[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AI08

# Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY**: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to provide for expedited (and, in this case, "interlocutory") review by the Commission of orders on requests by potential parties for access to certain sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI).

**DATES:** The effective date is April 9, 2008.

**ADDRESSES:** Publicly available documents created or received at the NRC after November 1, 1999, are available electronically on the NRC's website in the Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this page, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail at pdr@nrc.gov. Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public

computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

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## I. Background

Commission regulations in 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" govern the conduct of NRC adjudicatory proceedings.

Potential parties who may request a hearing or petition to intervene in a hearing under 10 CFR Part 2 may deem it necessary to obtain access to sensitive unclassified non-safeguards information (SUNSI) (including, but not limited to, proprietary, confidential commercial, and security-related information) and to Safeguards Information (SGI) as defined in 10 CFR 73.2 to meet Commission requirements for hearing requests or for intervention.

In order to facilitate access to the information described above, the Commission has developed, and made available for public comment,[1] draft access procedures to address receipt of this information by potential parties. In addition, the Commission is completing a final rule to update its regulations governing access to and protection of SGI.[2] Development of the procedures for access by potential parties and of the SGI rule is separate from, and not a part of, this amendment to 10 CFR 2.311. The revisions to 10 CFR 2.311 provide for interlocutory review by the Commission of access determinations made under those procedures, but § 2.311 does not control how the initial access determinations are made. However, a brief discussion of the purpose of those procedures is necessary to explain the Commission's intent in revising § 2.311.

Under the draft procedures for information access, a *Federal Register* notice of hearing, or a notice of opportunity for hearing on a licensing or other regulatory action, would instruct

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[1] *See* "Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information; Reopening of Public Comment Period and Notice of Availability of Proposed Procedures for Comment" (72 FR 43569; August 6, 2007). The draft access procedures document, "Availability for Comment of Proposed Procedures to Allow Potential Intervenors to Gain Access to Relevant Records That Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information," is available in ADAMS at ML071910149.

[2] *See,* "Protection of Safeguards Information," (71 FR 64004; Oct. 31, 2006). The comment period on that proposed rule expired January 2, 2007, and a final rule is under development.

persons who claim a need for access to SUNSI or SGI in order to prepare a hearing request or intervention petition to submit a request by letter to specified Commission offices, within a specified time period from the issuance of the notice. The letter request for either SUNSI or SGI would have to contain certain elements, such as a description of the NRC licensing or enforcement action at issue (with citations to the relevant FRN); a description of the potential party's particular interest that could be harmed by the potential NRC action; and the identity of the individual requesting access to the information and that individual's need for the information in order to meaningfully participate in the adjudicatory proceeding. Access to SGI under the draft access procedures also would require: (1) a showing of the technical competence of the requester to understand and use the requested information to provide the basis and specificity for a proffered contention and (2) completion of a background check (including fingerprinting as part of a criminal history records check, as well as a credit check release) to establish trustworthiness and reliability. Because these background checks may take up to several months to complete, the draft access procedures include a "pre-clearance" process by which potential parties who may seek access to SGI could request initiation of the background check prior to a notice of hearing and thereby minimize delays in the preparation (and, if appropriate, adjudication) of security-related contentions.

Based on an evaluation of the information submitted, the NRC staff would determine whether (1) there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in an adjudicatory proceeding and (2) the proposed recipient of the information has demonstrated a need for access to SUNSI, a need for access to SGI, a "need to know," and that the proposed recipient is trustworthy and reliable. If the request for access to SUNSI or SGI is granted, the terms and conditions for this

access would be set forth in a draft protective order and affidavit of non-disclosure. If the request for access to SUNSI or SGI is denied by the NRC staff, the NRC staff would briefly state the reasons for the denial. The requester could challenge the NRC staff's adverse determination or denial of access; similarly, a party other than the requester could challenge a grant of access to SUNSI if that party's interest independent of the proceeding would be harmed by the release of the information. Depending on the applicable access procedures and provisions of the SGI rule (after they become effective), such a challenge would be filed with any presiding officer assigned to the proposed NRC licensing action; or if no presiding officer has yet been assigned, with the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel; or if he or she is unavailable, with another administrative judge, or with an administrative law judge with jurisdiction under 10 CFR 2.318(a); or, if another officer has been designated to rule on information access issues, with that officer.

