

**TEMPLATE KEY:**

- Brackets (“[” and “]”) designate information that will need to be inserted into the document when it is issued in a specific proceeding.
- Curly brackets (“{” and “}”) designate optional information of two possible kinds: (1) cases where the NRC is considering one or more possible alternative procedures to be adopted in the final general procedures, or (2) cases where a particular procedure would only apply under certain conditions. Contextual statements will make clear which of these two cases apply.
- Angle brackets (“<” and “>”) designate information about the template that is for information only and will not appear in the document that is issued in a specific proceeding.

*[Insert standard Federal Register notice header information.]*

**Docket No. 52—[XXX]**

**[Facility name and unit number]; Notice of Intended Operation; Opportunity for Hearing on Conformance with the Acceptance Criteria in the Combined License; and Associated Orders.<sup>1</sup>**

*[Insert standard Federal Register notice sections for Agency, Action, Summary, Dates, Addresses, and Contact Information.]*

*The Dates section would provide information on the deadlines for requesting a hearing and for requesting access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) for contention preparation. A request for a hearing must be filed within 60 days of publication in the Federal Register. A potential party as defined in Section 2.4 of Title 10 of the Code of Federal Regulations (10 CFR), who believes access to SUNSI or SGI is necessary to respond to this notice must request access within 10 days of publication in the Federal Register.*

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<sup><1</sup> While this document is intended to serve as a template for the future issuance of notices of intended operation, the NRC may make appropriate modifications to the actually-issued notices, such as changes to reflect the specific facts associated with a particular plant or to reflect updated means of accessing information.>

*The Addresses section would provide instructions on how the public may obtain information related to this action. Among other things, this section would state: “The inspections, tests, analyses, and acceptance criteria (ITAAC) for this combined license, the licensee’s ITAAC closure notifications, uncompleted ITAAC notifications, and ITAAC post-closure notifications; associated NRC inspection and review documents; and other supporting documents pertaining to ITAAC closure for [Facility name and unit number] are available electronically at [NRC ITAAC webpage].”*

## **I. Introduction.**

Pursuant to the Atomic Energy Act of 1954, as amended (AEA), and the regulations in 10 CFR Part 2, “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,” and 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” notice is hereby given that (1) the licensee intends to operate [Facility name and unit number]; (2) the NRC is considering whether to find that the acceptance criteria in the combined license (COL) are met; and (3) interested persons have an opportunity to request a hearing regarding conformance with the acceptance criteria. This notice is accompanied by an order imposing procedures for the conduct of the hearing and an order imposing procedures for access to SUNSI and SGI for contention preparation (SUNSI-SGI Access Order).

A. Information on [Licensee’s] Intent to Operate [Facility name and unit number] and on the Hearing Opportunity Associated with Facility Operation.

[Licensee] was issued a COL for [Facility name and unit number] on [Date]. Under the provisions of Section 185b. of the AEA and NRC regulations in 10 CFR 52.97(b), ITAAC are included in a COL for the purpose of establishing a means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. The ITAAC are included as Appendix [X] to the COL. Section 185b. of the AEA

requires that, after issuance of the COL, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met as required by 10 CFR 52.103(g). Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which includes initial fuel load.

The NRC is considering whether to make the 10 CFR 52.103(g) finding that the acceptance criteria for all ITAAC are met. Prior to making this finding, Section 189a.(1)(B)(i) of the AEA provides that the NRC shall publish in the *Federal Register* a notice of intended operation that shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license. In the licensee's notification dated [Date] (ADAMS Accession No. [MLXXXXXXXXXX]), the licensee informed the NRC that its scheduled date for initial loading of fuel into the reactor is [Date].

B. Information on [Licensee's] Completion of ITAAC.

For every ITAAC, the licensee is required by 10 CFR 52.99(c)(1) to submit to the NRC an ITAAC closure notification explaining the licensee's basis for concluding that the inspections, tests, and analyses have been performed and that the acceptance criteria are met. These ITAAC closure notifications are submitted throughout construction as ITAAC are completed. If an event occurring after the submission of an ITAAC closure notification materially alters the basis for determining that the inspections, tests, and analyses were successfully performed or that the acceptance criteria are met, then the licensee is required by 10 CFR 52.99(c)(2) to submit an ITAAC post-closure notification documenting its successful resolution of the issue.

The licensee must also notify the NRC when all ITAAC are complete as required by 10 CFR 52.99(c)(4). These notifications, together with the results of the NRC's inspection process, serve as the basis for the NRC's finding regarding whether the acceptance criteria in the COL are met.

One other required notification, the uncompleted ITAAC notification, must be submitted at least 225 days before scheduled initial fuel load and must describe the licensee's plans to complete the ITAAC that have not yet been completed. 10 CFR 52.99(c)(3). These uncompleted ITAAC notifications provide information to members of the public for the purposes of requesting a hearing and submitting contentions on uncompleted ITAAC within the required timeframes. Members of the public must submit hearing requests by the deadline specified in this notice, and the hearing request must address any deficiencies with respect to uncompleted ITAAC based on the information available to the petitioner, including the uncompleted ITAAC notifications required by 10 CFR 52.99(c)(3). Members of the public may not defer the submission of hearing requests or contentions because there are ITAAC that have not yet been completed. The licensee must submit an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1) after it completes these uncompleted ITAAC.

The supporting documents pertaining to ITAAC closure for [Facility name and unit number] are available electronically at [NRC ITAAC webpage]. These include the ITAAC and the licensee's ITAAC closure notifications, uncompleted ITAAC notifications, and any ITAAC post-closure notifications. The licensee has not yet submitted the 10 CFR 52.99(c)(4) "all ITAAC complete notification" required under 10 CFR 52.99(c)(4). This notification will be included at [NRC ITAAC webpage] when it is submitted.<sup>2</sup> This webpage also includes NRC

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<sup>2</sup> *This template has been developed with the expectation, based on interactions with the nuclear industry, that there will be a number of ITAAC not yet completed by the time the notice of intended operation is published. If it turns out that all ITAAC are completed by the publication of the notice of intended operation, then the actually issued notice would be appropriately modified from this template.>*

inspection reports, ITAAC Closure Verification Evaluation Forms (VEFs) generated by the NRC staff, and citations to periodically issued *Federal Register* notices of the NRC staff's determinations that certain inspections, tests, and analyses have been successfully completed. The NRC staff determinations made in these documents are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The 10 CFR 52.103(g) finding, which will be made by the Director of the Office of New Reactors if all the acceptance criteria are met, will be accompanied by a document providing the rationale supporting the 10 CFR 52.103(g) finding, which will be issued when the NRC is prepared to make the 10 CFR 52.103(g) finding. [NRC ITAAC webpage] will be updated to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents. In addition, to provide additional background information to members of the public, [NRC ITAAC webpage] includes other supporting documents, such as the final safety analysis report for the facility, the NRC's final safety evaluation report for the COL review, and the design control document for the [XYZ] design certification, which the facility references. Finally, to search for documents in ADAMS using the [Facility name and unit number] docket number, [52-0XX], one should enter the term "052000[XX]" in the "Docket Number" field when using the web-based search (advanced search) engine in ADAMS.

