

Access Authorization and Fitness-for-Duty Determinations

February 13, 2017

Agenda



- Purpose
- Background
- Status of Rulemaking Activity
- Topics for Discussion
- Public Feedback
- Next Steps

Purpose of Today's Meeting



- Provide information to the public about the NRC rulemaking activity on the role of third parties in licensee access authorization and fitness-for-duty determinations
- Provide opportunity for the public to express views on this topic

Background



- **March 2012:** U.S. Court of Appeals for the Seventh Circuit rules that NRC regulations do not prohibit third party arbitration of licensee unescorted access denials and revocations.
- **January 2013:** NEI submits petition for rulemaking ([ML13035A186](#))
- **January 2015:** NEI withdraws petition for rulemaking ([ML15023A338](#))
- **November 2015:** NRC staff offers options and recommends expedited rulemaking to the Commission (SECY-15-0149, [ML15068A348](#))
- **June 2016:** Commission approves addressing issue through the normal rulemaking process (SRM-SECY-15-0149, [ML16158A286](#))

Background



- **November 2016:** NRC holds a public meeting on this rulemaking activity to provide background information, discuss status, and solicit input from the public ([ML16336A034](#))
- **December 2016:** NRC holds a closed meeting with representatives from IBEW to discuss specific cases referenced in SECY-15-0149 and other cases that may be relevant to this rulemaking activity ([ML16355A092](#))

Status of Rulemaking Activity



- The staff is developing a document that will describe the regulatory issue, options to address the issue, and the recommended option. This document is called a “regulatory basis.”
- A regulatory basis document:
 - Discusses the scope of the problem and possible options
 - Considers legal, policy, technical, and cost-benefit analysis
 - Identifies the preferred regulatory action
- Possible options:
 - Maintain status quo
 - Revise regulations
 - Revise guidance
 - Other?

Topics for Discussion



1. Does allowing a third party arbitrator to overturn a licensee's access authorization determination pose a regulatory problem? If so, what is the nature of the problem? If not, why not?
2. Does allowing a third party arbitrator to overturn a licensee's access authorization determination pose a safety (human performance) or security vulnerability? If so, why? If not, why not?

Topics for Discussion (cont'd)



3. If the NRC determines that there is a regulatory problem, what potential solutions should the NRC consider? For each solution, please discuss:
 - a) How does it address the potential safety (human performance) or security vulnerability?
 - b) How does it affect due process concerns, and how can those concerns be mitigated?
 - c) What are the unintended consequences?
 - d) What are the cost drivers?

Topics for Discussion (cont'd)



4. What are the elements of a robust appeals process?
 - a) What has been your experience with arbitration of access authorization denials or revocations or fitness-for-duty determinations?
 - b) Are there alternatives to arbitration by third parties that balance employee rights with the responsibility of licensees to ensure trustworthiness and reliability?

Public Feedback



Concerns of non-power reactor community

Public Feedback



Concerns of materials community

Public Feedback



Concerns of unions

Public Feedback



Concerns of power reactor community

Public Feedback



Concerns of non-governmental organizations

Public Feedback



Open discussion

Next Steps



- **Early 2017:** Staff will publish a draft regulatory basis for public comment
- **Early 2017:** Public meeting on draft regulatory basis
- **Mid 2017:** Staff will consider public feedback and conduct additional outreach as necessary
- **Late 2017:** Staff will publish a final regulatory basis

Where to Find Information



The screenshot shows the regulations.gov website interface. At the top left is the logo "regulations.gov" with the tagline "Your Voice in Federal Decision-Making". To the right are navigation links: Home, Help, Resources, and Contact Us. Below these are three buttons: Search, Browse, and Learn. A central banner reads "Make a difference. Submit your comments and let your voice be heard." Below the banner is a search box with the text "SEARCH for: Rules, Comments, Adjudications or Supporting Documents:". The search input field contains "NRC-2016-0145" and is circled in red. To the right of the input field is a blue "Search" button and a link for "Advanced Search". Below the search box are three sections: "What's Trending" (listing Payday, Vehicle Title, and Certain High-Cost Installment Loans), "Comments Due Soon" (listing Today (16) and Next 3 Days (77)), and a partially visible "FAA Section 333" section.

Search for docket ID NRC-2016-0145

How did we do?

- Link to NRC Public Meeting Feedback form:



Acronyms



ADAMS	Agencywide Documents Access and Management System
CFR	<i>Code of Federal Regulations</i>
FR	<i>Federal Register</i>
IBEW	International Brotherhood of Electrical Workers
NEI	Nuclear Energy Institute
NRC	Nuclear Regulatory Commission

Backup Slides

Current Rule Language



The licensee or applicant may accept, in part or whole, an access authorization program implemented by a contractor or vendor to satisfy appropriate elements of the licensee's access authorization program in accordance with the requirements of this section. Only a licensee shall grant an individual unescorted access. Licensees and applicants shall certify individuals' unescorted access authorization and are responsible to maintain, deny, terminate, or withdraw unescorted access authorization.

10 CFR 73.56(a)(4)

Current Rule Language



Review procedures. Each licensee and applicant shall include a procedure for the notification of individuals who are denied unescorted access, unescorted access authorization, or who are unfavorably terminated. Additionally, procedures must include provisions for the review, at the request of the affected individual, of a denial or unfavorable termination of unescorted access or unescorted access authorization that may adversely affect employment. (Continued...)

10 CFR 73.56(I)

Current Rule Language



...The procedure must contain a provision to ensure the individual is informed of the grounds for the denial or unfavorable termination and allow the individual an opportunity to provide additional relevant information and an opportunity for an objective review of the information upon which the denial or unfavorable termination of unescorted access or unescorted access authorization was based. The procedure must provide for an impartial and independent internal management review. Licensees and applicants shall not grant unescorted access or certify unescorted access authorization, or permit the individual to maintain unescorted access or unescorted access authorization during the review process.

10 CFR 73.56(I)

Fitness for Duty Determinations



- 10 CFR 26.39, “Review process for fitness-for-duty policy violations”
- 10 CFR 26.185, “Determining a fitness-for-duty policy violation”
- 10 CFR 26.189, “Determination of fitness”