



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

February 13, 2020

EGM-20-001

MEMORANDUM TO: David C. Lew, Regional Administrator, Region I  
Laura A. Dudes, Regional Administrator, Region II  
Darrell J. Roberts, Regional Administrator, Region III  
Scott A. Morris, Regional Administrator, Region IV  
Ho K. Nieh, Director, Office of Nuclear Reactor Regulation  
John W. Lubinski, Director, Office of Nuclear Material Safety  
and Safeguards  
Brian E. Holian, Director, Office of Nuclear Security  
and Incident Response

FROM: George A. Wilson, Director /RA/  
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM (EGM) 2020-001,  
ENFORCEMENT DISCRETION NOT TO CITE CERTAIN  
VIOLATIONS OF 10 CFR 73.56 REQUIREMENTS

**PURPOSE:**

Consistent with Section 3.5, "Violations Involving Special Circumstances," of the Enforcement Policy, this enforcement guidance memorandum (EGM) grants enforcement discretion not to cite certain violations of requirements in section (d)(3), "*Verification of true identity*," of Title 10 *Code of Federal Regulations* (10 CFR) Part 73.56, "Personnel Access Authorization Requirements for Nuclear Power Plants," as discussed more fully below.

**BACKGROUND:**

The Nuclear Regulatory Commission's (NRC) 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.

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10 CFR 73.56(d)(3), states, that “Licensees, applicants, and contractors or vendors shall verify the true identity of an individual who is applying for unescorted access (UA) or unescorted access authorization (UAA) 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.

The general performance objective of 10 CFR 73.56 is to provide high assurance that the individuals subject to 10 CFR 73.56 are trustworthy and reliable. The requirements in 10 CFR 73.56(d)(3) impose an obligation on licensees to verify the “true identity” of individuals applying for UA or UAA. As part of this obligation, licensees must take steps to 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, 2006. In discussing the proposed requirements in 10 CFR 73.56(d)(3), the Commission stated that the term ‘validation’ would be used 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 62664, 62747 (Oct. 26, 2006)). The Commission went on to say that this validation of social security numbers could be accomplished through a variety of means, including accessing information from Federal Government databases or comparing the social security number provided by the individual to the social security number included in a credit history report or other reliable source of information. As noted above, the regulatory language does not define the term validate or set forth a prescriptive process for validating an individual's social security number. However, the Commission did establish the principle that licensees must take affirmative steps to validate the authenticity of an individual's social security number.

The same principle that applies to the validation of an applicant's social security number applies to the validation of an applicant's non-immigration status. Accordingly, 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. This can be accomplished by accessing appropriate Federal Government databases, e.g., Department of Homeland Security United States (US) Citizenship and Immigration Services (DHS-USCIS) Systematic Alien Verification for Entitlements (SAVE) database or following the guidance to which licensees commit in section 7.3.a.2 of the Nuclear Energy Institute's guidance document NEI 03-01, “Nuclear Power Plant Access Authorization Program,” Rev. 3.

An applicant's non-immigration status directly impacts the types of work activities that an applicant is legally permitted to perform while in the U.S. The regulatory requirement in 10 CFR 73.56(d)(3) is for the licensee to validate that the applicant's claimed non-immigration status is correct. Determining that an applicant has a valid visa is a necessary first step in the validation process. However, licensees must take additional steps to determine the non-immigration status of applicants seeking UA or UAA, including that the applicants are legally authorized to carry out the activities for which UA or UAA is sought in accordance with the regulatory requirements associated with their visa, e.g., work visa or tourist visa, issued to them for entry into the US.

Licensee access authorization (AA) documents, i.e., Personal History Questionnaire, provide important, relevant information to the licensee in determining trustworthiness and reliability. However, sole use of these documents does not in and of itself provide an independent means of validating the individual's claimed non-immigration status.

### **DISCUSSION:**

Based on, a review of the regulatory requirements and corresponding regulatory guidance, the NRC has developed information indicating a potential generic issue regarding the means by which licensees validate "true identity" in accordance with 10 CFR 73.56(d)(3) and the effectiveness of NRC's oversight of this requirement. 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. However, moving forward a change to the UA and UAA processes should be implemented for subsequent AA evaluations.

### **ACTIONS:**

#### **Basis for Granting Enforcement Discretion**

Based on the lack of clear and objective NRC inspection criteria associated with inspecting licensees AA programs as they relate to these requirements, coupled with upcoming guidance enhancements to reinforce compliance, exercising enforcement discretion not to cite violations is a prudent, interim course of action.

#### **Immediate Actions**

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.

Use of this EGM must be brought to an enforcement panel (modified panel is allowed if all offices agree) and dispositioned in accordance with enforcement panel processes. Violations for which such enforcement discretion is exercised **do** require the assignment of an enforcement-action tracking number to document enforcement discretion. Letters documenting the use of enforcement discretion under this EGM will follow the normal process and include "AND EXERCISE OF DISCRETION" in the subject line, with OE on distribution.

Associated individual actions for each case will be dispositioned in accordance with section 4.0 "Enforcement Actions Involving Individuals" of the Enforcement Policy. It should be noted that any individual action associated with a foreign national will be coordinated with the Office of International Programs prior to issuance of final action.

### Long-Term Actions

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.

### **EXPIRATION:**

This EGM will remain in effect until 6 months from the issuance date of new regulatory guidance or until December 31, 2020, whichever occurs first.

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DATE: 02/13/2020

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**ADAMS: EGM Memo: ML19316A667**

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