*{If applicable:}* The licensee has submitted partial ITAAC closure notifications, which are notifications that cover the partial closure of individual ITAAC. These partial ITAAC closure notifications are indicated in the [ITAAC Status Report] available at [NRC ITAAC webpage]. When these ITAAC are fully closed, the licensee will submit a complete ITAAC closure notification to the NRC; this notification will be available at [NRC ITAAC webpage]. ITAAC for which a partial ITAAC closure notification has been submitted continue to be considered uncompleted and are subject to an uncompleted ITAAC notification until they are fully

completed and closed.} For those ITAAC that are uncompleted, the NRC staff has conducted only an administrative review of the uncompleted ITAAC notifications to determine that a notification has been submitted for each uncompleted ITAAC; the NRC staff will conduct a substantive review of the subsequent ITAAC closure notifications after the uncompleted ITAAC are completed by the licensee.

In accordance with 10 CFR 2.105(b)(3)(iv), the notice of intended operation must identify any conditions, limitations, or restrictions to be placed on the license in connection with the finding under 10 CFR 52.103(g), and the expiration date or circumstances (if any) under which the conditions, limitations or restrictions will no longer apply. As of the date of this notice, the NRC staff {has not identified any such conditions, limitations, or restrictions OR has identified the following [conditions, limitations, or restrictions]:}.

## **II. Hearing Requests.**

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a hearing request with the NRC. This section sets forth the requirements for requesting a hearing on whether acceptance criteria in the combined license for [Facility name and unit number] have been or will be met. This section references the requirements for hearing requests found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions," with certain additional procedures included in the orders issued with this notice. Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR and electronically from the NRC's Electronic Reading Room on the NRC Web site at <http://www.nrc.gov>. All hearing requests must be filed in accordance with the filing instructions in Section III of this document.

A. A Hearing Request Must Show Standing.

As required by 10 CFR 2.309(d), a hearing request shall show standing by setting forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest. Discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception as it provides for other proceedings.

B. A Hearing Request Must Include an Admissible Contention.

A hearing request must also include the contentions that the petitioner seeks to have litigated in the hearing. The contention standards for an ITAAC hearing under 10 CFR 52.103(b), which are in some respects different from the contention standards in other NRC proceedings, are as follows.

For each contention, the petitioner must meet the following requirements from 10 CFR 2.309(f)(1)(i) through (v) and (vii):<sup>3</sup>

- Provide a specific statement of the issue of law or fact to be raised or controverted, as required by 10 CFR 2.309(f)(1)(i). The issue of law or fact to be raised must be directed at demonstrating that one or more of the acceptance criteria in the COL have not been,

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<sup>3</sup> The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;<sup>4</sup>

- Provide a brief explanation of the basis for the contention, as required by 10 CFR 2.309(f)(1)(ii);
- Demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the 10 CFR 52.103(g) finding, as required by 10 CFR 2.309(f)(1)(iii) and (iv);
- Include a concise statement of the alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely, as required by 10 CFR 2.309(f)(1)(v); and
- Submit sufficient information showing, *prima facie*, that one or more of the acceptance criteria in the COL have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety, as required by 10 CFR 2.309(f)(1)(vii). This information must include the specific portion of the report required by 10 CFR 52.99(c) that the petitioner believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)).<sup>5</sup>

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<sup>4</sup> In accordance with 10 CFR 51.108, the Commission will not admit any contentions on environmental issues in this proceeding, and the NRC is not making any environmental finding in connection with a finding under 10 CFR 52.103(g) that the acceptance criteria are met.

<sup>5</sup> Consistent with 10 CFR 2.309(f)(1)(vii), a purported incompleteness in the 10 CFR 52.99(c) report might be the basis for a petitioner's *prima facie* showing. However, if the petitioner believes that the purported incompleteness *prevents* the petitioner from making the necessary *prima facie* showing, then the petitioner may submit a claim of incompleteness as described later in this section.



As provided in the orders issued with this notice, any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

Because the licensee references the [XYZ] design certification rule (10 CFR Part 52, Appendix [X]), the provisions in this design certification rule pertaining to proceedings under 10 CFR 52.103 also apply to hearing requests and contentions submitted in this proceeding. These provisions include 10 CFR Part 52, Appendix [X], Paragraphs [VI.B, VIII.B.5.g, and VIII.C.5].

C. Claims of Incompleteness.

If the petitioner identifies a specific portion of the § 52.99(c) report as incomplete and contends that the incomplete portion prevents the petitioner from making the necessary *prima facie* showing, then 10 CFR 2.309(f)(1)(vii) requires the petitioner to explain why this deficiency prevents the petitioner from making the *prima facie* showing. Such a claim is called a “claim of incompleteness.” The process for claims of incompleteness is intended to address situations in which the licensee’s 10 CFR 52.99(c) report is incomplete and this incompleteness prevents the petitioner from making the necessary *prima facie* showing with respect to one or more aspects of 10 CFR 2.309(1)(i) through (v) and (vii).<sup>6</sup> To establish a valid claim of incompleteness, the

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<sup>6</sup> 10 CFR 2.309(f)(1)(i) through (v) are essential elements in making the *prima facie* showing required by the AEA and NRC regulations, and it is conceivable that an incompleteness in the licensee’s 10 CFR 52.99(c) report would prevent the petitioner from satisfying the elements in 10 CFR 2.309(f)(1)(i) through (v).

