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NUCLEAR REGULATORY COMMISSION

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NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING ON THE NRC'S DRAFT

REGULATORY ISSUE SUMMARY (RIS)

CLARIFICATION OF PERSONNEL ACCESS AUTHORIZATION
REQUIREMENTS FOR NON-IMMIGRANT FOREIGN NATIONALS

WORKING AT NUCLEAR POWER PLANTS

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TUESDAY

AUGUST 9, 2022

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The Public Meeting was convened via Microsoft Teams at 10:00 a.m. EDT, Brad Baxter, Facilitator, presiding.

PRESENT:

BRAD BAXTER, Facilitator

MICHELE SAMPSON, Division of Physical and Cybersecurity Policy

MARK RESNER, Office of Nuclear Security and Incident Response

TRACY HIGGS, Office of Investigations

NORM ST. AMOUR, Office of the General Counsel

HOWARD BENOWITZ, Office of the General Counsel

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P R O C E E D I N G S

(10:00 a.m.)

MR. BAXTER: Good morning, everyone, and welcome. My name is Brad Baxter, and I'm a security specialist in the NRC's Office of Nuclear Security and Incident Response. I'm one of the Access Authorization Program managers here within NSIR, and today I'll be serving as the meeting facilitator. My role is to ensure that today's meeting is informative and productive.

I want to welcome everyone and thank you for participating in today's public meeting to discuss the NRC's draft RIS on Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants.

I'd like to note this is an informational meeting with a question and answer session. The purpose of this meeting is for NRC staff to meet directly with individuals to discuss regulatory and technical issues. Attendees will have an opportunity to ask questions of the staff or make comments about the issues discussed throughout the meeting, however, the NRC is not actively soliciting comments toward regulatory decisions at this meeting.

Any feedback provided today by meeting

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attendees to the staff is not considered a formal comment, therefore, no formal response will be provided regarding any of today's discussion. Please submit any comments on the draft RIS by August 12, 2022, and we'll explain that in greater detail on slide 14 in our presentation.

Please note this meeting is being transcribed. For today's meeting we're also using the Microsoft Teams format. Should we have any communication issues with Teams during the presentation, we may need to turn off the video presentation of the slides.

This helps minimize any internet bandwidth issues. In addition, we ask that you please turn off your camera when you're not speaking to the staff. Next slide, please.

The agenda. Here industry representatives and stakeholders can ask questions of the staff or meeting participants at the designated open discussion time frame, and on the meeting agenda we have about an hour time slot set aside around eleven o'clock. The meeting is scheduled from 10:00 a.m. to 12:00 p.m. Eastern Standard Time.

I'd like to note the draft RIS reminds licensees of requirements under 10 CFR 73.56(d)(3),

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Verification of True Identity, that prior to granting or reinstating unescorted access or certifying unescorted access authorization to non-immigrant foreign nationals for the purpose of performing work, licensees shall validate that the foreign national's claimed non-immigration status is correct, and that verifying employment eligibility is an important component of required validation.

Next slide. Now at this time I'd like to introduce Michele Sampson, Director of the Division of Physical and Cybersecurity Policy, who will give the opening remarks for today's meeting.

Michele.

MS. SAMPSON: Thanks so much, Brad.

Good morning. We're here today to share information on the background and purpose for NRC's draft Regulatory Information Summary titled "Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants," which was published in the *Federal Register* for public comment on June 13.

The staff presentation will describe the regulatory history and recent information that led us to develop the draft Regulatory Information Summary.

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We appreciate the wide industry interest in this topic and the commitment by staff and industry alike to ensuring the safe and secure operations of the nation's nuclear power plant fleet.

A robust multi-faceted security framework, including access authorization, fitness for duty, and insider mitigation programs will minimize the likelihood of a licensee allowing the wrong person to gain access and enable licensees to have a trustworthy and reliable workforce. This RIS provides a reminder of those necessary steps to validate the true identity of a foreign national seeking unescorted access to a nuclear power plant.

The RIS is intended to clarify the existing regulatory requirements. The RIS does not introduce any new requirements for the access authorization program. Licensees have the ultimate responsibility for granting unescorted access to their facilities, not contractors or contractor employers.

The draft RIS describes one means that a licensee may use to validate the claimed non-immigration status of foreign nationals. Licensees are free to use other means that will effectively validate the status of these personnel.

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The purpose of the RIS is not to enforce immigration law. The steps in the RIS describe how a licensee can independently validate information provided by foreign nationals seeking unescorted access to a U.S. nuclear power plant, rather than taking a piece of paper and an individual's word for it that they are who they say they are.

I look forward to a very productive meeting today, and now I'll turn it back over to Brad.

MR. BAXTER: Yes. Thank you, Michele.

Now I'd like to introduce the NRC staff who will be leading the discussion for today's meeting. Mark Resner, Senior Security Specialist in the Reactor Security Branch of NSIR, will be leading the technical presentation. Today we also have Tracy Higgs, Director of the Office of Investigations, and senior attorneys from the Office of the General Counsel, Norm St. Amour and Howard Benowitz. Each may provide general remarks throughout the presentation.

For those individuals who may have dialed in using the telephone bridge line and are not using Microsoft Teams to attend this meeting, you can obtain an electronic copy of today's presentation by going to the NRC website, select the August 9 meeting

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on the calendar that appears under public meetings. The slide presentation is also available in the NRC ADAMS document database by searching for the accession number ML22217A114.

