

**Draft Template for Protective Orders Governing the Disclosure and Use of
Safeguards Information (SGI) in Hearings Related to Conformance with
Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)**

Pursuant to the “Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses,” dated July 1, 2016 (81 FR 43266) (ITAAC Hearing Procedures), the U.S Nuclear Regulatory Commission (NRC) has developed this draft template for protective orders governing the disclosure and use of SGI in ITAAC hearings. The ITAAC Hearing Procedures set forth templates for case-specific orders imposing procedures for ITAAC hearings, but protective order templates were not included. In response to comments on the ITAAC Hearing Procedures suggesting that model templates would facilitate quick development of protective orders, the NRC stated that protective order templates would be developed in a separate process allowing for stakeholder input. See Comment Summary Report, at 61 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16167A464). In addition to this draft template for SGI, the NRC has developed a draft protective order template for sensitive unclassified non-safeguards information.

The NRC is making both draft templates available for stakeholder input, as discussed in the *Federal Register* notice providing the templates for comment. After considering stakeholder input, the NRC will announce the availability of the final templates via a *Federal Register* notice.

In developing the SGI protective order template, the NRC focused on specific regulatory requirements for protection of SGI contained in 10 C.F.R. § 73.22. The NRC also included specific instructions for filing documents containing SGI in ITAAC hearing proceedings. These instructions are in accordance with the applicable requirements of 10 C.F.R. § 73.22 and are intended to prevent the unauthorized disclosure of SGI.¹

Participants in ITAAC hearings may, but are not required to, rely on the final protective order templates in providing input to the presiding officer regarding the terms of a proposed protective order. As stated in the ITAAC Hearing Procedures, the protective order templates “*should* serve as a basis for case-specific protective orders, *as appropriate*.” See, e.g., Final Template A: Notice of Intended Operation and Associated Orders, at 27 (ADAMS Accession No. ML16167A469) (emphases added).

¹ The NRC also considered the National Archives and Records Administration’s final rule, “Controlled Unclassified Information,” published September 14, 2016 (81 Fed. Reg. 63,324) (CUI Rule). The CUI Rule establishes government-wide requirements for protecting sensitive unclassified information, but most of these requirements do not apply to SGI because the authorizing law and regulations for SGI provide specific handling controls. See 32 C.F.R. § 2002.4(r). Also, the NRC has not yet implemented the CUI Rule and does not expect to achieve implementation before the ITAAC hearings for Vogtle Units 3 and 4. Therefore, this template does not address conformance with the CUI Rule.

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 cases where a particular procedure or term would only apply under certain conditions.
- 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge(s):

| | |
|------------------|-----------------|
| In the Matter of | [Docket No(s).] |
| [Company] | [ASLBP No.] |
| [Plant] | [DATE] |

MEMORANDUM AND ORDER
(Protective Order Governing the Disclosure of
Safeguards Information)

Upon consideration of the Joint Motion for Entry of a Protective Order (Joint Motion) of the U.S. Nuclear Regulatory Commission staff (NRC Staff), [Petitioner] (Petitioner), and [Licensee] (Licensee), the {Atomic Safety and Licensing Board (Board) OR Presiding Officer}<¹> hereby GRANTS the motion and issues this Protective Order, the terms of which are as follows:

1. This Protective Order shall govern the Petitioner’s possession, use, and transmission of Safeguards Information (SGI) in connection with this proceeding. This Protective Order applies to the SGI described in the Joint Motion and any other SGI provided to

<¹ Depending on the stage of the proceeding at which access is requested, the presiding officer may be an Atomic Safety and Licensing Board or a single legal judge assisted as appropriate by technical advisors (“Special Assistants”). Typically, an Atomic Safety and Licensing Board is referred to as a “Board,” while a single legal judge is referred to as a “Presiding Officer.”>

the Petitioner by the Licensee or the NRC Staff to allow the Petitioner to participate in this proceeding. As described in the Joint Motion, certain identified person(s) are qualified for access to the SGI described in the Joint Motion by (1) having a “need to know” the SGI described therein, as defined by 10 C.F.R. § 73.2; (2) having previously undergone a Federal Bureau of Investigation (FBI) criminal history records check, as appropriate; and (3) having been determined to be trustworthy and reliable, based upon a background check or other means approved by the Commission, as prescribed by 10 C.F.R. § 73.22(b)(2). This Protective Order shall remain in effect until specifically amended or terminated by the {Board *OR* Presiding Officer} or the Commission.