petitioner must specifically identify the incompleteness in the 10 CFR 52.99(c) report and must provide an adequately supported explanation of why this deficiency prevents the petitioner from making the necessary *prima facie* showing. However, the availability of this procedural avenue does not obviate the need for the petitioner to show standing and, to the extent it can based on the available information, satisfy the contention requirements. Thus, the petitioner must make all of its claims regarding the ITAAC and satisfy the contention admissibility requirements of 10 CFR 2.309(f)(1)(i) through (v) and (vii) in its hearing request to the extent possible but for the petitioner's claim of incompleteness. Also, to the extent that a petitioner is able to make a *prima facie* showing with respect to one aspect of an ITAAC, it must do so even if there is a different aspect of the ITAAC for which a *prima facie* showing cannot be made because of an incompleteness in the licensee's 10 CFR 52.99 report. Furthermore, because the *prima facie* showing must address two issues—conformance with the acceptance criteria and whether the operational consequences of nonconformance are contrary to reasonable assurance of adequate protection of the public health and safety—a valid claim of incompleteness must either explain why the incompleteness in the 10 CFR 52.99 report prevents the petitioner from making the *prima facie* showing with respect to both issues, or the petitioner must make the *prima facie* showing with respect to one issue and explain why the incompleteness in the 10 CFR 52.99 report prevents the petitioner from making the *prima facie* showing with respect to the other issue.

If the Commission determines that the petitioner has submitted a valid claim of incompleteness, then it will issue an order requiring the licensee to provide the additional information and setting forth a schedule for the petitioner to file a contention that meets the *prima facie* standard based on the additional information. If the petitioner files an admissible contention thereafter, and all other hearing request requirements (e.g., standing) have been met, then the hearing request will be granted.

D. Participation by Interested States, Local Governments, and Federally-recognized Indian Tribes.

A request for hearing submitted by a State, local government body, Federally-recognized Indian Tribe, or an agency thereof must comply with the provisions of 10 CFR 2.309(h)(1). The hearing request must meet the requirements for hearing requests set forth in this section, except that a State, local government body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local government body, Federally-recognized Indian Tribe, or an agency thereof may also seek to participate in a hearing in accordance with 10 CFR 2.315(c).

E. Hearing Requests from the Licensee.

The licensee may file a request for hearing if it disputes an NRC staff determination that the acceptance criteria are not met. A licensee requesting a hearing must specifically identify the ITAAC subject to this dispute and the specific issues that are being disputed.<sup>7</sup>

F. Deadlines for Hearing Requests and Answers to Hearing Requests.

Hearing requests must be filed no later than 60 days from **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after this date must meet the requirements for such filings that are set forth in the orders issued with this notice. As provided by 10 CFR 2.309(i), answers to hearing requests must be filed within 25 days of the service of the hearing request, and the petitioner is not permitted to reply to these answers.

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<sup>7</sup> The *prima facie* showing requirement does not apply to a licensee hearing request because the licensee would be asserting that the acceptance criteria are met rather than asserting that the acceptance criteria have not been, or will not be, met. Licensees requesting a hearing would be challenging an NRC staff determination that the acceptance criteria are not met; this NRC staff determination is analogous to a *prima facie* showing that the acceptance criteria have not been met.

The Commission will rule on all hearing requests. If the petitioner's hearing request is granted, the petitioner becomes a party to the contested proceeding, subject to any limitations in the order granting the hearing request. Concurrent with the granting of the hearing request, the Commission would designate the presiding officer for the hearing and issue an order specifying the hearing procedures that would apply to the proceeding. The party's participation would be governed by the applicable procedures set forth in the Commission order, and may include the opportunity to present the party's legal and technical views, introduce evidence, and propose questions to be asked of witnesses. The hearing procedures will be selected from those described in [*Federal Register* notice announcing final procedures and providing responses to comments] and may include any additional or modified case-specific procedures that the Commission designates.<sup>8</sup>

G. Interim Operation.

If a hearing request is granted, AEA § 189a.(1)(B)(iii) directs the Commission to determine whether to allow interim operation, which is operation of the facility for an interim period before completion of the adjudicatory hearing. Interim operation will be allowed if the NRC staff makes the 10 CFR 52.103(g) finding for all ITAAC and if the Commission determines, after considering the petitioners' *prima facie* showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. AEA §§ 185b. and 189a.(1)(B)(iii); 10 CFR 52.103(c). As provided by 10 CFR 52.103(c), the Commission will make this adequate protection determination acting as the presiding officer. Because the purpose of the interim operation provision is to prevent an ITAAC hearing from unnecessarily delaying plant operation if the hearing extends beyond

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<sup>8</sup> In accordance with 10 CFR 2.309(g), participants to this proceeding may not address the selection of hearing procedures in their initial filings. The NRC provided the public with an opportunity to comment on generic hearing procedures during the comment period on the proposed generic procedures. See [*Federal Register* notice announcing final procedures and providing responses to comments]; [*Federal Register* notice soliciting comments on draft procedures].

scheduled fuel load, the Commission intends to make an adequate protection determination for interim operation by scheduled fuel load if the hearing is not completed by that time.

In making the adequate protection determination for interim operation, the Commission will follow the legislative intent underlying the interim operation provision. The pertinent legislative history indicates that Congress did not intend that the Commission would rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that will not arise during the interim operation period, or in which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation.<sup>9</sup>

As stated previously, the adequate protection determination for interim operation is based on the parties' initial filings, i.e., the hearing request and answers thereto. Thus, the petitioner should include in its hearing request information regarding the time period and modes of operation during which the adequate protection concern arises. Likewise, the NRC staff and the licensee should include such information in their answers to the hearing request, and the licensee should also include any proposed mitigation measures to address the adequate protection concerns raised by the petitioner. The petitioners, the NRC staff, and the licensee are reminded that, ordinarily, their initial filings will be their only opportunity to address adequate protection during interim operation.

Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents

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<sup>9</sup> Additional background information regarding interim operation can be found in SECY-13-0033, "Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103" (ADAMS Accession No. ML12289A928), and the *Federal Register* notice for the final generic ITAAC hearing procedures [XX FR XXXXX].

on which the proponent relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support provided by the proponent, including the qualifications and experience of each expert providing expert opinion.