To help facilitate the discussion, we request that you use the raised hand feature in Teams so we can identify who would like to speak. When called upon, please state your first and last name and affiliation since the meeting is being transcribed.

At the appropriate time, staff will then call on individuals to ask questions. The raised hand button, which is shaped like a small hand, is along the top row in the Teams display area. To minimize interruptions, staff will call on participants who have used the raised hand feature to identify they have a question.

Additionally, if you joined the meeting using the Microsoft Teams bridge line and would like to ask a question or provide a comment, you need to press *6 to unmute your phone. The staff will pause at the end of each topic to ensure all participants have the opportunity to ask questions before the next topic. After your comment has been discussed, your phone will be muted again. If you want to ask an additional

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question, you have to press *6 to unmute your phone again.

And with that, I'd like to turn the meeting over to my counterpart and good friend, Mark Resner, to start the discussion of the draft RIS.

Mark.

MR. RESNER: Well, thank you, Brad, and good morning, everybody.

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

Next slide, Brian.

As Brad mentioned in the beginning of the meeting, the actual regulation, 10 CFR 73.56(d)(3): "Licensees, applicants, and contractors or vendors

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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 10 CFR 73.57 confirm the individual's claimed identity, if such results are available."

Again, just to reiterate what is meant by validate. A foreign national's immigration status determines what they are allowed to do in the United States. For example, a B-2 tourist visa allows a person to visit, not to do work.

An H-2A farm labor visa allows you to do agricultural work. Other types of visas allow foreign nationals to do other kinds of work. Importantly, validating that the claimed non-immigration status is correct involves determining that they are eligible for the kind of work they are

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seeking or applying for.

Next slide, Brian.

The initial draft, as you can see, was issued on March 31, 2020, and that was followed with a public meeting which had an open comment period for the public until June 15 of 2020. The staff received 15 comments from 14 people through Regulations.gov. Comments were provided by industry stakeholders, private citizens, and from the Nuclear Energy Institute.

To summarize the general theme of the comments, the comments asserted that the verification of employment eligibility for contractor employees to work in the U.S. is the responsibility of the contractor employers and not a requirement for licensee access authorization staff under 10 CFR 73.56(d)(3), "True Identity." Therefore, NRC was re-interpreting the regulation, constituting a backfit.

All stakeholder comments were considered in a comment resolution matrix that can be found in NRC ADAMS under ML22147A097.

Based on the information obtained as part of the staff's retrospective review, which included engagement with industry stakeholders, staff learned that some licensees use only a visual verification of

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documents provided by the foreign national to validate the foreign national's claimed non-immigration status.

As discussed more fully in the revised draft RIS, simple visual verification of documents is not sufficient to accurately verify a foreign national's eligibility to work in the United States. Visual verification of documents provided by the foreign national is necessary, but without consulting other sources or reliable information, it is not in itself sufficient to meet the regulatory requirement at 10 CFR 73.56(d)(3), and it's not consistent with the Commission's intent for the validation process.

In addressing the issue, four options were considered for addressing a licensee's practice of only conducting a visual verification of documents to meet the requirements of 10 CFR 73.56(d)(3). These options included, number one, issuing a RIS that clarifies that accurately and reliably verifying a foreign national's employment eligibility is an important component in validating a foreign national's claimed non-immigration status. Number two, seeking Commission approval of a traditional rulemaking to make verifying employment eligibility explicit in 10 CFR 73.56(d)(3).

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The third option considered was developing a notice of interpretation, that is an interpretive rule, that would require the use of a Federal database to verify a foreign national's employment eligibility. And the fourth option considered was developing a notice of interpretation allowing a licensee's visual verification of the documentation provided by a foreign national to validate the foreign national's claimed non-immigration status.

Overall, balancing the time and resources needed to implement options two and three against the benefit of clarifying the requirements through rulemaking, the staff is not pursuing these two options. With respect to the fourth option, a visual verification of documents provided by a foreign national would not enable the licensee to verify employment eligibility. Relying solely on a visual verification does not meet the regulatory requirement in 10 CFR 73.56(d)(3) and would weaken the safety and security provided by the requirement to validate the foreign national's claimed non-immigration status as part of establishing the foreign national's true identity.

Therefore, the staff pursued option one

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and published a RIS in the *Federal Register* for public comment, and you can see that was published June 13 of 2022. The comment period -- as Michele mentioned earlier, the comment period closes August 12 of 2022, and we welcome your comments.

Next slide, please, Brian.

In 2002, the NRC recognized the need to improve controls for screening individuals for access to nuclear power plants when it discovered that a foreign national was granted unescorted access to a site based on fraudulent documents. The case demonstrated the vulnerability that exists when visual examination of documents alone is used to authorize access.

Following discussions between the NRC and the Immigration and Naturalization Service at that time on August 27, 2002, the NRC issued RIS 2002-13, the title of which was "Confirmation of Employment Eligibility". It's a non-public document; it is in ADAMS at ML021720225. That document has been provided to NEI.

The NRC determined that as a result of the lapse in security, and given the existing threat environment, it was crucial that licensees exercise greater diligence in implementing the access

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authorization program. The RIS made clear that confirming employment eligibility was an important element of a background investigation undertaken to verify an applicant's true identity.