As explained above, requests for this information at this stage of a proceeding would initially be made to and decided by the NRC staff. However, the draft access procedures would not apply to license transfer adjudications (for which the Commission has already chosen a different procedural approach),[3] the pending High Level Waste (HLW) Pre-License Application Presiding Officer proceeding (PAPO), or any subsequent adjudication regarding the Department of Energy's (DOE) expected application for a construction authorization for a HLW

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[3] *See Consolidated Edison Co.* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 231 (2001); *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 292 (2000). In these decisions, the Commission established a procedure for making confidential commercial information available to petitioners to intervene in which the applicant and petitioners may negotiate a confidentiality agreement or a proposed protective order. If no agreement can be reached, one or more individuals may move for issuance of a protective order.

repository.

The draft access procedures also include time periods for submission of requests for access, for NRC staff determinations, for filing of contentions, and for challenges to appeal NRC staff access determinations. These periods are intended to minimize the potential for delay in the admission of contentions.[4]

This final rulemaking deals with interlocutory review (review permitted immediately rather than at the end of a proceeding) by the Commission of certain orders granting or denying access to SUNSI or SGI. The amendments to 10 CFR 2.311 recognize the potential role of access to information on the proposed licensing action by potential parties in determining whether to request a hearing or to intervene in a hearing or to support these requests. Extending the opportunity to seek interlocutory review by the Commission of orders relating to these requests should enhance both public involvement in NRC adjudicatory proceedings and the effectiveness and efficiency of these proceedings.

## II. Discussion

[4] The final access procedures, a final rule delegating authority to issue Orders under the procedures to the Secretary of the Commission, and the NRC staff's response to public comments on the draft procedures were recently made available to the public in ADAMS (ML080380626, ML080380608, and ML080380633).

Section 2.311 provides for "interlocutory" review by the Commission of orders issued by a presiding officer or Atomic Safety and Licensing Board[5] on requests for hearing or petitions to intervene and selection of hearing procedures. However, there is no comparable provision for interlocutory Commission review of orders relating to requests by potential parties for access to information described previously. To address this omission, the Commission is changing the rules of practice in 10 CFR Part 2 as described below.

The definitions in § 2.4 are modified to add a definition of *Potential party* as follows: *Potential party* means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 CFR Part 2, other than hearings conducted under Subparts J and M of 10 CFR Part 2.

This definition does not rely on the definition of *Party* in § 2.1001 of Subpart J, applicable to a *party* in a proceeding for the issuance of licenses related to a high-level radioactive waste (HLW) geologic repository. As stated in § 2.1001, the term *Party* is defined only for purposes of Subpart J of 10 CFR Part 2.[6] Similarly, the definition by its terms does not apply to a proceeding conducted under Subpart M ("Procedures for Hearings on License Transfer Applications").

The revised § 2.311 allows potential parties (persons who may intend to request a hearing or petition for leave to intervene in a hearing) as well as the NRC staff, applicants, or

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[5] The term "Atomic Safety and Licensing Board" will be deleted because the definition of "presiding officer" in 10 CFR 2.4 includes that term.

[6] See the discussion in Section I of this document regarding the inapplicability of the interlocutory appeal process that is the subject of this final rule to the pending HLW PAPO proceeding or to any subsequent adjudication regarding the expected application by DOE for a construction authorization for a HLW repository.

licensees, to seek expedited review by the Commission of certain orders. Among these are orders relating to a request by potential parties for access to SUNSI and SGI. This amendment is necessary to provide an avenue for promptly obtaining Commission review of these determinations, some of which might ultimately result in denial of a request for a hearing or for leave to intervene for failure to meet the requirements for standing and admissibility of contentions. Specific changes to § 2.311 are discussed below.

The rule amends 10 CFR 2.311(a) by making the following changes. In addition to deletion of the reference in paragraph (a) to the Atomic Safety and Licensing Board, paragraph (a) is further modified. First, language is added to include orders other than those issued by the presiding officer: e.g., if a presiding officer has not been designated, orders of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under § 2.318(a). This change recognizes that a presiding officer might not have been designated when a potential party is seeking interlocutory review by the Commission. Also, paragraph (a) is divided into paragraphs (a)(1), (a)(2), and (a)(3), and a new paragraph (b) is added. Paragraphs (a)(1) and (a)(2) retain orders on a request for hearing or petition to intervene as orders on which interlocutory review by the Commission may be sought. New paragraph (a)(3) adds to these categories an order relating to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) and SGI. Access to this information could be deemed necessary by a potential party to determine whether to request a hearing or petition to intervene or to support such requests. This paragraph also adds language authorizing an appeal, in connection with such a request, of an order of an officer designated to rule on information access issues. This language is necessary because, as is contemplated by the

access procedures discussed in Section I of this preamble and by the Commission's final rule in development concerning SGI, a judge may be specifically designated to adjudicate information access issues. The remainder of paragraph (a), addressing requirements relating to such matters as the initiation and filing of appeals, is redesignated as paragraph (b).

