

# Role of Third Parties in Access Authorization and Fitness-for- Duty Determinations

November 16, 2016

# 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](#))

# 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, the logo "regulations.gov" is displayed with the tagline "Your Voice in Federal Decision-Making". Navigation links for "Home", "Help", "Resources", and "Contact Us" are in the top right. Below these are buttons for "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 placeholder text "SEARCH for: Rules, Comments, Adjudications or Supporting Documents:". The text "NRC-2016-0145" is entered into the search box 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, there are three sections: "What's Trending" with a bar chart icon and the text "Payday, Vehicle Title, and Certain High-Cost Installment Loans"; "Comments Due Soon" with a list showing "Today (16)" and "Next 3 Days (77)"; and a section titled "FAA Section 333".

**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>
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”