Now, post-9/11 and the attacks on New York in September 2001, the Commission determined that the current threat environment would require additional enhancement in the area of access authorization. One of the security measures involved the validation of true identity. So on December 17, 2002, the Commission approved Order EA-02-261 that imposed access authorization enhancements, which included employment verification. And on January 7, 2003, the Commission issued interim compensatory measures and implementing guidance.

Specifically Section B.1.3.c of the order stated: Licensees should confirm eligibility for employment through U.S. Citizenship and Immigration Service and thereby verify and ensure to the extent possible, the accuracy of a social security number or alien registration number. Additionally, licensees should confirm the eligibility for employment through a federally acceptable database, thereby verifying and ensuring, to the extent possible, the accuracy of the alien registration number. Now this particular

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attachment to the order, B.1.3.c, later became also a supplement to the industry guidance of NEI 03-01.

Next slide, please, Brian.

The enhancements of true identity expanded upon the original 1991 access authorization rule for verification of identity. Specifically, it expanded upon the current rule that required entities who are subject to these requirements, 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, contractor or vendor is authentic.

NRC revised its regulations for access authorization in March of 2009 to incorporate lessons learned during the implementation and application of the original rule published in the *Federal Register* on April 25, 1991, and to incorporate the enhanced requirements that were provided in the interim compensatory measures following the terrorist attacks of September 11, 2001.

The requirements in 10 CFR 73.56(d)(3) were promulgated on March 27, 2009. NRC Order EA-02-261 was still in effect at this time and included the requirement to confirm a foreign

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national's employment eligibility.

On November 28, the Commission rescinded the Order EA-02-261 because of the requirements for access authorization in the order to include employment eligibility had been incorporated into the regulatory requirements codified in the 2009 Power Reactor Security rulemaking. The rescission letter stated that all of the requirements in the Order EA-02-261, including the requirement to verify employment eligibility, were incorporated into the NRC's 2009 Power Reactor Security rulemaking.

An early 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). Accordingly, consistent with the Order EA-02-261 requirements incorporated into NRC's security regulations, the process of validating a foreign national's non-immigration status is correct includes verifying the foreign national's eligibility for employment.

To recap. The issuance of the 2002 RIS, the 2003 Order EA-02-261, and the November 2011 rescission letter, the 2009 Power Reactor Security Requirements Rule, and subsequent endorsement of

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industry guidance to licensees on acceptable methods of implementing those requirements demonstrates the NRC's consistent position that verifying employment eligibility is an important component of validating a foreign national's claimed non-immigration status and thereby verifying the foreign national's true identity. The draft RIS does not articulate a new or different staff position, and therefore does not constitute a backfit under NRC's requirements in 10 CFR 50.109.

Next slide, please, Brian.

In the statement of considerations to the 2006 Power Reactor Security Requirements Proposed Rule, the Commission made clear what it meant by the term "validation". In the Commission's words, validation would require the licensees to access information other than that provided by the individual to ensure that the information provided is authentic. The Commission further stated that validation could be accomplished by a variety of means, including accessing information from databases maintained by the Federal Government.

It is clear from this discussion that rather than just relying on information presented by an applicant for unescorted access or unescorted

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access authorization, the Commission expects licensees to take steps to obtain additional information to independently authenticate a foreign national's claimed non-immigration status is correct.

To revisit the Commission's intent, the requirements in 10 CFR 73.56(d)(3) obligate licensees to verify the true identity of individuals applying for unescorted access or unescorted access authorization. As part of this obligation, licensees must validate that the Social Security number provided by an individual is in fact his or her Social Security number. The term "validate" is not defined in the regulations, however, the Commission addressed its understanding of this term in the Power Reactor Security Requirements Proposed Rule issued for public comment on October 26 of 2006.

In discussing the proposed 10 CFR 73.56(d)(3), the Commission stated, "The term "validation" would be used to indicate that the 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

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authentic."

Next slide, please, Brian.

Again, the Commission's expectation about the significance of the validation. The visual inspection of documents provided by a foreign national alone does not meet the intent of the requirement of 10 CFR 73.56(d)(3), because visual inspection alone may not detect fraudulent documents. The use of a Federal database, such as a U.S. Citizenship and Immigration Services, i.e. the USCIS, Systematic Alien Verification for Entitlements, or the SAVE, commonly called the SAVE, or E-Verify, together with a visual inspection of a passport and visa meets the intent of the true identity requirement to validate the authenticity of the information provided by an individual.

Importantly, to facilitate licensees' verification of a foreign national's employment eligibility, on September 26, 2007, the NRC entered into a memorandum of understanding with the U.S. Citizenship and Immigration Services to allow NRC licensees to use the agency's Systematic Alien Verification for Entitlements, or SAVE, system electronic database. The use of the SAVE database is one acceptable means of verifying a foreign

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national's employment eligibility as part of validating the foreign national's true identity.

The draft RIS does not mandate that licensees use the SAVE system database to verify a foreign national's employment eligibility. As noted in the draft RIS, the SAVE program is simply one method that licensees may use to confirm a foreign national's eligibility to work in the United States.

Licensees may use other independent and reliable sources of information that will allow them to verify a foreign national's employment eligibility. Consequently, the RIS does not establish a new requirement, and therefore, no rulemaking is required.