In light of the above modifications, current paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e), respectively. In redesignated paragraph (c), an order denying a request for access to the information described in paragraph (a), is included as an order appealable by the petitioner/requester on the question as to whether the request and/or petition should have been granted. Former paragraph (c), redesignated as paragraph (d), concerns appeals by a party other than the requester/petitioner. This paragraph is modified to address in paragraph (d)(1) appeals of orders granting a petition to intervene and/or hearing and in paragraph (d)(2), appeals of orders granting requests for access to information. The appealable issue in paragraph (d)(2) is whether the request for access should have been denied in whole or in part. Paragraph (d) in the current rule is redesignated as paragraph (e) but is otherwise unchanged.

## III. Analysis of Public Comments on the Proposed Rule

The Commission received two comment letters on the proposed rule (72 FR 32018; June 11, 2007) one from the Nuclear Energy Institute (NEI) and the other from Progress Energy. NEI supported the rule as proposed. Progress Energy suggested revisions to the Background section of the rule's Supplementary Information to make clear that a licensee or applicant may challenge an NRC staff grant of access to SUNSI or SGI. Progress Energy stated that the proposed rule provides for these appeals as a counterpart to the provision

allowing access-requesters to challenge *denials* of these requests. Progress Energy stated that this approach is consistent with existing practices for the treatment of proprietary information in NRC adjudications. Progress Energy identified several specific places in the Background section where references should be added to clarify the appeal rights of applicants or licensees.

In addition, the Commission received two comment letters on the related draft access procedures; one of these comments indirectly addressed the proposed rule. The commenter, a law firm that represents utilities, stated that an applicant or licensee should have an opportunity to have input concerning the propriety of providing SUNSI or SGI to the requesting party. The commenter referenced the proposed interlocutory review rule in stating that applicants and licensees (as well as the NRC staff) should have an opportunity to participate in challenges to access determinations.

*NRC response*:

The proposed rule provided that a party other than the access-requester may argue on appeal that the access request "should have been denied in whole or in part."
See, § 2.311(d)(2). The issue raised by the comments has prompted the Commission to reconsider the permissible scope of interlocutory appeals by parties other than those requesting access to SUNSI or SGI.

The Commission agrees with the commenter's general point concerning the parallel appeal provisions for applicants/licensees with respect to disputes over proprietary information. In such circumstances, the applicant/licensee could be uniquely affected by improper disclosure and should have an opportunity to contest that access determination. However, because of the NRC staff obligation and strong interest in protecting SGI and because of the diverse types of

information that may be designated as SUNSI, the Commission concludes that efficient resolution of information access issues would not be furthered by expediting appeals of favorable access determinations with respect to SGI or with respect to SUNSI in which the appealing party has no direct independent interest.

A key purpose of the amended provision is to permit prompt Commission review of access determinations concerning information that potential parties may deem necessary to meet Commission hearing requirements. For SGI and for most types of SUNSI, the NRC staff's role and expertise in making access determinations (and appealing contrary presiding officer orders to the Commission, if necessary) will serve to protect the information from unnecessary disclosure. Accordingly, the NRC staff's opportunity to appeal favorable determinations generally does not need to be duplicated by appeals from other parties. However, the potential value of interlocutory appeals by parties other than the requester may justify the additional adjudication time and resources in circumstances when improper disclosure could harm those parties' independent interests. Therefore, under the final rule, interlocutory review of favorable information access rulings with respect to SGI may be sought only by the NRC staff or, with respect to SUNSI, by the NRC staff or by a party with a directly affected independent interest. As explained below, the Commission has limited and clarified the rule text and Supplementary Information in this document accordingly.

A potential party requesting access to SUNSI must demonstrate a "need" for the requested information, while a potential party requesting access to SGI must demonstrate both a "need to know" the requested SGI and that the recipient of the information is "trustworthy and reliable." The SGI trustworthiness and reliability determination is based on a background check (including fingerprinting as part of a criminal history records check). In NRC adjudications,

making the initial need to know and trustworthiness and reliability determinations will generally be the responsibility of the NRC staff.

