrity of the licensee's access authorization program. Therefore, validating a non-immigrant foreign national's employment eligibility is fully consistent with the clear purpose and scope of the NRC's access authorization regulations.

The NRC does not agree with the commenter's assertion that requiring licensees to verify a foreign national's employment eligibility is impractical and overly burdensome because licensee reviewing officials are not immigration experts. Verifying a foreign national's employment eligibility does not require a licensee's reviewing official to become an immigration expert to comply with the regulatory requirement in 10 CFR 73.56(d)(3). Based on NRC staff discussions with USCIS staff, the NRC understands that use of the SAVE program is relatively straightforward and involves the entering of information on a specific individual that should be readily available to the licensee. The USCIS website provides easily accessible information and training on the use of the SAVE program. Therefore, the NRC does not agree that the regulatory requirement is impractical and overly burdensome.

In response to these and similar comments, the NRC has included a discussion of the regulatory history relating to the development of NRC's access authorization requirements applicable to foreign nationals to add context to the discussion in the final RIS. The NRC has made no other changes to the final RIS in response to these comments.

Comment No. 14
Source: B.E. Standley
Posted to Regulations.gov website, June 30, 2020

"Nuclear Regulatory Commission (NRC), through *Federal Register* Notice 85 Fed. Reg. 17,770, published Draft Regulatory Issue Summary 2020-XX, "Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants," for comment in the *Federal Register* on March 31, 2020 with a comment date of April 30, 2020. In a *Federal Register* dated April 30, 2020, NRC extended the public comment period to June 15, 2020. The Nuclear Energy Institute (NEI) submitted comments to the NRC regarding the subject Draft RIS on June 15, 2020. Dominion Energy endorses the NEI comments and would appreciate the NRC's consideration of those comments. Consistent with the NEI comments, Dominion Energy also notes there is no evidence in the regulatory history to support the draft RIS proposal that, as a part of verifying true identity, licensees must determine whether the visa category is correct to perform the work for which unauthorized access (UA) is being granted or UA authorization (UAA) is certified. Consequently, the phrase "and to determine whether the visa category is correct to perform the work for which UA is being granted or UAA is certified' should be removed from the draft RIS (page 2 of 7, ML20008D562)."

NRC Response to Comment No. 14

The commenter repeats many of the assertions made by the commenter in Comment 10. To the extent that this comment raises the same or similar assertions, the NRC reiterates its response to these assertions made in Comment 10.

The NRC does not agree with the commenter's assertion that there is no evidence in the regulatory history to support the proposition that confirming a foreign national's employment eligibility is an important element in validating that foreign national's true identity. The NRC also does not agree with the suggestion to delete the phrase "and to determine whether the visa category is correct to perform the work for which UA is being granted or UAA is certified" from the draft RIS. As discussed above in the NRC's response to comment 10, the regulatory history is clear that verifying a foreign national's employment eligibility has been an important element in validating that foreign national's true identity. As also discussed above in the NRC's response to comment 10, the NRC does not agree that the regulatory requirement in 10 CFR 73.56(d)((3) is met simply by showing that the documents presented by a foreign national match the information presented in an application for UA or UAA or demographic information maintained in an industry database.

In response to these and similar comments, the NRC has included a discussion of the regulatory history relating to the development of NRC's access authorization requirements applicable to foreign nationals to add context to the discussion in the final RIS. The NRC has made no other changes to the final RIS in response to these comments.

Comment No. 15
Source: William L. Parks

Posted to Regulations.gov website, June 30, 2020

Florida Power & Light Company on behalf of itself and of its affiliates, NextEra Energy Seabrook, LLC, NextEra Energy Duane Arnold, LLC, and NextEra Energy Point Beach, LLC (collectively, "NextEra") provides the following comments on Draft RIS, "Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign national working at nuclear Power Plants." The NRC published the Draft RIS for comment in the *Federal Register* on March 31, 2020 (85 Fed. Reg. 17771). NextEra appreciates the opportunity to provide these comments. However, as expressed in the attached comments, we believe that the Draft RIS inappropriately imposes new staff position interpreting the Commission's regulations. These new positions should either be withdrawn or imposed through a notice-and-comment rulemaking process.