If the Commission grants a hearing request, it may order additional briefing as a matter of discretion to support a determination on whether there will be adequate protection during interim operation. Such a briefing order will be issued concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission will issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

H. Limited Appearance Statements.

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to 10 CFR 2.315(a). In the discretion of the presiding officer, a person making a limited appearance may make an oral or written statement of position on the issues, at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, the presiding officer will not provide for oral limited appearance statements unless an oral hearing is held. In addition, a person making a limited appearance statement may not otherwise participate in the proceeding. Such limited appearance statements shall not be considered evidence in the proceeding.

### III. Electronic Submissions.

Except for an initial request for access to SUNSI or SGI made pursuant to the SUNSI-SGI Access Order, all documents filed in this proceeding, including a request for hearing, any motion or other document filed in the proceeding prior to the submission of a request for hearing, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007) as modified by the procedures in the orders issued with this notice.<sup>10</sup> Participants to this proceeding must submit and serve all adjudicatory documents over the internet, or in some cases mail copies on electronic storage media by overnight mail. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described later in this section.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for this proceeding; and (2) advise the Secretary that the participant will be submitting a request for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System

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<sup>10</sup> The initial request for access to SUNSI or SGI must be made in accordance with the procedures set forth in the SUNSI-SGI Access Order that accompanies this notice.

requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or



representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call to 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by hand delivery or overnight mail to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by hand delivery on the date the document is received by the Secretary and the other participants, or by overnight mail upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Any person who files a motion pursuant to 10 CFR 2.323 (as modified by the orders issued with this notice) must consult with counsel for the licensee and counsel for the NRC staff. Counsel for the licensee is [Name, phone number, and e-mail address]. Counsel for the NRC staff in this proceeding is [Name, phone number, and e-mail address].

Documents submitted in this proceeding will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a hearing request will require that the petitioner include information on local residence in order to demonstrate a proximity assertion of interest in this proceeding. With respect to copyrighted works, except for limited excerpts that support the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

**Order Imposing Procedures for ITAAC Hearings  
Before a Commission Ruling on the Hearing Request**

**I. BACKGROUND.**

The Atomic Energy Act of 1954, as amended (AEA), grants the NRC discretion to establish appropriate procedures for conducting a hearing on whether a facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, provided that the NRC explains its reasoning for establishing those procedures. AEA § 189a.(1)(B)(iv). As provided by 10 CFR 2.310(j), the Commission designates on a case-specific basis the procedures for proceedings on a Commission finding under 10 CFR 52.103(c) and (g), which includes the Commission determination on a hearing request under 10 CFR

52.103(c).<sup>11</sup> This order contains the procedures that govern requests for hearings on conformance with the prescribed acceptance criteria in the combined license, as well as other filings that may be submitted before a Commission ruling on the hearing request.<sup>12</sup> The procedures in this order were approved by the Commission for use on a general basis in [*Federal Register* notice announcing final procedures and providing responses to comments]. The Commission developed the procedures in this order based on the NRC's rules of practice in 10 CFR Part 2, primarily Subpart C, adopting or modifying them as necessary to conform to the expedited schedule and specialized nature of hearings on inspections, tests, analyses, and acceptance criteria (ITAAC). The Commission modeled these procedures on the existing rules because they have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures in this order if they are already familiar with the existing rules. To the extent that the Commission has modified these rules, the basis for the Commission's decision is set forth in this order. And to the extent that the Commission has adopted the rules with little or no change, the Commission incorporates by reference the basis for their promulgation in 10 CFR Part 2.

Many of the modifications the Commission has made to the hearing procedures in existing regulations are to account for the requirement in the AEA that, to the maximum possible extent, decisions resolving issues raised by an ITAAC hearing request shall be rendered within 180 days of the publication of the notice of intended operation or the anticipated date for initial

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<sup>11</sup> See Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 FR 49352, 49414 (Aug. 28, 2007) (final rule).

<sup>12</sup> This order contains only procedures governing the period prior to a ruling on the hearing request. If the Commission grants a hearing request or determines that a claim of incompleteness is valid, then the Commission will issue procedures governing the resolution of these issues concurrently with its decision on the hearing request.

loading of fuel, whichever is later. AEA § 189a.(1)(B)(v). Therefore, the Commission has established a narrow time frame for hearings on ITAAC, which is reflected in reduced time limits for certain adjudicatory actions. The Commission has also made appropriate changes to the “Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information [SGI] for Contention Preparation” (SUNSI-SGI Access Order), which immediately follows this order.

## **II. HEARING PROCEDURES.**

The procedures set forth herein and in the SUNSI-SGI Access Order issued with this notice are exclusive—meaning no procedures other than those stated in the orders issued with the notice of intended operation apply to this proceeding, unless modified by a later Commission order. Thus, if a provision of 10 CFR Part 2 is not expressly referenced in this order, then it does not apply to this proceeding, unless modified by a later Commission order.

### **A. Hearing Requests and Answers To Hearing Requests.**

#### *1. Requirements for Hearing Requests*

- a. Hearing requests must be filed within 60 days of the publication of the notice of intended operation. Section F.2 of this order governs hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after 60 days from the publication of the notice of intended operation.
- b. Hearing requests must meet the requirements of 10 CFR 2.309(f)(1)(i) through (v) and 10 CFR 2.309(f)(1)(vii). The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

- c. The requirements of Sections [VI.B, VIII.B.5.g and VIII.C.5] of the [XYZ] design certification rule apply to this proceeding.
- d. The hearing request must include a demonstration that the petitioner has standing in accordance with the requirements of 10 CFR 2.309(d). Additionally, the provisions of 10 CFR 2.309(h) apply to this proceeding. However, discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception as it provides for other proceedings.
- e. Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

2. *Effect of Hearing Requests on Interim Operation*

- a. If the petitioner argues that the information raised in the hearing request will affect adequate protection during interim operation, then, in order for its views to be considered by the Commission before the Commission makes the interim operation determination, the petitioner shall provide its views on this issue, including the time periods and modes of operation in

which the adequate protection concern arises, at the same time it submits the hearing request.<sup>13</sup>

- b. Because the Commission's interim operation determination is a technical finding, a petitioner's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which it relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a petitioner's position on adequate protection during interim operation will depend on the level and specificity of support provided by the petitioner, including the qualifications and experience of each expert providing expert opinion.

