

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM-73-16; NRC-2013-0024]

Personnel Access Authorization Requirements for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for comment a notice of receipt of a petition for rulemaking (PRM) filed with the Commission by Ellen C. Ginsberg on behalf of the Nuclear Energy Institute (NEI or the petitioner) on January 25, 2013. The petition was docketed by the NRC on February 4, 2013, and has been assigned Docket No. PRM-73-16. The petitioner requests that the NRC amend its regulations to limit the scope of third-party review of licensee decisions denying or revoking an employee's unescorted access at their facility. The petitioner seeks to ensure that such decisions cannot be overturned by any third party. The petitioner also requests an expedited review of this petition based on pending arbitration cases that will be affected by NRC action on this petition. The NRC has reviewed the petitioner's request for an expedited review of this petition and has determined that the petition should be expedited due to the aforementioned pending arbitration cases. Therefore, the NRC is limiting the public comment period to 45 days. While 75 days is the normal duration for NRC technical rules, the NRC believes that 45 days provides sufficient time for stakeholders to comment.

DATES: Submit comments by **[INSERT DATE THAT IS 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date. Because the NRC has determined that the petition should be expedited due to the aforementioned pending arbitration cases, requests for extension of the comment period will not be granted.

ADDRESSES: You may access information and comment submissions related to this petition for rulemaking which the NRC possesses and is publicly available, by searching on <http://www.regulations.gov> under Docket ID **NRC-2013-0024**. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0024**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Scott Sloan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1619, e-mail: Scott.Sloan@nrc.gov.

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2013-0024** when contacting the NRC about the availability of information for this petition for rulemaking. You may access information related to this petition for rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0024**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the

first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2013-0024** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

The Petition

Ellen C. Ginsburg, vice president, general counsel, and secretary, NEI, submitted a PRM dated January 25, 2013 (ADAMS Accession No. ML13035A186), requesting that the NRC amend its personnel access authorization regulations to ensure that denials cannot be

overturned by a third party. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under § 2.802 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Petition for rulemaking,” and the petition has been docketed as PRM-73-16. The NRC is requesting public comment on the petition for rulemaking.

The Petitioner

The petition states that NEI “is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues.” The petition further states that NEI “endeavors to bring matters to the NRC’s attention that might frustrate the agency’s statutory and regulatory objectives.” The NEI believes that the issue raised in this petition is a generic matter and “has the potential to affect the ability of NRC reactor licensees to control access to the protected and vital areas of their sites.”

Discussion of the Petition

The NRC’s regulations at 10 CFR part 73, “Physical protection of plants and materials,” require a nuclear power plant to have access authorization programs in place to evaluate an employee’s suitability for unescorted access to the plant. Specifically, 10 CFR 73.56(c) contains the requirement that all licensees have access authorization programs in place that provide a high degree of assurance that all employees granted unescorted access to nuclear power plants “are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.” Regulations at 10 CFR 73.56(d) require licensees to perform background investigations of those employees seeking unescorted access, and regulations at

10 CFR 73.56(l) requires licensees to implement a notification and review process for those employees who are denied unescorted access. For the employee whose denial may provide an adverse impact on employment, the review “must provide for an impartial and independent internal management review.”

The petitioner states that the United States Court of Appeals for the 7th Circuit decided, in *Exelon Generation Company, LLC v. Local 15, International Brotherhood of Electrical Workers*, 676 F.3d 566 (7th Cir. Ill. 2012), that the NRC’s access authorization regulations do not prohibit the use of third-party arbitrators in cases where employees have been denied access. The petitioner states that one effect of the court’s decision is that a person who has been determined not to be trustworthy and reliable by a licensee and denied unescorted access to a nuclear power plant could have that determination overturned by a third party. Therefore, according to the petitioner, the 7th Circuit court’s decision “undermines the NRC’s ability to demonstrate that adequate protection is assured if licensees are impeded in their ability to comply with NRC regulations to maintain ‘high assurance’.”

Furthermore, the petitioner believes that the 7th Circuit court’s conclusion that NRC regulations do not explicitly prohibit third-party arbitration of denials of unescorted access could have been prevented had the regulations contained more “clarity regarding the proper scope of the review process and the ultimate responsibility of the licensee for plant safety and security.” The petitioner states that in order to provide the necessary clarity, the NRC regulations should be modified to “expressly prohibit the restoration or grant of unescorted access by third parties (including arbitrators), to remove all doubt that the licensee is solely responsible for making final unescorted access decisions, and to prescribe a clearly-articulated scope of review for third-party reviewers.” The petitioner provided proposed modifications to the regulations at 10 CFR 73.56(a)(4), 10 CFR 73.56(a)(5), and 10 CFR 73.56(l), that the petitioner believes

would clarify the process and limit the scope on third-party reviews of access denials, and strengthen the authority of licensees to approve or deny unescorted access to nuclear power plants.

Dated at Rockville, Maryland, this 16th day of April 2013.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.