Upon further consideration, the Commission concludes that the rule should not permit challenges by parties other than the NRC staff to grants of access to SGI held by the NRC staff.[7] First, with respect to an SGI requester's trustworthiness and reliability, the NRC staff and the SGI requester are the only potential parties who will have access to the results of the background check (including the criminal history records check) on which the trustworthiness and reliability determination is based. Therefore, it is unlikely that another potential party would have a relevant factual basis for challenging the soundness of the determination. Moreover, enabling such challenges could encourage frivolous "untrustworthiness/unreliability" claims solely intended to undermine an opposing party's credibility or delay the proceedings. Furthermore, given the NRC staff's robust obligation to ensure that dissemination of SGI is appropriately limited to trustworthy and reliable individuals and to those with a need to know, litigating these objections by other potential parties would be more likely to distract from resolution of the issues than to enhance protection of SGI. Accordingly, the final rule does not extend to appeals by non-requesters of favorable SGI access determinations. However, because of the NRC staff's responsibility for protecting SGI in NRC proceedings, appeals by the NRC staff will remain within the scope of the rule.

Similarly, with respect to SUNSI, the rule should not permit challenges to a favorable determination of "need" for information in which the challenging party has no direct interest

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[7] Similarly, the final access procedures do not address information possessed solely by a licensee or applicant.

independent of the adjudicatory proceeding. For most SUNSI, the NRC staff's regulatory responsibility for releasing the information only to those demonstrating need should provide sufficient assurance that favorable access determinations are sound. Accordingly, expending time and resources to hear third-party challenges (and subsequently permit expedited Commission review) concerning that information would not be justified. However, as indicated by the commenter, improper release of certain categories of SUNSI – namely proprietary information, privacy information, certain security-related information, or information controlled by other Government agencies – could have a direct impact on independent interests of other parties to the proceeding. For these types of information, it remains appropriate for such an affected party to be able to challenge a presiding officer determination that access be granted.

For the above reasons, the Commission has modified proposed § 2.311(d)(2) to state that review is permitted on the question of "Whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information." The Commission has also made a minor grammatical correction to the first sentence of § 2.311(d) – inserting the word "granting" before "a request for information" so that it is clearer that appeals under this section relate only to orders granting access to information. Finally, to emphasize that § 2.311(d)(2), not (d)(1), is the paragraph governing appeals of orders granting requests for access to SUNSI and SGI, the Commission has revised the text of § 2.311(d)(1) to refer to a "request for hearing or petition to intervene" rather than just a "request/petition."

## IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is permitting potential parties to seek interlocutory Commission review of orders denying a request for access to information for the preparation of contentions. This action does not constitute the establishment of a government-unique standard as defined in the Office of Management and Budget (OMB) Circular A-119 (1998).

## V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

## VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting

document displays a currently valid OMB control number.

## VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation because it applies to the procedures to be used in NRC adjudicatory proceedings and does not involve any provisions that would impose any economic burdens on licensees or the public.

## VIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule only governs procedural aspects to provide for expedited review by the Commission of orders on requests by potential parties for access to certain sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI).

## IX. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

## X. Congressional Review Act

Under the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 2.

**PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND FOR ISSUANCE OF ORDERS**

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i,

189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97--425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.4, a definition of *Potential party* is added in alphabetical order to read as follows:

**§ 2.4 Definitions.**

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*Potential party* means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 CFR Part 2, other than hearings conducted under Subparts J and M of 10 CFR Part 2.

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3. Section 2.311 is revised to read as follows:

**§ 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.**

(a) An order of the presiding officer, or if a presiding officer has not been designated, of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under § 2.318(a), may be appealed to the Commission with respect to:

(1) A request for hearing;

(2) A petition to intervene; or

(3) A request for access to sensitive unclassified non-safeguards information (SUNSI), including, but not limited to, proprietary, confidential commercial, and security-related information, and Safeguards Information (SGI). An appeal to the Commission may also be taken from an order of an officer designated to rule on information access issues.

(b) These appeals must be made as specified by the provisions of this section, within ten (10) days after the service of the order. The appeal must be initiated by the filing of a notice

of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within ten (10) days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

(c) An order denying a petition to intervene, and/or request for hearing, or a request for access to the information described in paragraph (a) of this section, is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

(d) An order granting a petition to intervene, and/or request for hearing, or granting a request for access to the information described in paragraph (a) of this section, is appealable by a party other than the requestor/petitioner on the question as to:

(1) Whether the request for hearing or petition to intervene should have been wholly denied; or

(2) Whether the request for access to the information described in paragraph (a)(3) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

(e) An order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in § 2.310. The appeal must be filed with the Commission no later than ten (10) days after issuance of the order selecting a hearing procedure.

Dated at Rockville, Maryland, this 4th day of March 2008.

For the Nuclear Regulatory Commission.

/RA/

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