2. Persons who may receive and use SGI pursuant to this Protective Order are designated the “Authorized SGI Recipients.”

a. Having been determined to be trustworthy and reliable and having a “need to know” regarding the SGI described in paragraph 1, [Name 1, Name 2, . . . are] granted access to SGI subject to the terms of this Protective Order as Authorized SGI Recipients.

These persons shall each execute, and the Petitioner shall file, the attached Non-Disclosure Declaration (Attachment 1) to gain access to SGI. An individual shall not receive access to the SGI until the individual executes, and the Petitioner files, the Non-Disclosure Declaration.

b. The Petitioner may request that an additional or substitute person(s) necessary for the preparation of the Petitioner’s case become authorized to receive SGI, but only after satisfying the requirements for access to SGI, including having a need to know the

SGI and having been determined to be trustworthy and reliable.² The Petitioner will initiate a request that such person(s) be provided access to SGI in accordance with the (Date) SUNSI-SGI Access Order included with the Notice of Intended Operation.^{<3>} If approved for access to SGI, any additional or substitute person shall be subject to the terms of this Protective Order and shall not receive access to the SGI until the individual executes, and the Petitioner files, the Non-Disclosure Declaration.

3. In the Joint Motion, the NRC Staff, Licensee, and Petitioner each provided an SGI Access List, that is, a list of individuals qualified to receive the SGI governed by this Protective Order, and the addresses by which SGI may be sent to these individuals.^{<4>} The NRC Staff, Licensee, and Petitioner shall promptly update their SGI Access Lists as warranted and file updates via the E-Filing system available on the NRC's "Electronic Submittals" website.⁵ An additional or substitute person may be added to the Petitioner's SGI Access List only after

² The background check process for access to SGI takes a substantial amount of time to complete, which should be considered when determining whether to request SGI access for additional or substitute persons. As the Commission has stated:

[T]he NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI. In other words, members of the public will have to take the proceeding as they find it once they ultimately obtain access to SGI for contention formulation.

"Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses," 81 Fed. Reg. 43,266, 43,282 (July 1, 2016).

<³ In accordance with the ITAAC Hearing Procedures, a particular ITAAC proceeding will commence when a Notice of Intended Operation, a SUNSI-SGI Access Order, and an Additional Procedures Order are published together in the Federal Register.>

<⁴ As reflected in the template text, the participants should provide their SGI Access Lists in the Joint Motion.>

⁵ Participants seeking an exemption from the E-Filing requirements must request an exemption in accordance with 10 C.F.R. § 2.302(g).

the person has been approved for access as described in paragraph 2.b. of this Protective Order.

4. Other than the requirements set forth in this Protective Order for filing documents{, initially providing SGI to the Petitioner,}<⁶> and updating the SGI Access List, the terms of this Protective Order do not apply to the NRC Staff, NRC contractors, or NRC legal counsel. The NRC's use of SGI is governed by NRC regulations and policies as well as other applicable law.

5. Authorized SGI Recipients shall protect SGI from unauthorized disclosure as required by 10 C.F.R. § 73.22. Authorized SGI Recipients may copy and take notes of SGI, but such copies and notes become SGI subject to the terms of this Protective Order. Authorized SGI Recipients may generate documents containing SGI, but such documents are also subject to the terms of this Protective Order. Authorized Recipients shall not reveal, either during or after this proceeding, any SGI that is received by virtue of this proceeding as long as the information remains SGI or otherwise constitutes sensitive information. In accordance with 10 C.F.R. § 73.22(h), the decision to decontrol SGI may be made only by the NRC, with NRC approval, or in consultation with the individual or organization that made the original determination.

