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Revision 2

# REGULATORY GUIDE

OFFICE OF NUCLEAR REGULATORY RESEARCH

## REGULATORY GUIDE 5.66

*(This is an administratively changed version of Revision 1, issued July 2009)*

### ACCESS AUTHORIZATION PROGRAM FOR NUCLEAR POWER PLANTS

#### A. INTRODUCTION

This guide describes a method that the staff of the U.S. Nuclear Regulatory Commission (NRC) considers acceptable to implement the requirements in Title 10, of the *Code of Federal Regulations*, Section 73.56, “Personnel Access Authorization Requirements for Nuclear Power Plants” (10 CFR 73.56) (Ref. 1), and 10 CFR Part 26, “Fitness for Duty Programs” (Ref. 2), related to an access authorization program.

The NRC issues regulatory guides to describe to the public methods that the staff considers acceptable for use in implementing specific parts of the agency’s regulations, to explain techniques that the staff uses in evaluating specific problems or postulated accidents, and to provide guidance to applicants. Regulatory guides are not substitutes for regulations and compliance with them is not required.

This regulatory guide contains information collection requirements covered by 10 CFR Part 50 that the Office of Management and Budget (OMB) approved under OMB control number 3150-002. The NRC may neither conduct nor sponsor, and a person is not required to respond to, an information collection request or requirement unless the requesting document displays a currently valid OMB control number. This regulatory guide is a rule as designated in the Congressional Review Act (5 U.S.C. 801-808). However, OMB has not found it to be a major rule as designated in the Congressional Review Act.

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The NRC issues regulatory guides to describe and make available to the public methods that the NRC staff considers acceptable for use in implementing specific parts of the agency’s regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in reviewing applications for permits and licenses. Regulatory guides are not substitutes for regulations, and compliance with them is not required. Methods and solutions that differ from those set forth in regulatory guides will be deemed acceptable if they provide a basis for the findings required for the issuance or continuance of a permit or license by the Commission.

This guide was issued after consideration of comments received from the public.

Regulatory guides are issued in 10 broad divisions: 1, Power Reactors; 2, Research and Test Reactors; 3, Fuels and Materials Facilities; 4, Environmental and Siting; 5, Materials and Plant Protection; 6, Products; 7, Transportation; 8, Occupational Health; 9, Antitrust and Financial Review; and 10, General.

Electronic copies of this guide and other recently issued guides are available through the NRC’s public Web site under the Regulatory Guides document collection of the NRC Library at <http://www.nrc.gov/reading-rm/doc-collections/> and through the NRC’s Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, under Accession No. ML112060028. The regulatory analysis may be found in ADAMS under Accession No. ML112060032.

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## B. DISCUSSION

The NRC revised its regulations for access authorization in 10 CFR 73.56 to incorporate lessons learned during the implementation and application of the original rule published in Volume 56 of the *Federal Register* (56 FR 19007; April 25, 1991) (Ref. 3), and to incorporate the enhanced requirements that were issued in orders following the terrorist attacks of September 11, 2001.

The access authorization program required by 10 CFR 73.56 consists of a background investigation with periodic reinvestigations, a psychological assessment with periodic reassessments for enumerated critical personnel, a behavior observation program that includes self-reporting requirements, and determinations of trustworthiness and reliability for contractors that support licensees in meeting these rule requirements. The background investigation is designed to identify past actions that are indicative of an individual's current trustworthiness and reliability and is supported by a periodic reinvestigation designed to maintain the required high assurance standard during continued unescorted access or unescorted access authorization. The psychological assessment is designed to evaluate the possible impact of any noted psychological characteristics that may have a bearing on trustworthiness and reliability and is additionally supported by periodic reassessments for particular categories of employees. Behavior observation is designed to detect behavioral changes that, if left unattended, could lead to acts detrimental to public health and safety or the common defense and security. In addition, an employee self-reporting requirement supports behavior observation.