3. *Answers*

- a. Answers to hearing requests shall be filed within 25 days of service of the hearing request in accordance with 10 CFR 2.309(i)(1).
- b. Any answers to the proffered contention from the NRC staff and the licensee shall include their views regarding the impact of the issues raised in the hearing request on adequate protection during interim operation, including the licensee's plans, if any, to propose mitigation measures to ensure adequate protection during interim operation. NRC staff filings addressing interim operation should address any terms and

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<sup>13</sup> A claim of incompleteness does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing.

conditions that should be imposed to assure adequate protection during the interim period. Because the Commission's interim operation determination is a technical finding, the NRC staff's and the licensee's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which they rely. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to the NRC staff's or the licensee's position on adequate protection during interim operation will depend on the level and specificity of support provided, including the qualifications and experience of each expert providing expert opinion.

- c. As provided by 10 CFR 2.309(i)(2)-(3), replies to answers are not permitted. If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination on interim operation. If the Commission makes this determination, then it intends to issue a briefing order concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission intends to issue a briefing order allowing the NRC staff and the petitioner an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

4. *Timing for Decision on Hearing Requests*

- a. Unless the Commission extends its time for review, the Commission will rule on a hearing request within 30 days of the filing of answers.
- b. A Commission interim operation determination need not be made in conjunction with a ruling on the hearing request.

**B. General Motions.**

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in 10 CFR Part 2, Subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, or earlier, as prescribed by the Commission. Answers to motions shall be filed within 7 days after service of the motion, or earlier, as prescribed by the Commission. Except for the filing deadlines, motions and answers shall otherwise conform to the requirements of 10 CFR 2.323(a) through (d). The provisions of 10 CFR 2.323(g) apply to this proceeding.

**C. Motions for Extension of Time.**

1. Except as otherwise provided, the Commission may, for good cause shown, extend the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time. A showing of good cause must be based on an event occurring before the deadline in question.
2. Motions for extension of time shall be filed as soon as possible, and, absent exceptional circumstances, motions for extension of time will not be entertained if



they are filed more than two business days after the moving party discovers the event that gives rise to the motion.<sup>14</sup>

3. When determining whether the requesting party has demonstrated good cause, the Commission shall take into account the factors in 10 CFR 2.334(b):
  - a. Whether the requesting party has exercised due diligence to adhere to the schedule;
  - b. Whether the requested change is the result of unavoidable circumstances; and
  - c. Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.
4. In furtherance of the statutory direction regarding the expeditious completion of the hearing, “good cause” is to be interpreted strictly, and a showing of “unavoidable and extreme circumstances”<sup>15</sup> is required for more than very minor extensions of time. Because good cause will be interpreted strictly, meritorious motions will likely be based on events outside the party’s control.

**D. Motions for Reconsideration and Motions for Clarification.**

*{The NRC requests comment on the following options. OPTION 1: Motions for reconsideration are governed by 10 CFR 2.323(e), except that the motion must be filed within 7 days of the action for which reconsideration is requested and the answer is due within 7 days of service of the motion. This regulatory provision adequately governs reconsideration and the*

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<sup>14</sup> Consistent with practice under 10 CFR 2.307, a motion for extension of time might be filed shortly after a deadline has passed, e.g., an unanticipated event on the filing deadline prevented the participant from filing. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 FR 46562, 46571 (final rule).

<sup>15</sup> This standard is taken from the Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

Commission declines to limit its use before obtaining sufficient experience with the ITAAC hearing process.

*OR*

*OPTION 2:* Motions for reconsideration are not allowed for decisions on the hearing request or any presiding officer decisions prior to the hearing request. Instead, reconsideration will only be allowed for a presiding officer's initial decision and Commission decisions on appeal of a presiding officer's initial decision. Reconsideration is allowed in these narrow instances because these are the most important decisions in the proceeding and motions for reconsideration of these decisions do not prevent them from taking effect. Reconsideration is not permitted for other decisions because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review and rule on requests for reconsideration would take time away from preparing for the hearing, (3) parties who disagree with an order of the presiding officer may seek redress through the process for appeals and petitions for review, and (4) the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed for these other decisions, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification may explain the basis for the perceived ambiguity and the possible interpretations of the purportedly ambiguous language, but the motion for clarification may not advocate for a particular interpretation of the presiding officer order.

*OR*

*OPTION 3:* Motions for reconsideration are not permitted because they consume the resources of the parties and the presiding officer without compensating benefit. Reconsideration is unlikely to be necessary for many decisions, and the resources necessary to prepare, review and rule on requests for reconsideration of interlocutory decisions would take

time away from preparing for the hearing. In addition, parties who disagree with an NRC adjudicatory order may seek redress through the process for appeals and petitions for review, and the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification may explain the basis for the perceived ambiguity and the possible interpretations of the purportedly ambiguous language, but the motion for clarification may not advocate for a particular interpretation of the presiding officer order.}

**E. Commission Notifications.**

1. *Notification of Relevant New Developments in the Proceeding*

- a. Given the potential for circumstances to change over the course of this unique proceeding, we remind the parties of their continuing obligation to notify the other parties, the presiding officer, and the Commission of relevant new developments in the proceeding.<sup>16</sup>

2. *Additional Notification Procedures for Pending Contentions*

- a. For several reasons, it is possible for the factual predicate of a proposed contention to change before a decision on the hearing request is issued. First, NRC regulations require for uncompleted ITAAC that hearing requests be submitted on the predictive question of whether one or more of the acceptance criteria in the combined license will not be met.<sup>17</sup> When the ITAAC is later completed, this may affect the basis for the proposed contention. Second, a licensee might choose to re-perform an

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<sup>16</sup> *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 470 (2006).

<sup>17</sup> See 10 CFR 2.309(f)(1)(vii).

inspection, test, or analysis for ITAAC maintenance or to dispute a proposed contention.<sup>18</sup> Third, events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. To account for these possibilities, and to ensure that the Commission and the parties are timely notified of a change in circumstances, the NRC establishes the following additional procedures for proposed contentions that might be affected by such an event.