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

Next slide, please, Brian. I think back

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up one, next.

Since the codification of the requirements there have been three incidences identified in the 2017-2018 time frame, but no other adverse trends or inspection violations were noted. In 2017, the Department of Homeland Security Homeland Security Investigations collaborated with the NRC's Office of Investigations to look at these three instances and they did not determine there was a security significance in those instances. And based on those three incidences, an enforcement guidance memorandum was put in place which expires in June of 2023.

Back up to slide 10, please.

I'd just like to comment on the use of the SAVE system in general. From January 1, 2013, to May 25 of 2018, we did a five-year retrospective look at the individuals who were granted unescorted access. And of a total population of 764,354 total population granted during that period, only 7,944 of those, or approximately 1.04 percent, were foreign nationals.

And additionally on the use of the SAVE system, based on the billings to the NRC from the USCIS, the average cost to do a check for a foreign

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national's employment eligibility using the SAVE system is approximately \$25 per month, and at a maximum per search of \$1. And that would be 50 cents for the initial, and if there's an additional search required, additional verification, it would be another 50 cents, totaling one \$1.

From the inception of the SAVE program, NRC has funded the use of the SAVE system. And to get access to the SAVE system, licensees must enter into an MOU with the NRC and we'll then set up an account for the particular licensee, a secure web-based account that can easily be accessed using the internet with a computer connected to the internet. In looking at this in detail, approximately 60 percent of the licensees for the nuclear plants have had access to the SAVE system.

Under normal circumstances, once the information from a non-immigrant foreign national's passport and visa are entered into the SAVE system, the return from the USCIS SAVE system on employment eligibility and identity are within three to five seconds. Interestingly, in FY21, USCIS completed 17,800,000 verifications through the SAVE system.

During the COVID pandemic, which USCIS employees were working remotely for unusual periods

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of increased immigration activity, response times were additional. Secondary searches were needed to be done by hand in the USCIS offices. Response times were affected.

To ensure this matter is broadly understood by the nuclear industry, NSIR has developed this RIS, draft RIS, and issued this generic communications to notify NRC licensees the means by which true identity must be validated in accordance with 10 CFR 73.56(d)(3) requirements.

And at this time, I'd like to hand it off to Michele Sampson for the summary. Go to the next slide.

MS. SAMPSON: Thanks so much, Mark.

As we've identified in the meeting today, the purpose of the RIS is to remind licensees of the requirement for verifying employment eligibility, and how that requirement fits into the overarching need to validate that we have trustworthy and reliable personnel inside the plant. So verifying employment eligibility is really an important component of validating that a foreign national's claimed non-immigration status is correct.

Licensees are required to take steps to access information from other reliable sources that

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can independently verify and validate that the information is authentic. The responsibility for granting access authorization rests with the licensee, and the NRC is issuing the RIS to remind licensees of the requirement and also to provide information on the availability of the SAVE program as one method that can be used to perform that independent validation.

Next slide, please.

MR. BAXTER: Thanks, Michele.

This is the portion of the slide presentation where stakeholders and the public can ask questions of the NRC staff. We had scheduled 60 minutes for this dialogue. If the discussion period ends early, we'll adjust the agenda accordingly and conclude the meeting for the day.

But at this time I'd like to ask, do we have any comments from the Nuclear Energy Institute? I know they're represented here today, so if they would like to provide any comments, feel free to have the floor.

MR. MOGAVERO: Good morning, Brad. This is Rich Mogavero from the Nuclear Energy Institute. Can you hear me?

MR. BAXTER: Yes, Rich, we can. Thank

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you very much.

MR. MOGAVERO: Thanks, Brad. As I said, this is Rich Mogavero from the Nuclear Energy Institute. I'm senior project manager here.

We certainly appreciate the NRC scheduling a public meeting to talk about this very important topic, and I appreciate the opportunity to make a few remarks. And separately, I do want to note that NEI will be providing a written response as well.

The nuclear industry is absolutely committed to ensuring the ongoing safety and security of our nuclear power plants. The personnel who perform access authorization functions for our plants play a vital role in achieving our safety and security mission.

Plant access staff are the first line of defense in ensuring that individuals accessing our plants are trustworthy and reliable, such that workers gaining access don't constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage. We do extensive background checks for individuals that we plan to bring on site.

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It's important to note that our station reviewing officials are not trained immigration personnel. We continue to have concerns with the revised draft. We're here to listen to all the additional remarks, but we would like to ask some clarifying questions on the NRC presentation we just heard, and as I stated earlier, Brad, NEI will be providing a written statement to the RIS.

Thank you. I'll turn it back over to you.

MR. BAXTER: Thank you, Rich.

Do I have any questions or comments from industry stakeholders at this time?

MR. ZALESKI: I see no raised hands, Brad. If anyone would like to make a comment and present some information or ask some questions -- okay, Rich, I see that your hand is raised.

MR. MOGAVERO: Let me see if I can take my hand down now. All right. Thanks, Brian.

So the initial draft RIS strongly asserts that verifying eligibility or employment eligibility is required, then the revised draft RIS -- you don't have to back, but the first bullet on slide 4 indicates that it's an important requirement. So my

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question is: Is it the NRC's view that verification of employment eligibility is required in order to verify the claimed non-immigration status?