The Nuclear Energy Institute (NEI) prepared NEI 03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, issued May 2009 (Ref. 4), as the industry standards (hereafter referred to as "the Standards"). The Standards contain security-related information in accordance with 10 CFR 2.390(d)(1) and, therefore, is not publicly available. The Standards meet the intent and substance of the regulation. In 10 CFR 73.56, the NRC requires each applicant and holder of an operating license under the provisions of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" (Ref. 5), and each holder of a combined license under the provisions of 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants" (Ref. 6), to establish, maintain, and implement, in part, the requirements in 10 CFR 73.56 before fuel is allowed on site (in a protected area). The NRC established these requirements to provide high assurance that individuals granted unescorted access and those certified for unescorted access authorization are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

The Standards describe the components of these elements and include evaluation criteria for granting and maintaining unescorted access and for certifying and maintaining unescorted access authorization. The Standards also provide details for reinstatement of access and authorization, requirements for contractor and vendor performance and trustworthiness and reliability, audits and corrective actions, protection of information, and required sharing of information between licensees and licensee contractors and vendors supporting a licensee access authorization program. Revision 1 to this regulatory guide identified this guidance as an acceptable method to meet 10 CFR 73.56.

The NRC has prepared Revision 2 to this guide to provide additional information to the public. Revision 1 included an attachment with security-related information from NEI 03-01 and therefore is not publically available. The staff has omitted the attachment from Revision 2 to this guide so that it can be made publically available. Although the regulatory position from Revision 1 has not changed, the staff has amended the wording of the license condition stated in Regulatory Position 1 to be consistent with this revision. The NRC has no requirement for a licensee who conforms to Revision 1 to this guide to make any changes as a result of the issuance of Revision 2.

## **C. STAFF REGULATORY GUIDANCE**

NEI 03-01 contains security-related information in accordance with 10 CFR 2.390(d)(1) and, therefore, is not publicly available. The NRC staff considers conformance with the provisions of NEI 03-01 an acceptable approach to meet the requirements in 10 CFR 73.56 and 10 CFR Part 26 that relate to granting and maintaining unescorted access and to certifying and maintaining unescorted access authorization, subject to the following condition:

1. Licensees who adopt this regulatory guide, and its endorsement of NEI 03-01, should include the following statement in their physical security plans:

All elements of Regulatory Guide 5.66, Revision 2, have been implemented to satisfy the requirements of 10 CFR 73.56 and 10 CFR Part 26 related to unescorted access and unescorted access authorization.

## **D. IMPLEMENTATION**

The purpose of this section is to provide information on how applicants and licensees<sup>1</sup> may use this guide and information regarding the NRC's plans for using this regulatory guide. In addition, it describes how the NRC staff complies with the Backfit Rule (10 CFR 50.109) and any applicable finality provisions in 10 CFR Part 52.

### **Use by Applicants and Licensees**

Applicants and licensees may voluntarily<sup>2</sup> use the guidance in this document to demonstrate compliance with the underlying NRC regulations. Methods or solutions that differ from those described in this regulatory guide may be deemed acceptable if they provide sufficient basis and information for the NRC staff to verify that the proposed alternative demonstrates compliance with the appropriate NRC regulations. Current licensees may continue to use guidance the NRC found acceptable for complying with the identified regulations as long as their current licensing basis remains unchanged.

Licensees may use the information in this regulatory guide for actions which do not require NRC review and approval such as changes to a facility design under 10 CFR 50.59. Licensees may use the information in this regulatory guide or applicable parts to resolve regulatory or inspection issues.

### **Use by NRC Staff**

The staff may discuss with licensees, various actions consistent with staff positions in this regulatory guide, as one acceptable means of meeting the underlying NRC regulatory requirement. Such discussions would not ordinarily be considered backfitting even if prior versions of this regulatory guide are part of the licensing basis of the facility. However, unless this regulatory guide is part of the licensing basis for a facility, the staff may not represent to the licensee that the licensee's failure to comply with the positions in this regulatory guide constitutes a violation.