This document reflects the comments of Florida Power & Light Company and its affiliates, NextEra Energy Seabrook, LLC, NextEra Energy Duane Arnold, LLC, and NextEra Energy Point Beach, LLC (collectively, "NextEra") on the NRC's Draft RIS, " Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants."

The Draft RIS relays the NRC' s expectation that "the licensee is ultimately responsible for Verifying the true identity and validating and validating the non-immigrant foreign national's eligibility to work with the correct visa category when granting UA or certify UAA" (emphasis is added). As is explained in more detail below, this is not required by current NRC regulations and would impose an onerous and unnecessary burden on licensees. New requirements should be introduced in regulations following a notice-and- comment rulemaking process. NextEra respectfully requests that the NRC should withdraw the Draft RIS and, if the NRC determine s that licensees' Access Authorization reviews should ensure that its employees and its contractors' and vendors' employees are authorized to work in the U.S., institute a rulemaking proceeding to that effect.

I. Practical Considerations

At the outset, it should be noted that NextEra and its contractors/vendors comply with immigration laws and NextEra does not knowingly allow work to be performed on its sites by non-authorized individuals. However, NextEra's Human Resources professionals can only directly validate this for its own employees. In the case of the workers provided by contractors/vendors, NextEra contractually relies on the contractor/vendor that employs these workers to ensure that its workers are authorized to work in the U.S. Nuclear Access Authorization staff members are not trained in the application of immigration laws and should not be expected to add this burden to their existing responsibilities. The Draft RIS implies that this is a relatively simple analysis, but that is not the case. As the Draft RIS itself notes, relying on SAVE to validate employment authorization can involve leafing through guidance documents and immigration manuals and tables and codes to determine visa categories. And that does not get into the various exceptions and extensions that may be applicable in individual cases.

NextEra has encountered numerous work authorization questions that cannot be resolved by Access Authorization staff based on a simple review of visa documents. For instance, certain workers on an H-1B visa may be authorized to work beyond the date stated on their visa if a timely extension request has been filed and remains pending. An individual's visa or passport may be expired on its face while his or her employment authorization document remains valid. Individuals in the U.S. on a student visa may be authorized to work following completion of

their coursework under certain circumstances. And certain business travelers on B1 visas may perform work such as installation, service, or repair of commercial/industrial equipment purchased from outside the U.S. or training of U.S. workers to perform such services. None of these situations can be simply evaluated by Access Authorization staff.

Finally, in the past, NextEra has encountered challenges with the accuracy of the information provided by SAVE. This concern does not affect the use of SAVE to validate the authenticity of an individual's documentation, but if the NRC wants to rely on SAVE as an I-9 workaround for licensees to check the employment authorization of a contractor 's employees, the NRC should ensure that SAVE provides accurate and reliable information regarding employment authorization.

II. Regulatory Analysis

In addition to these practical considerations, the interpretation set forth in the Draft RIS has no basis in the NRC' s current regulations. The NRC' s mission is radiological safety, not enforcing the nation's immigration laws. The NRC' s regulations do require licensees to verify the true identity of individuals seeking unescorted access authorization. And the NRC's regulations do require, in the case of foreign nationals, licensees to "validate the claimed non-immigration status that the individual has provided is correct." 10 CFR 73.56(d)(3). But that validation of non-immigration status does not require licensees to further the analysis by evaluating the authority of the individual in question to perform the work being performed at the licensee's site.

The Draft RIS discusses several sources of regulatory authority for its interpretation but none of these sources support its interpretation. First, the Draft RIS cites 10 CFR 73.56(d)(3), "Verification of true identity," which 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." Second, the Draft RIS explains that licensees should follow Supplement 1 to NEI 03-01, Revision 3, dated May 2009,which "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...."' Third, the Draft RIS cites the "the general performance objective of 10 CFR 73.56(c), which states that 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. As explained below, none of these three sources provide a regulatory basis for the interpretation in the Draft RIS that licensees should ensure individuals granted unescorted access are authorized to work in the U.S.

A. 73.56(d)(3)

Section 73.56(d)(3) states:

> Verification of true identity. 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.

Read in context,[1] it is clear that the purpose of the Section 73.56(d)(3) requirement to validate that the claimed non-immigration status is correct is to validate the true identity of the individual. The question is not, is this person authorized to work in the U.S.? But instead, the question is, do these identification documents match the individual who presented them and are they valid? Therefore, under 10 CFR 73.56(d)(3), the NRC can require licensees to validate that the individual is the person that he or she has claimed to be and that the non-immigration status reflected on his or her identification matches that listed in SAVE. But it cannot require licensees to perform a full legal analysis of work authorization in order to determine true identity.