And I can repeat my question. So, my question is: Is it the NRC's view that the verification of employment eligibility is required in order to meet the claimed non-immigration status?

MS. SAMPSON: This is Michele Sampson.

MR. MOGAVERO: Hi, Michelle.

MS. SAMPSON: I think the RIS is relatively clear. Perhaps I'm not following your question exactly. The RIS requires that the licensee independently verify the employment eligibility. Does that answer your question?

MR. MOGAVERO: Yeah. I think it was the inconsistency between the initial draft RIS that said verifying employment eligibility is a requirement, versus the revised draft RIS that says it's an important component. And we wanted to make sure that the NRC's perspective is that the verification of eligibility is required to verify the non-immigration status.

MR. ZALESKI: Brad, there are additional hands raised. I'm not sure if Norm wants to speak first or if Andy does.

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MR. BAXTER: Andy, would you like to speak first? Because I think I saw your's raised before Norm's.

MR. ANDERSON: However you'd like to do it, Brad.

MR. BAXTER: Go ahead, Andy, you have the floor.

MR. ANDERSON: All right. Thank you. So Andy Anderson from Constellation.

So the prior draft RIS required a detailed verification that visa codes match the specific work to be performed. Is that level of detailed verification required in order to verify the claimed non-immigrant status?

MR. RESNER: Andy, Mark Resner here.

Certainly in the three instances that we cited during the discussion, those individuals had B-2 tourist visas, so certainly that would not qualify as eligibility for employment.

MR. ANDERSON: I just want to make sure you're saying yes, it is required.

MR. RESNER: Yes, that's correct. Employment eligibility is a requirement as part of being the correct non-immigration status.

MR. ANDERSON: Understand. Thanks,

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Mark.

MS. SAMPSON: I think, Brad, if we could add some additional information, he might be able to provide some clarification.

MR. BAXTER: Yes, Norm.

MR. ST. AMOUR: Norman St. Amour, senior attorney with OGC for nuclear security matters.

And I just want to clarify, there was no intent to create an inconsistency between the language in the original draft RIS and what was published in 2022. The emphasis is, in order to meet the requirement in 73.56(d)(3), a licensee needs to verify the employment eligibility of a foreign national seeking unescorted access.

So yes, it is a requirement in fulfilling the obligations in 73.56(d)(3), the licensee must verify the foreign national's employment eligibility in the United States. Now, as we've tried to emphasize in this presentation, use of SAVE is one acceptable means of doing that. That will give you a clear indication of whether or not the foreign national is eligible to work in the United States, but there are other acceptable means that the NRC knows about and industry may have access to others that they can inform us about, which would be fine.

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But it is a requirement in meeting 73.56(d)(3) to verify the employment eligibility of a foreign national seeking unescorted access. That's one component of what you have to do in verifying the claimed non-immigration status of the foreign national is correct.

So I hope that helps, and I now I hope I can figure out how to turn my hand off.

MR. ZALESKI: I think I did it for you, Norm.

Andy has another comment or question, Brad.

MR. BAXTER: Yes, Andy, go ahead.

MR. ANDERSON: Thank you, gentlemen.

So the revised draft -- and this goes along with the comment that was just made -- the revised draft RIS states that relying solely on visual verification is unacceptable. So when I'm processing a request for UA or UAA for not only foreign nationals but also U.S. citizens, we review a number of records, right, that are not provided by the individual.

So is that review of the government-issued immigration documents combined with the review of these other elements truly unacceptable still?

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MR. ST. AMOUR: This is Norman again.

In answer to your question, I don't think we can answer that, because we don't know what other elements each individual licensee is reviewing. And so in any given instance, we can't determine if what you're doing is acceptable with the intent and the regulatory requirement in 73.56(d)(3).

Other databases, other U.S. Government sources that you are consulting, reviewing, in addition to the visual verification of the documents, if they reliably allow you to determine employment eligibility may be perfectly acceptable, would be perfectly acceptable in that case. But we don't know what each licensee is doing, and so we can't speak generically to reviewing other government documentation is adequate.

The Commission was trying to address a specific problem that they identified in 2002 and then two subsequent incidents that happened up until this date. And that was, individuals presented fraudulent documents that enabled them to get unescorted access -- or nationals presented fraudulent documents that enabled them to get unescorted access to a plant when they weren't entitled to such access.

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And so they created a RIS in 2002 to address that problem. They issued an order in January of 2003 to say take effective steps to make sure that doesn't happen again, licensees, and to ensure the integrity of your access authorization program.

And that's what this RIS is designed to do, to remind licensees that they have to ensure the integrity of their access authorization program. And that is accomplished by verifying -- that is accomplished, in part, by verifying a foreign national's claimed non-immigration status is correct. An important component of that is verifying employment eligibility.

MR. ANDERSON: I appreciate that. So obviously I'm still uncertain on what compliance will look like then. So if my licensee or any licensee out there is not using SAVE, then what would the NRC find acceptable?

And maybe I can ask it -- so if I'm following the rest of the regulation, right, criminal history report, credit reports, et cetera, and I'm not using SAVE, but I'm using all those additional resources that are found within the regulation -- and I'm not using SAVE, again -- what would be acceptable

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then?

MR. RESNER: If I may. This is Mark Resner speaking.