6. SGI shall not be used or reproduced by Authorized SGI Recipients except as necessary for the conduct of this proceeding, and it shall be protected from unauthorized disclosure in accordance with the following specific requirements of 10 C.F.R. § 73.22:

- a. 10 C.F.R. § 73.22(a) – *Information to be protected*
- b. 10 C.F.R. § 73.22(c) – *Protection while in use or storage*

<⁶ The text within the curly brackets will be included if the NRC staff is to provide the initial set of SGI to the Petitioner in accordance with paragraph 17 of the Protective Order.>

- c. 10 C.F.R. § 73.22(d) – *Preparation and marking of documents or other matter*
- d. 10 C.F.R. § 73.22(e) – *Reproduction of matter containing Safeguards Information*
- e. 10 C.F.R. § 73.22(f) – *External transmission of documents and material*
- f. 10 C.F.R. § 73.22(g) – *Processing of Safeguards Information on electronic systems*
- g. 10 C.F.R. § 73.22(h) – *Removal from Safeguards Information category*, except that Authorized SGI Recipients are not authorized to remove information from the SGI category.⁷
- h. 10 C.F.R. § 73.22(i) – *Destruction of matter containing Safeguards Information*

Authorized SGI Recipients must specifically certify in the Non-Disclosure Declaration whether they possess a “Security Storage Container” meeting the criteria of the definition provided in 10 C.F.R. § 73.2 in which to store documents containing SGI. If the Authorized SGI Recipient does not certify that he or she possesses the required security storage container, that person shall only store documents containing SGI at [an approved SGI storage location identified in the Joint Motion]. Authorized SGI Recipients must also specifically certify in the Non-Disclosure Declaration that any electronic equipment used to process SGI meets all requirements of 10 C.F.R. § 73.22(g). If the Authorized SGI Recipient does not certify that he or she possesses the required security electronic equipment for processing SGI, that person shall {not use

⁷ This limitation is being imposed because the SGI that Authorized SGI Recipients will use in this proceeding will derive from SGI provided by the NRC staff or the Licensee. Thus, the Authorized SGI Recipients are not expected, within the meaning of § 73.22(h), to make original determinations that information is SGI.

electronic equipment to process SGI OR only process documents containing SGI on electronic equipment at [identify location], as discussed in the Joint Motion}.^{<8>}

7. In addition to the requirements in 10 C.F.R. § 73.22 for protecting SGI, Authorized SGI Recipients must ensure that SGI in their possession is not sent or made available to, and is not observable by, any other person, except the following: (a) other Authorized SGI Recipients; (b) the {Board OR Presiding Officer,} {Special Assistants,} and persons supporting the {Board OR Presiding Officer}; (c) Commission adjudicatory employees as defined by 10 C.F.R. § 2.4; (d) the NRC's Office of the Secretary; (e) the NRC's Office of Commission Appellate Adjudication; (f) persons on the NRC Staff's SGI Access List; and (g) persons on the Licensee's SGI Access List.

8. Documents containing SGI shall not be submitted via the E-Filing system. Instead, filings containing SGI shall be submitted and served using overnight mail^{<9>} as follows:

a. Documents containing SGI must be filed in the proceeding on optical storage media (OSM){, except that participants who have been exempted from the electronic document requirement for SGI filings pursuant to 10 C.F.R. § 2.302(g)(3) shall file and receive paper documents}. The OSM {and paper} filings shall contain the complete filing, including portions of the filing that do not contain SGI. A mailing package containing OSM{ or paper}

^{<8>} Before filing the Joint Motion, the Petitioner, NRC Staff, and Licensee should discuss the availability of security storage containers and security electronic equipment meeting the requirements of 10 C.F.R. Part 73, and identify, if necessary, alternative means for storage or electronic processing of SGI; for example, an Authorized SGI Recipient without SGI-compliant equipment might use SGI-compliant equipment owned by another Authorized SGI Recipient. The Petitioner, NRC Staff, and Licensee should also discuss how storage and electronic processing of SGI will affect the options for filing SGI. Also, as stated in the SUNSI-SGI Access Order included with the Notice of Intended Operation, the NRC staff has the option to conduct an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 C.F.R. § 73.22.>

^{<9>} In accordance with the ITAAC Hearing Procedures, the Additional Procedures Order included with the Notice of Intended Operation would provide that any filing that is not made by the E-Filing System, fax, or email, must be made by overnight mail to ensure expedited delivery.>

documents containing SGI must be processed, marked, and transmitted in accordance with the requirements set forth in 10 C.F.R. §§ 73.22(d), 73.22(e), 73.22(f), and 73.22(g), as applicable.