This interpretation is supported by the regulatory history of the 2009 security rulemaking. At the outset, the proposed rule explained:

> The proposed paragraph would require the entities who are subject to this section, at a minimum, to validate the social security number, or in the case of foreign nationals, the alien registration number, that the individual has provided to the licensee, applicant or C/V. The term, “validate," would be used in the proposed paragraph to indicate that licensees, applicants and C/Vs 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 that the individual has provided to the licensee is authentic.

Proposed Rule, Power Reactor Security Requirements, 71 Fed. Reg. 62664 (Oct. 26, 2006) (emphases added). Thus, the purpose of this regulation, as proposed, was to ensure that the paper documentation provided by an individual is authentic "in order to ensure that the applicant is the person that he or she has claimed to be." 10 CFR 73.56(d)(3).

That limited purpose did not change when the rule was finalized. In the final rule, the language was expanded from requiring validation of an "alien registration number" to requiring validation of "non-immigrant status" in order to accommodate individuals from NAFTA countries who may not have an alien registration number. Regardless, the Commission explained that this revision was made "to allow licensees and applicants to use an alien registration or an I-94 Form *to verify the identity of a foreign national"* Final Rule, Power Reactor Security Requirements, 74 Fed. Reg. 13926, 13947 (Mar. 27, 2009) (emphasis added).

Thus, both the plain language of the regulation as well as the regulatory history make clear that Section 73.56(d)(3) does not require licensees to wade into the intricacies of immigration law, but instead merely calls for a check "to ensure the applicant is the person that he or she has claimed to be."

B. NEI 03-01, Rev. 3, Supplement 1

Next, the Draft RIS mentions NE I 03-01, Rev. 3, Supplement 1. The Draft RIS explains that this document "states at 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..." In

the Draft RIS, the NRC Staff implies that because this language is in NEI 03-01, licensees are already committed to follow confirm eligibility for employment. But that is not the case. Contrary to the language used in the Draft RIS, this language does not come from section B.1.3.c of the NEI 03-01 Supplement. Instead, the Supplement is quoting from section B.1.3.c of the NRC' s 2002 Access Authorizations Compensatory Measures Order (AA CM). EA-02-261, "Order for Compensatory Measures Related to Access Authorization," dated January 7, 2003. Thus, NEI 03-01, Rev.3, which was published in 2009 was simply stating a then-current legal requirement and providing a method to comply with that requirement.

However, the 2002 AA CM was rescinded by the NRC in 2011 because "the generically applicable security requirements set forth in the orders are adequately captured in the applicable NRC regulations. "Rescission or Partial Rescission of Certain Power Reactor Security Orders. Applicable to Nuclear Power Plants (Nov.28,2011). ADAMS Accession No. ML1122044 7. Moreover, NEI 03-0,1 was not providing a new requirement, it was simply quoting the applicable regulatory standard at that time. The only additional language in NE I 03-01 was the bare statement that SAVE is a verification of employment eligibility.

It is inappropriate for the NRC to rely on an industry guidance document from 2009 that quotes language from a since-rescinded order, in order to justify a new legal requirement. Moreover, even when the 2002 AA CM was in effect, the NRC did not require licensees to validate that con tractor / vendor employees were authorized to work in the U.S. *See* Letter from J.A. Stall, Senior Vice President and Chief Nuclear Officer, FPL to NRC" Response to Order for Compensatory Features Related to Access Authorization ," dated January 21, 2003, Attachment 1, footnote (" FPL and FPL Seabrook will confirm eligibility for employment for new employee who are expected to seek unescorted access. This will be completed within the timeframes allowed and while observing restrictions of the responsible Federal agency. Contractors/ Vendors will be directed to comply with employment check required by INS"). This implementation was approved by the NRC. See Letter from Richard Laufer, Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation to J.A. Stall, Senior Vice President, Nuclear and Chief Nuclear Officer, Florida Power and Light Company, "Response to Order for Compensatory Measures Related to Access Authorization," dated September 5, 2003.