We want the information validated, as we said, against other documentation. So if the individual is a foreign national, they must have an I-9 Form if they're working in the United States, if they're hired by the employer, having the employer provide that information to the access staff. The I-9, whatever validation they did of that individual's status, requiring that and matching that information against the visa and passport information would be an independent validation.

MR. ANDERSON: Thank you, Mark, I appreciate your response.

MR. BAXTER: Thank you, Andy.

MR. ANDERSON: You're welcome.

MR. BAXTER: Next question. Dawn Odom, I see your hand is up.

MS. ODOM: Yes. I just wanted to provide that we had an individual who applied for access -- we do use the SAVE program. The individual was here on a B-1/B-2 visa, and we did the SAVE check. It does not indicate whether the individual is here on the B-1 or the B-2.

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MR. RESNER: Dawn, this is Mark Resner. I had a little difficult time hearing you what your question was. Could you please repeat that?

MS. ODOM: Yes, sir. We had an individual who applied for access, the individual was here on a B-1/B-2 visa, and we conducted the SAVE check. And SAVE does not indicate whether the individual is here on the B-1 or the B-2, so how would we know whether or not they were eligible to work?

MR. RESNER: Well, if the individual had a B-2 visa, the I-94 which should be submitted, if you're using SAVE, to the SAVE system -- the I-94 that comes with the visa determines how long they can stay in the United States, their duration. So that would be the B-2 aspect of it.

And if I understand you correctly, you did submit an inquiry to the SAVE system?

MS. ODOM: That's correct, and it was approved. It showed the individual was eligible.

MR. RESNER: Okay.

MS. ODOM: But it did not designate whether they were here on the work visa or the pleasure. It validated that the visa was a valid document.

MR. RESNER: And the return didn't speak

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to employment eligibility at all?

MS. ODOM: It did not. No, sir.

MR. RESNER: Interesting. But again, with the B-2 there should have been a time duration, how long that B-2 was in effect if that would have been the I-94. But I'd be happy to look at that example, if you want to provide that to me. I would be more than happy to look into that.

MS. ODOM: Understood. Yes, sir.

MR. BAXTER: I'm not seeing any further questions. Any further questions from industry stakeholders at this time?

Rich, I see your hand has been raised.
Rich.

MR. MOGAVERO: Yeah. You know, Dawn raises a pretty good point, Mark. Before I go into some concluding comments that I have, you know, if the SAVE database will say what their stay in the U.S. is and kind of the type of immigration status they are, if it doesn't provide the ability to determine the employment eligibility, I think the question that Andy Anderson raised earlier regarding what is acceptable would be very helpful for the licensees so they can pivot or transition to another way to validate or verify that the person has

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employment eligibility, if that is a requirement.

MR. RESNER: Thank you, Rich.

You know, on the SAVE system, normally the responses coming back will have a code in there that determines why they're here, what they're authorized to do. That's in the SAVE system if you go into the help part of the system and check. It will tell you, it will have, a certain code in there what they're authorized for.

I don't know if that helps you or not.

MR. MOGAVERO: Thanks, Mark.

I think if there are no other questions, I just have some closing remarks, but I'll stand by if anybody else has any questions or comments.

MR. BAXTER: Rich, I'm not seeing any further questions. I wanted to ask the general public if they had any general interest, feel free to have the floor, and if I don't hear anything -- excuse me, I do see one, Rich.

Rani Franovich, I see her hand raised.

MS. FRANOVICH: Yes. Thank you.

MR. BAXTER: I'm sorry, Rani. Go ahead.

MS. FRANOVICH: Can you hear me?

MR. BAXTER: Yes, I can.

MS. FRANOVICH: Okay, thank you.

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This is Rani Franovich. I'm a senior policy advisor for the Nuclear Energy Innovation Team at the Breakthrough Institute, and I appreciate this opportunity to ask a couple of questions about the draft RIS.

As a preliminary matter, the Breakthrough Institute is an independent 501(c)(3) global research center that identifies and promotes technological solutions to environmental and human development challenges. As such, we represent society and its collective interests.

We advocate for appropriate regulation, licensing and oversight of advanced nuclear reactors and currently operating reactors to enable the timely deployment of safe, innovative and economically viable emerging nuclear technologies. We believe new and advanced reactors represent critical pathways to climate mitigation and deep decarbonization, same thing for the currently operating fleet. The Breakthrough Institute receives no funding from industry.

So I have a few questions. It's my understanding that this RIS is new. It's not an existing RIS that is being updated or revised, it's a brand new RIS. Correct?

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MS. SAMPSON: Yes, yes. There was a 2002 RIS that spoke to the same topic, but this is a brand new RIS.

MS. FRANOVICH: Okay. Thank you, Michele.

So on April 27, 2022, the Breakthrough Institute and Steve Nesbit, then president of the American Nuclear Society, wrote a letter to the Commission to express concern regarding the NRC staff's regulatory posture and proposed language for a limited scope change to Title 10 CFR Part 73.55, Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage. I reiterate those concerns here.

In short, a proposed change or insertion of the term "high assurance" in this RIS, it constitutes regulatory overreach beyond NRC's legal mandate for nuclear security, which is no different than its mandate for safety: to provide reasonable assurance of adequate protection of public health and safety. So the question of "reasonable" versus "high assurance" for nuclear security has already been decided by the Commission.