- b. To ensure that the Commission and the other parties stay fully informed of the status of challenged ITAAC as a proposed contention is being considered, any answers to the proposed contention from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.
- c. After answers are filed, the parties must notify the Commission and the other parties in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include notifying the Commission and the other parties of information related to re-performance of an ITAAC that might bear on the proposed contention. In addition, after answers are filed, the licensee must notify the Commission and the other parties of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice

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<sup>18</sup> The AEA provisions on combined licenses and ITAAC were added by the Energy Policy Act of 1992 (EPAAct), Public Law No. 102-486. The legislative history of the EPAAct suggests that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143-44 (Feb. 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

must be filed on the same day that the ITAAC closure notification or ITAAC post-closure notification is submitted to the NRC.

**F. Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline.**

1. *Presiding Officer:* Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the original deadline must be filed with the Commission.
  - a. The Commission will rule upon all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures for the newly admitted contentions and will determine whether there will be adequate protection during interim operation with respect to the newly admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 CFR 2.309(f)(1)(vii), the Commission will designate separate procedures for resolving the claim.
  - b. For motions for leave to file amended contentions, the Commission may delegate rulings on such contentions to a licensing board or a single legal judge (assisted as appropriate by technical advisors). In such situations, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission will have provided guidance on the admissibility of the relevant issues when it ruled on the original contention. Procedures governing presiding officer rulings on amended

contentions would be included in a Commission order issued concurrently with its decision on the hearing request.

2. *Good Cause Required, as Defined in 10 CFR 2.309(c)*

a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline will not be entertained absent a determination by the Commission or the presiding officer that the participant has demonstrated good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. To be deemed timely, hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline must be filed within {*The NRC requests comment on the following options: 20 days OR 30 days OR some period in between 20 and 30 days*} of the availability of the information upon which the filing is based. To be deemed timely, motions for leave to file new or amended claims of incompleteness under 10 CFR 2.309(f)(1)(vii) must be filed within {*The NRC requests comment on the following options: 20 days OR 30 days OR some period in between 20 and 30 days*} of the challenged 10 CFR 52.99(c) notification.

3. *Additional Requirements*

- a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline must meet the requirements set forth in Sections A.1.b through A.1.e of this order, except that a showing of standing is not required for participants who have already addressed the standing criteria.

4. *Effect of Hearing Requests, Intervention Petitions, and New or Amended Contentions Filed After the Original Deadline on Interim Operation*

- a. The provisions in Sections A.2.a and A.2.b of this order also apply to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline.

5. *Answers*

- a. The provisions in Sections A.3.a and A.3.b of this order also apply to answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline, except that answers shall be filed within {*The NRC requests comment on the following options: 15 days OR 25 days OR some period in between 15 and 25 days*} of service of the hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline.
- b. Replies to answers are not permitted. If the Commission grants the hearing request, intervention petition, or motion for leave to file new or amended contentions filed after the original deadline, the Commission may determine that additional briefing is necessary to support an

adequate protection determination on interim operation in accordance with Section A.3.c of this order.

6. *Timing for Decision on Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline*

- a. Unless the Commission extends the time for its review, the Commission will rule on a hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline within 30 days of the filing of answers. If a decision on the admissibility of an amended contention is delegated to a licensing board or a single legal judge (assisted as appropriate by technical advisors), the Commission would expect the presiding officer to rule on the amended contention within 30 days of the filing of answers. Further procedures governing presiding officer rulings on amended contentions would be included in a Commission order issued concurrently with its decision on the hearing request.
- b. A Commission interim operation determination need not be made in conjunction with a ruling on a hearing request, intervention petition, or new or amended contention.

**G. *Reopening the Record.***

- 1. {The NRC requests comment on the following options. *OPTION 1:* The NRC's existing rule in 10 CFR 2.326 will apply to any motion to reopen the record.  
*OR*  
*OPTION 2:* Motions to reopen the record will be entertained only with respect to the submission of new information related to a previously admitted contention.



The NRC's existing rule in 10 CFR 2.326 will apply to any such motion. A motion to reopen is not required for a hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline because the purposes served by the reopening provisions are addressed by the requirements applying to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline.<sup>19}</sup>

**H. {Commission Review of Presiding Officer Decisions—***OPTION 1: If the Commission decides that it will resolve requests for review of NRC staff determinations on access to SUNSI or SGI, then there will be no provision in this order regarding Commission review of presiding officer decisions because all adjudicatory decisions before the granting of a hearing request will be made by the Commission.*

OR

*OPTION 2: If the Commission decides that a licensing board or a single legal judge (assisted as appropriate by technical advisors) will resolve requests for review of NRC staff determinations on access to SUNSI or SGI, then the following provisions would be included:*

1. Because the Commission, itself, will be ruling on the hearing request, the only possible decision before this ruling that would not be made by the Commission would be on requests for review of NRC staff determinations on access to SUNSI

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<sup>19</sup> Timeliness concerns are addressed by 10 CFR 2.309(c), and the *prima facie* showing requirement addresses concerns regarding newly raised issues being significant and substantiated. Compare 10 CFR 2.326(a)(2)-(3) (requiring that a motion to reopen address a significant safety or environmental issue and demonstrate that a materially different result would be or would have been likely) with 10 CFR 2.309(f)(1)(vii) (requiring that a contention in an ITAAC hearing show *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety).

or SGI. Any appeals of such decisions will be governed by Section H.2 of this order; 10 CFR 2.311 does not apply to this proceeding.

2. *Interlocutory Review*

a. Appeals as of right:

- (i) Parties or petitioners may appeal to the Commission a presiding officer order with respect to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI. Because of the expedited nature of the proceeding, such an appeal shall be filed within 10 days after service of the order. The appeal shall be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party or petitioner may file a brief in opposition within 10 days after service of the appeal. The supporting brief and any answer shall conform to the requirements of 10 CFR 2.341(c)(3). A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted. A presiding officer order granting a request for access to SUNSI or SGI may only be appealed on the question of whether the request 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.

3. *Certified Questions/Referred Rulings*

- a. The Commission recognizes that there may be unusual cases that merit a certified question or referred ruling from the presiding officer, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 CFR 2.323(f) and 2.341(f)(1) apply to this proceeding. However, the proceeding is not stayed by the presiding officer's referral of a ruling or a certification of a question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the proceeding during the pendency of the Commission's review.}

**I. Stays of Decisions or Actions.**

1. 10 CFR 2.342 and 2.1213 are applicable to this proceeding with the following exceptions:
  - a. The deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days.
  - b. The deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is modified to 7 days.
  - c. A request to stay the effectiveness of the Commission's decision on interim operation will not be entertained. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the finding under 10 CFR 52.103(g) that the acceptance criteria are met and issues an order allowing interim operation.