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<sup>1</sup> In this section, "licensees" refers to licensees of nuclear power plants under 10 CFR Parts 50 and 52; and the term "applicants," refers to applicants for licenses and permits for (or relating to) nuclear power plants under 10 CFR Parts 50 and 52, and applicants for standard design approvals and standard design certifications under 10 CFR Part 52.

<sup>2</sup> In this section, "voluntary" and "voluntarily" means that the licensee is seeking the action of its own accord, without the force of a legally binding requirement or an NRC representation of further licensing or enforcement action.

If an existing licensee voluntarily seeks a license amendment or change and (1) the NRC staff's consideration of the request involves a regulatory issue directly relevant to this new or revised regulatory guide and (2) the specific subject matter of this regulatory guide is an essential consideration in the staff's determination of the acceptability of the licensee's request, then the staff may request that the licensee either follow the guidance in this regulatory guide or provide an equivalent alternative process that demonstrates compliance with the underlying NRC regulatory requirements. This is not considered backfitting as defined in 10 CFR 50.109(a)(1) or a violation of any of the issue finality provisions in 10 CFR Part 52.

The NRC staff does not intend or approve any imposition or backfitting of the guidance in this regulatory guide. The NRC staff does not expect any existing licensee to use or commit to using the guidance in this regulatory guide, unless the licensee makes a change to its licensing basis. The NRC staff does not expect or plan to request licensees to voluntarily adopt this regulatory guide to resolve a generic regulatory issue. The NRC staff does not expect or plan to initiate NRC regulatory action which would require the use of this regulatory guide. Examples of such unplanned NRC regulatory actions include issuance of an order requiring the use of the regulatory guide, requests for information under 10 CFR 50.54(f) as to whether a licensee intends to commit to use of this regulatory guide, generic communication, or promulgation of a rule requiring the use of this regulatory guide without further backfit consideration.

Additionally, an existing applicant may be required to adhere to new rules, orders, or guidance if 10 CFR 50.109(a)(3) applies.

### **Conclusion**

This regulatory guide is not being imposed upon current licensees and may be voluntarily used by existing licensees. In addition, this regulatory guide is issued in conformance with all applicable internal NRC policies and procedures governing backfitting. Accordingly, the NRC staff issuance of this regulatory guide is not considered backfitting, as defined in 10 CFR 50.109(a)(1), nor is it deemed to be in conflict with any of the issue finality provisions in 10 CFR Part 52.

If a licensee believes that the NRC is either using this regulatory guide or requesting or requiring the licensee to implement the methods or processes in this regulatory guide in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfit appeal with the NRC in accordance with the guidance in NUREG-1409 and NRC Management Directive 8.4.

## REFERENCES<sup>1</sup>

1. 10 CFR Part 73, "Physical Protection of Plants and Materials," U.S. Nuclear Regulatory Commission, Washington, DC.
2. 10 CFR Part 26, "Fitness for Duty Programs," U.S. Nuclear Regulatory Commission, Washington, DC.
3. 59 FR 19007, *Federal Register*, Volume 56, p. 19007, Washington, DC, April 25, 1991.
4. NEI 03-01, "Nuclear Power Plant Access Authorization Program," Revision 3, Nuclear Energy Institute, Washington, DC, May 2009.<sup>2</sup> (not publically available)
5. 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," U.S. Nuclear Regulatory Commission, Washington, DC.
6. 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," U.S. Nuclear Regulatory Commission, Washington, DC.

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<sup>1</sup> Publicly available NRC published documents are available electronically through the NRC Library on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/>. The documents can also be viewed on line or printed for a fee in the NRC's Public Document Room (PDR) at 11555 Rockville Pike, Rockville, MD; the mailing address is USNRC PDR, Washington, DC 20555; telephone 301-415-4737 or (800) 397-4209; fax (301) 415-3548; and e-mail [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

<sup>2</sup> This document contains security-related information in accordance with 10 CFR 2.390(d)(1), and therefore is not publically available. Copies of this non-NRC document may be requested from the publishing organization.