On October 5, 2016, the Commission issued

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its staff requirements memorandum SRM for Commission Paper (SECY) 160073, Options and recommendations for the Force-on-Force Inspection Program in response to SRM (SECY) 140088. In its SRM, the Commission explicitly and unequivocally defined the assurance standard for security and directed the staff to modify its regulatory posture accordingly.

And I'm quoting from their SRM: "In implementing the NRC's regulatory program, either in developing new regulations, inspecting licensee compliance with regulations, or executing the Force-on-Force Program, the staff should be mindful 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. The NRC should not be applying a zero-risk mentality to security any more than we should be doing so with respect to safety. The staff would operate and should operate under this paradigm and eliminate ambiguity on this point" -- and I'll repeat this -- "eliminate ambiguity on this point in its guidance documents or other internal directives, instructions or training materials to the extent such ambiguity exists."

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The Commission provided this explicit direction in uncharacteristically strident terms, sua sponte, to curb an overly zealous regulatory posture in the NRC staff's Force-on-Force exercise program and other areas of nuclear security.

So I have a couple of questions now. How does the NRC staff square this unequivocal direction with the conclusion in the draft RIS, specifically this sentence, "Licensees must have an access authorization program that provides high assurance that individuals UA or certified UAA are trustworthy and reliable." How does the staff square this insertion of "high assurance" in a brand new RIS with prior Commission direction saying don't do it?

MR. ST. AMOUR: Rani, this is Norman St. Amour and I'd like to take the first shot at responding to your question. And it's nice to hear you. I haven't talked to you for quite a while, it's good to hear you.

MS. FRANOVICH: Likewise, Norm. Thank you.

MR. ST. AMOUR: As you noted, the RIS gave explicit direction to the staff and it didn't do certain things. It did not change the regulatory language in 73.55 to go from "high assurance" to

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"reasonable assurance" so the regulatory language remains the same.

What the RIS reminded the staff about is that use of the term "high assurance" in our security regulations has the equivalent meaning as "reasonable assurance" in the safety realm. And the staff should be mindful of that and not seek, as you point out, zero risk regulatory solutions.

So the use of the term "high assurance" is consistent with the regulatory language, and it is understood to mean that the staff doesn't expect zero risk; it expects that licensees will take reasonable steps to ensure high assurance. And what we have typically done -- certainly in SECYs what staff has done is they have -- always when they use the term "high assurance", what I typically request and staff does is put in a footnote saying what is said in the RIS, that the use of the term "high assurance" as directed in the SRM is the equivalent of "reasonable assurance" in the safety realm.

I don't know who brought up it but there is a footnote here.

MR. ZALESKI: I put it up there, Norm, just so everybody sees what both of you are speaking about in the RIS. It's in the conclusion paragraph,

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and then footnote 3 at the bottom.

MR. ST. AMOUR: Yeah. And so we're mindful of what you're saying. Staff is not asking for a zero-risk policy, staff is saying using what continues to be the regulatory language, the Commission has not directed staff to change that regulatory language, and then footnoting it to say high assurance is equivalent to the concept of reasonable assurance.

So I think that's how we tried to address the concerns that you articulated in the letter that came in and as this term is used here in this RIS as well. There is no intention on the part of the staff to say that high assurance involves a different standard than reasonable assurance in the safety realm. So I hope that answers your question.

And, Brian, if you can take my hand away, I haven't figured out how to turn it off yet.

MS. FRANOVICH: I appreciate that, Norm. I would just offer that if the staff really wanted to follow the Commission's direction and eliminate ambiguity wherever it exists, it would use the term "reasonable assurance" in its RIS, in its proposed regulations, in its guidance documents. It would use the term "reasonable assurance" to eliminate that

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ambiguity, and I don't see that changing and it concerns me why that is.

MR. ST. AMOUR: Well, I understand what you're saying. I think the staff's concern is that then creates an ambiguity with the existing regulatory language. You have approved regulatory language in 73.55 that uses the term "high assurance".

OGC has gone back as far as 1978 to figure out where that term came from and why it's different from "reasonable assurance," and the use of that term is not anywhere adequately explained, but it is the approved regulatory language. And to use other language that differs from the existing regulatory language in 73.55 creates its own ambiguity.

So there is a dilemma there, I agree. And we've tried to address that by always -- I won't say always, but hopefully always when we use the term "high assurance" inserting the footnote that explains what we mean by that term.

So that's why I think staff continues to use the term "high assurance" in formal documentation like this, like SECYs, et cetera. Either way, there's going to be some ambiguity and we tried to address it by inserting the footnote that will

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clarify why we're doing that.

MS. FRANOVICH: Thank you, Norman.

I think Bill Ostendorff, when he was an NRC commissioner back in 2016, also had his legal assistant, Jason Zorn, research the epidemiology of this "high assurance" phrase and could find scant evidence to support it.

Why does the staff not undertake a change to the rule to correct this assurance standard to reasonable assurance of adequate protection?

MR. ST. AMOUR: The Commission hasn't directed that action, and I understand what you're saying, and perhaps many people would like that rulemaking activity. Given the resources that would be involved, it would obviously have to go up to the Commission for approval of that rulemaking and they haven't directed that. They could but they haven't. That's the best I can give you on that.

MS. FRANOVICH: Could the staff propose it?