**J. Additional Provisions.**

1. *The following provisions in 10 CFR Part 2 apply to this proceeding as written and in accordance with Commission case law, except as otherwise noted:*
  - a. 10 CFR 2.4 (Definitions): with the clarification that this proceeding is considered a “contested proceeding.”
  - b. 10 CFR 2.8 (Information collection requirements: OMB approval).
  - c. 10 CFR 2.111 (Prohibition on sex discrimination).
  - d. 10 CFR 2.302 (Filing of documents): The initial request for access to SUNSI or SGI under the SUNSI-SGI Access Order will be made in accordance with the provisions of the SUNSI-SGI Access Order. For all other filings, 10 CFR 2.302 applies with the exception that subsections (b)(1) and (d)(2), which relate to first-class mail delivery, do not apply. When the Commission has approved a method other than electronic filing through the E-Filing system, documents filed in this proceeding must be transmitted either by fax, e-mail, hand delivery, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax, e-mail, or hand delivery is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if segmented into smaller files, the filer must segment the document and file the segments separately.
  - e. 10 CFR 2.303 (Docket).
  - f. 10 CFR 2.304 (Formal requirements for documents; signatures; acceptance for filing).
  - g. 10 CFR 2.305 (Service of documents, methods, proof): The initial request for access to SUNSI or SGI under the SUNSI-SGI Access Order will be

made in accordance with the provisions of the SUNSI-SGI Access Order.

For all other filings, 10 CFR 2.305 applies with the exception that when the Commission has approved a method other than electronic service through the E-Filing system, service must be made either by fax, e-mail, hand delivery, or overnight mail in order to ensure expedited delivery.

Use of overnight mail will only be allowed if fax, e-mail, or hand delivery is impractical.

- h. 10 CFR 2.306 (Computation of time): with the exception that subsections (b)(1) through (4), which allow additional time for mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.
- i. 10 CFR 2.314 (Appearance and practice before the Commission in adjudicatory proceedings): *{OPTION 1: If the Commission decides to rule on requests for review of NRC staff determinations on access to SUNSI or SGI, then 10 CFR 2.314 applies without modification.*

OR

*OPTION 2: If the Commission decides that a licensing board or a single legal judge (assisted as appropriate by technical advisors) will rule on requests for review of NRC staff determinations on access to SUNSI or SGI, then the following language will be included:* with the exception that, to expedite the proceeding, the time to appeal a disciplinary sanction under subsection (c)(3) is modified to 10 days after issuance of the order imposing sanctions.}

- j. 10 CFR 2.315 (Participation by a person not a party).
- k. 10 CFR 2.316 (Consolidation of parties).

- l. 10 CFR 2.317 (Separate hearings; consolidation of proceedings).
- m. 10 CFR 2.318 (Commencement and termination of jurisdiction of presiding officer).
- n. 10 CFR 2.319 (Power of the presiding officer): subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (p), (q), (r), and (s) apply in their entirety. Subsection (b) applies with the clarification that this provision will not be used for purposes of discovery since there is no discovery before a hearing request is granted. Subsections (n) and (o) do not apply because they concern matters arising after a hearing request is granted. Subsection (f) does not apply because depositions are not allowed in this proceeding.
- o. 10 CFR 2.320 (Default).
- p. 10 CFR 2.321 (Atomic Safety and Licensing Boards).
- q. 10 CFR 2.324 (Order of procedure).
- r. 10 CFR 2.329 (Prehearing conference).
- s. 10 CFR 2.330 (Stipulations).
- t. 10 CFR 2.331 (Oral argument before the presiding officer).
- u. 10 CFR 2.335 (Consideration of Commission rules in adjudications).
- v. 10 CFR 2.343 (Oral argument).
- w. 10 CFR 2.346 (Authority of the Secretary).
- x. 10 CFR 2.347 (Ex parte communications).
- y. 10 CFR 2.348 (Separation of functions).
- z. 10 CFR 2.390 (Public inspections, exemptions, requests for withholding).

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards  
Information and Safeguards Information for Contention Preparation**

A. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI)).

Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this order is intended to conflict with the SGI regulations unless this order expressly provides otherwise.

B. Within 10 days after publication of this notice of intended operation, any potential party who believes access to SUNSI or SGI is necessary to formulate contentions may request access to SUNSI or SGI. A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.

C. Requests for access to SUNSI or SGI submitted later than 10 days after the publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier. To show good cause, the potential party must demonstrate that its request for access to SUNSI or SGI has been filed by the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.

D. The requestor shall request permission to access SUNSI, SGI, or both by e-mail submitted to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov); with copies being sent to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, [OGCmailcenter@nrc.gov](mailto:OGCmailcenter@nrc.gov); and [Name], Counsel for the NRC staff, [e-mail address]. If

it is impractical for the requestor to e-mail its request, then the requestor must either hand deliver the letter on the date that the request is due or submit the letter by overnight mail on the date the request is due. The addresses for hand delivery and overnight mail are as follows: (a) Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Mail Stop [X], 11555 Rockville Pike, Rockville, Maryland 20852; (b) Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Mail Stop [Y], 11555 Rockville Pike, Rockville, Maryland 20852; and (c) [Name], Counsel for the NRC staff, Mail Stop [Z], 11555 Rockville Pike, Rockville, Maryland 20852.<sup>20</sup> The request must include the following information:

(1) A citation to this *Federal Register* notice and a statement that the information is being requested with respect to a hearing on conformance with the acceptance criteria in the combined license for [Facility name and unit number];

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by a finding by the NRC that the acceptance criteria in the combined license are met;

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid

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<sup>20</sup> While a request for hearing and other filings in this proceeding must be made through the E-Filing system in accordance with the provisions set forth in this notice, the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.



the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;<sup>21</sup> and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at [*Federal Register* notice for pre-clearance process]. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the

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<sup>21</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at (301) 492-3524;<sup>22</sup>

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d) for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at [*Federal Register* notice for pre-clearance process]. Copies of Form FD-258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, by calling (301) 415-7232 or (301) 492-7311, or by e-mail to *Forms.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation (FBI) identification and criminal history records check;

(d) A check or money order payable in the amount of [fee for background check] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted and who did not pay this fee as part of the pre-clearance process announced at [*Federal Register* notice for pre-clearance process]; and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the

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<sup>22</sup> The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, still apply.