C. General Performance Objective

Finally, the Draft RIS argues that "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 the y do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabot age ."NextEra agrees with this statement. The requirement to ensure that an applicant is the person that he or she has claimed to be is certainly consistent with this performance objective. But the NRC has not explained how validating that an individual is authorized to work in the U.S. is relevant to that performance objective.

III Backfitting Discussion

Finally, the Draft RIS explains that it does not represent a backfit because it does not require any action or written response on the part of any licensee. This is inconsistent with the NRC' s stated position regarding guidance documents with which the NRC expect licensees to comply, as set forth in a letter from the General Counsel. *See* Letter from Stephen Burns, General Counsel,

NRC to Ellen Ginsberg, General Counsel NEI, dated July 14, 2010. In that letter, the agency explained that staff guidance must be subject to the backfit rule if the staff intends the position presented to be legally binding through further action, such as enforcement action. In such situations, the NRC recognizes the "implicit coercive effect" of the guidance. Here, presumably, the NRC plans to impose this position against licensees through inspections and enforcement actions. This supposition is supported by the NRC's concurrent issuance of an Enforcement Guidance Memorandum, which, by its terms, allows for enforcement for violation of this interpretation after finalization of the Draft RIS. As a result, the backfit rule applies and a formal back fit analysis must be performed.

As noted above, this Draft RIS represents a change in NRC position, especially in light of the NRC' s acceptance of NextEra's response of the 2002 AA CM. *As* a result, the NRC must perform a backfit analysis and identify a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from this guidance.

NRC Response No. 15

The commenter repeats many of the assertions made by the commenter in Comment 10. To the extent that this comment raises the same or similar assertions, the NRC reiterates its response to these assertions made in Comment 10.

The commenter references 2003 correspondence between J.A. Stall of Florida Power & Light (FPL) and Richard Laufer in the NRC's Office of Nuclear Reactor Regulation to support the assertion that the NRC did not require licensees to verify that contractor or vendor employees were eligible to work in the U.S. The commenter's characterization of this correspondence is incorrect.

As FPL states in its comment, Senior Vice President and Chief Nuclear Officer J. A. Stall's January 21, 2003, letter to the NRC stated in an Attachment 1 footnote that FPL would confirm eligibility for employment for all new FPL employees who are expected to seek unescorted access. The letter further stated that FPL contractors and vendors will be directed to comply with the employment check required by the INS. On September 5, 2003, Richard Laufer, Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, responded to Mr. Stall's letter approving FPL's process for verifying a foreign national's employment eligibility.

As stated in 10 CFR 73.56(b)(1)(i), a licensee's access authorization program applies to any individual to whom a licensee intends to grant unescorted access to a nuclear power plant protected area or vital area or certify unescorted access authorization. The regulation makes no distinction between individuals who are employees of a licensee and individuals who are not employees of a licensee. Consistent with 10 CFR 73.56(a)(4), only a licensee can grant unescorted access. Therefore, a licensee must determine that all individuals, not just employees, granted unescorted access or unescorted access authorization are trustworthy and reliable. This determination requires, in part, verifying the true identity of an individual applying for UA or UAA, and includes with respect to foreign nationals verifying their employment eligibility. Consistent with 10 CFR 73.56(a)(4), a licensee may accept, in whole or in part, an access authorization program implemented by a contractor or vendor if the program satisfies the requirements of 10 CFR 73.56. However, if a contractor or vender's access authorization program does not verify a foreign national's employment eligibility, it does not satisfy the NRC's regulatory requirements in 10 CFR 73.56(d)(3) and a licensee may not rely on that program to meet those requirements.

Accordingly, the process outlined in the January 21, 2003, FPL letter and approved by the NRC's September 5, 2003, letter is consistent with the 2003 order and regulatory requirements.

The draft RIS does not state that the licensee's reviewing official cannot rely on background information, including employment eligibility information, provided to it by a contractor or vender consistent with 10 CFR 73.56(a)(4). In its January 21, 2003, letter FPL committed to directing its contractors and vendors to comply with the employment check required by the INS. A licensee may be subject to enforcement action for relying on erroneous information provided by a contractor or vendor resulting in improperly granting an individual unescorted access to a nuclear power plant.

In response to these and similar comments, the NRC has included a discussion of the regulatory history relating to the development of NRC's access authorization requirements applicable to foreign nationals to add context to the discussion in the final RIS.