MR. ST. AMOUR: The staff, as you well know, can propose many things. Getting it through the whole management chain and up to the Commission, et cetera, that's not for me to say what staff would do. Certainly, staff has the legal authority to

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propose a rulemaking.

MS. SAMPSON: If I could add also -- so we do really appreciate the letter from the Breakthrough Institute that we received on the limited scope rulemaking, and we have added that letter to the docket for that advanced reactor physical security rulemaking docket and we'll certainly be considering it with the comments.

As you're aware, there's a number of important rulemakings going on at the agency. And as Norm stated, there's certainly the ability to propose rulemakings, but we don't have anything currently where that's on our rulemaking docket right now. But we do really appreciate the comment and are aware of the concern that the two terms has raised.

MS. FRANOVICH: Thanks, Michele.

And so I'll just end by saying thank you again for allowing me to ask these questions. I understand that the intent of the staff, at least as I understand it from Norm, is to use that footnote.

But when you make a statement that there's no effort underway to make this change to the regulation itself, I'm a little bit troubled by that because the staff admits this is the law, this is confusing, this is a problem. And a little more

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proactiveness on the part of the NRC staff, I think, would go a long way to establishing some kind of a good faith indication that the staff recognizes this is a problem and won't wait for the Commission to direct them to change it -- will actually take action to initiate the rule change, as it's going through the limited scope rule change now.

So I'll just leave it at that. I appreciate the opportunity to speak, and thank you very much.

MR. BAXTER: Well, thank you, Rani.

I see Rich Mogavero had an additional question.

MR. MOGAVERO: I'm off mute. I'm going to turn it over to Sue Perkins who has a question from NEI.

MS. PERKINS: Yes. Thanks, Rich.

Hi, everyone. This is Sue Perkins from the Nuclear Energy Institute.

Rani, I appreciate you bringing up the term "ambiguity" because I think that's what sums up my take-away from this discussion. Because I think what I'm hearing from this discussion -- there's still ambiguity on how to comply with the requirement to validate eligibility for employment. Because as

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Dawn brought up an example, going into the SAVE database doesn't necessarily provide that tool to validate eligibility.

So it looks like there are many ways, but there are no definitive ways. You know, when do you stop trying to validate this employment eligibility? So I think there's still work to be done there.

And Mark, I'm glad that you have asked Dawn to reach out for that specific example because it seems that there is some false confidence in the SAVE database, that it's going to hit the mark for the licensees to validate employment eligibility.

So I just leave you with that.

MR. MOGAVERO: Thanks, Sue.

Brad, Mark, I'm going to move into some closing remarks from the Nuclear Energy Institute, if that's okay.

MR. BAXTER: Yes, that's okay.

MR. MOGAVERO: All right. So from NEI, as you reviewed the proposed RIS, we noted the following. Like I said earlier, NEI will be providing a written response to the RIS.

But from our review, we believe that this expands the existing requirement for access personnel to verify immigration status beyond just determining

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trustworthiness and reliability. If imposed, we believe it will constitute an unanalyzed backfit, as we stated in the past.

We see the intent of the existing requirements and current guidance to be clear: to verify true identity by ensuring that the applicant is the person that he or she claimed to be.

Verifications of identity is part of conducting the background investigations for purposes, like we discussed on this call, for determining trustworthiness and reliability. While tools such as SAVE can be useful in verifying an applicant's status information, determining eligibility for employment is simply not required by 73.56, as we review it.

Lastly, I wanted to note that the revised RIS or the new RIS continues to confuse rather than clarify actions, as discussed during this call today, that are necessary to comply with 10 CFR 73.56(d)(3), and it does continue to consume a considerable amount of NRC and industry resources on an issue that may be of very low safety or security significance.

Despite the absence of what we heard earlier today with the 1.04 percent from Mark Resner, the NRC and industry have spent over two years on the

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development of this RIS. We continue to believe that the existing methods used by licensees for validation of non-immigration status comply with the 10 CFR 73.56(d)(3) requirements.

Mark and the NRC team, I just wanted to thank you again for the opportunity today, and I'll turn it back over to you. Thanks.

MR. BAXTER: Well, thank you, Rich. We look forward to receiving that letter in the near future.

Before I move on to the next slide, I'd like to ask if there's any additional public comment stakeholders that want to address anything at this time before I move on.

(No response.)

MR. BAXTER: Okay. I'm not seeing any.

How about NRC staff? Would any NRC staff like to make any closing remarks before I move on to slide 14?

(No response.)

MR. BAXTER: Okay, Brian, I'm not seeing any at this time, so if you will go to slide 14, Public Comment Submission.

As previously mentioned, the 60-day public comment period on the draft RIS will close on

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August 12, 2022. The NRC encourages electronic comment submissions by going to the Federal rulemaking website, Regulations.gov, and search for Docket ID No. NRC-2022-0119.

Next slide. And finally, we're always looking for ways to improve our public meetings and your feedback is very important to us. At the end of the meeting, please go to NRC's public web page, click on the Recently held meeting button and look for today's meeting. The meeting feedback form will be at the bottom of the meeting announcement.

And with that, I'd like to thank everyone for participating in today's meeting, I hope everyone has a good rest of the day, and this meeting is now closed.

(Whereupon, at 11:18 a.m. EDT, the meeting was closed.)

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