**Note:** Copies of documents and materials required by paragraphs D.(4)(b), (c), (d), and (e) of this order must be sent to the following address:

Office of Administration  
U.S. Nuclear Regulatory Commission  
Personnel Security Branch  
Mail Stop [ABC]  
Washington, DC 20555-0001.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required by paragraph D.(4) of this order.

E. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

F. Based on an evaluation of the information submitted under paragraphs D.(3) or D.(4), as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the requestor is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or established a need to know the SGI requested.

G. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both paragraphs F.(1) and F.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may

apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order<sup>23</sup> setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

H. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both paragraphs F.(1) and F.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order<sup>24</sup> by each individual who will be granted access to SGI.

I. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

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<sup>23</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with {*The NRC requests comment on the following options*: the Commission, which will rule on the request, *OR* the licensing board or a single legal judge designated to rule on the request or the Chief Administrative Judge if a licensing board or single legal judge has not yet been designated}, within 10 days after a positive access determination is made.

<sup>24</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with {*The NRC requests comment on the following options*: the Commission, which will rule on the request, *OR* the licensing board or single legal judge designated to rule on the request or the Chief Administrative Judge if a licensing board or single legal judge has not yet been designated}, within 10 days after a positive access determination is made.

J. Filing of Contentions. Any contentions in this proceeding that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than [the number of days given under the final ITAAC hearing procedures for filing new or amended contentions but no more than the 25 days given in other proceedings for filing contentions after receipt of SUNSI or SGI] after the requestor is granted access to that information. However, if more than [the number of days given in the previous sentence for filing a contention] remain between the date the petitioner is granted access to the information and the deadline for filing the hearing request (as established in the notice of intended operation), the petitioner may file its SUNSI or SGI contentions by that later deadline.

K. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a request for review within 5 days of receipt of that determination with: { *The NRC requests comment on the following options:* the Commission, which will rule on the request for review, *OR* the Chief Administrative Judge, who will designate a licensing board or a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. }

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv) {*The NRC requests comment on whether the following additional language should be added:* except that the request for review must be filed with the Commission, which will rule on the request for review, rather than the Chief Administrative Judge}.<sup>25</sup>

(5) {*Optional additional language if a licensing board or a single legal judge rules on a challenge to a denial of access to SUNSI or SGI:* Appeals of presiding officer decisions on access to SUNSI or SGI must be made pursuant to the provisions of the "Order Imposing Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request" that was issued with this notice.}

L. Review of Grants of Access. A party other than the requestor may file a request for review challenging an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding.<sup>26</sup> Such a request for review must be filed with {*The NRC requests comment on the following options:* the Commission, which will rule on the request for review, *OR* the Chief Administrative Judge, who will designate a licensing board or a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge} within 5 days of the notification by the NRC staff of its grant of access. {*Optional additional language if a licensing board or single legal judge rules on a challenge to a denial of access to SUNSI:* Appeals of presiding officer decisions on access to SUNSI must be made

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<sup>25</sup> Requestors should note that appeals of NRC staff determinations and other filings must be made through the E-Filing system in accordance with the provisions set forth in this notice even though the initial SUNSI/SGI request submitted to the NRC staff under these procedures was made by other means.

<sup>26</sup> An NRC staff determination to grant access to SGI may not be challenged.

pursuant to the provisions of the “Order Imposing Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request” that was issued with this notice.}

M. The Commission expects that the NRC staff {and the presiding officer, *if applicable*} will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the requirements in this notice. Attachment 1 to this order summarizes the target schedule for processing and resolving requests under these procedures.

IT IS SO ORDERED. Dated at Rockville, Maryland, this \_\_\_\_ day of **[MONTH]** **[YEAR]**.

For the Commission.

[Name]  
Secretary of the Commission.

**ATTACHMENT 1—Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in this Proceeding**

<b>Day</b>	<b>Event/Activity</b>
0	Publication of <i>Federal Register</i> notice of intended operation, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in this adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document



Day	Event/Activity
	processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff continues processing the background check (including fingerprinting for a criminal history records check), and begins information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no “need,” no “need to know,” or no likelihood of standing, the deadline for requestor to file a request for review seeking a ruling to reverse the NRC staff’s denial of access; NRC staff files copy of access determination with the {Commission OR Chief Administrative Judge, <i>depending on the choice made by the Commission regarding which body is designated to hear appeals of NRC staff access determinations</i> }. If NRC staff finds “need” for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a request for review seeking a ruling to reverse the NRC staff’s grant of access.
30	Deadline for NRC staff reply to requests for review of NRC staff determination(s).
30	(Receipt +20) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to

## Draft Template A: Notice of Intended Operation and Associated Orders

Day	Event/Activity
	file Non-Disclosure Agreement for SUNSI.
60	Deadline for submitting a hearing request containing: (i) a demonstration of standing and (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 for Answers to hearing request).
Staff SGI Determination Date + 10 <sup>27</sup>	If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit.
Staff SGI Determination Date + 15	Deadline for requestor to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of {Commission <i>OR</i> presiding officer} decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to

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<sup>27</sup> The completion time for access determinations may vary based on the information revealed during the background check (including a criminal history records check), and because some portion of the background check is usually conducted by agencies other than the NRC, the processing time may vary and is difficult to predict with any certainty. However, the NRC staff will make its utmost efforts to complete all activities associated with requests for access to SGI as soon as possible.

Day	Event/Activity
	SUNSI and/or SGI consistent with decision issuing the protective order.
A + [time period given for contention filing]	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than [time period given for contention filing] remain between the requestor's receipt of (or access to) the information and the deadline for filing the hearing request (as established in the notice of intended operation), the requestor may file its SUNSI or SGI contentions by that later deadline.
A + [time period given for contention filing plus time given for answers]	(Contention receipt + [time period given for answers]) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
Filing of answers + 30	Decision on contention admission.