

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AI08

Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive
Unclassified Non-Safeguards Information and Safeguards Information; Reopening of Public
Comment Period and Notice of Availability of Proposed Procedures for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Reopening of public comment period and notice of availability of proposed procedures for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is reopening the public comment period for an additional 30 days on a proposed rule published on June 11, 2007. The NRC is also making available for comment proposed procedures that would allow potential parties to NRC adjudications, as well as their representatives, to gain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI).

DATES: The comment period on the proposed rule expires on August 10, 2007. The comment period on the proposed procedures that would allow potential parties to NRC adjudications, as well as their representatives, to gain access to SUNSI or SGI expires on **[insert 30 days from date of publication]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods.

If you are commenting on the **proposed rule**, please include the following number **RIN 3150-AI08** in the subject line of your comments.

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

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher 301-415-5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1966).

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

If you are commenting on the **proposed procedures** please include the following phrase "proposed SUNSI/SGI access procedures" in the subject line of your comments. The proposed procedures can be viewed and downloaded electronically via the NRC's public Web site at <http://ruleforum.llnl.gov/cgi-bin/rulelist?type=ipcr>. The proposed procedures also may be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Mail comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration. E-mail comments to: nrcprep@nrc.gov. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. Fax comments to: 301-415-5144.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

The ADAMS accession number for the procedures is ML071910149.

FOR FURTHER INFORMATION CONTACT: Patrick Moulding, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-2549, e-mail pam3@nrc.gov.

SUPPLEMENTARY INFORMATION: On June 11, 2007 (72 FR 32018), the NRC published for public comment a proposed rule that would provide for expedited review by the Commission on

orders on requests by potential parties for access to certain SUNSI and SGI. A 30-day comment period was provided for the proposed rule. The original comment period for the proposed rule expired on July 11, 2007. The NRC has reopened the comment period, which now expires on August 10, 2007.

Commission regulations in 10 CFR part 2, “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders” govern the conduct of NRC adjudicatory proceedings. Potential parties who have requested or who may request a hearing or petition to intervene in a hearing under 10 CFR part 2 may need access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI as defined in 10 CFR 73.2 to meet Commission requirements for hearing requests or for intervention. The Commission is seeking comment on proposed procedures to allow potential parties to submit information requests and enter into protective agreements prior to becoming a party to a proceeding so that those who demonstrate a legitimate need for SUNSI or SGI can receive relevant documents to prepare a valid contention. The proposed procedures reflect the longstanding practice of staff access determinations in the first instance, subject to review by a presiding officer if contested. The proposed procedures also describe how the public will be informed of this process. The proposed procedures address:

(1) When and where to submit requests for access to SUNSI and SGI that is possessed by the NRC;¹

(2) Who will assess initially whether the proposed recipient has shown a need for SUNSI (or need to know for SGI) and a likelihood of establishing standing;

(3) Who will decide initially whether the proposed recipient is qualified (i.e., trustworthy and reliable) to receive SGI;

¹ The proposed procedures do not address information possessed solely by a licensee or applicant.

- (4) Use of nondisclosure affidavits/agreements and protective orders; and
- (5) Time periods for making standing, need, and access determinations, producing documents, submitting contentions, and seeking review of adverse determinations.

These proposed procedures also include a “pre-clearance” process that would permit a potential party who may seek access to SGI to initiate the necessary background check in advance of a notice of opportunity for hearing.

Dated at Rockville, Maryland, this 30th day of July 2007.

For the Nuclear Regulatory Commission.

/RA/

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