b. A transmittal letter that does not itself contain SGI shall accompany the mailed filing with documents containing SGI, and a copy of this letter shall be filed via the E-Filing system on the day the filing is mailed. A transmittal letter shall identify the documents included in the filing and state which documents include SGI.

c. Use the following addresses for filing and serving OSM{ or paper} documents containing SGI (along with the transmittal letter) to the NRC:<¹⁰>

ATTN: Adjudicatory Filing
Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

ATTN: Adjudicatory Filing
Office of Commission Appellate Adjudication
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

ATTN: Rulemakings and Adjudications Staff
Office of the Secretary
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Participants filing documents containing SGI must also serve copies of the filing on the representatives of the other participants authorized to access SGI using the addresses they provided, consistent with the requirements of this Protective Order. Incoming mail addressed to the Federal government may be irradiated, which may damage data stored on OSM. Thus, mailing packages containing OSM addressed to the NRC must be marked "CONTENTS CONTAIN OPTICAL STORAGE MEDIA – DO NOT IRRADIATE!"

<¹⁰ Before filing a joint motion with a proposed protective order, the NRC Staff will check to ensure the following addresses are current.>

d. In accordance with 10 C.F.R. § 2.302(g)(1), if a filing contains sections of information containing SGI, the portions of the filing not containing those sections shall be transmitted electronically via the E-Filing system.^{<11>}

9. Persons shall not reveal SGI during any open hearing or conference session in this proceeding. At any open hearing or conference, any person who intends to discuss SGI shall notify the {Board OR Presiding Officer} and the participants that such discussion will contain SGI prior to the statement being made. Such statements containing SGI may be provided only in closed session as permitted by the {Board OR Presiding Officer}.

10. The Petitioner shall maintain a log of all copies of materials containing SGI within its possession or control.

11. If the Petitioner has reason to believe that SGI may have been lost or misplaced, or that SGI has otherwise become available to unauthorized persons, the Petitioner shall within 24 hours notify the {Board OR Presiding Officer}, the Licensee's counsel, and NRC Staff counsel regarding that belief and the reasons for that belief. If any Authorized SGI Recipient has reason to believe that SGI may have been lost or misplaced, or that SGI has otherwise become available to unauthorized persons, that Authorized SGI Recipient shall notify the Petitioner's representative within 24 hours of that belief and the reasons for that belief so that the Petitioner may make the required notification. Any such notifications by the Petitioner's representative or the Authorized SGI Recipient shall be made as follows:

a. The notification must describe in detail the circumstances surrounding the infraction or possible infraction, including identifying (a) the document(s) involved; (b) the individuals involved; and (c) where, when, and how the infraction, or the possible infraction, occurred.

^{<11} *The participants may wish to discuss how this provision would apply to their filings given the particular facts of the proceeding and propose more specific provisions for meeting the regulatory requirement. The participants should ensure that any such specific provisions can be practically implemented under deadline pressures to avoid inadvertent disclosure of SGI.>*

b. A notification under this paragraph constitutes SGI, and, as such, must be processed, marked, and transmitted in accordance with the requirements set forth in 10 C.F.R. §§ 73.22(d), 73.22(e), 73.22(f), and 73.22(g), as applicable. In addition, the notification from the Petitioner's representative to the {Board *OR* Presiding Officer}, the Licensee's counsel, and NRC Staff counsel must be filed in accordance with paragraphs 8.a. and 8.c. of this Protective Order. The requirements in paragraphs 8.b. and 8.d. do not apply because even a non-detailed discussion of an infraction or possible infraction might constitute SGI.

12. The {Board *OR* Presiding Officer} may alter or amend this Protective Order and resolve disputes regarding the application of its terms. The Petitioner, Licensee, or NRC Staff may seek an amendment to this Protective Order or the Non-Disclosure Declarations via motion (*see* 10 C.F.R. § 2.323).

13. The SGI referenced in this Protective Order shall remain available to each Authorized SGI Recipient until the Access Termination Date. The Access Termination Date is the earlier of (a) the date of an order by the {Board *OR* Presiding Officer} or the Commission rescinding the right of access granted by this Protective Order; (b) the date of an order by the {Board *OR* Presiding Officer} terminating this proceeding (for any SGI other than that needed to pursue or defend against an appeal of a {Board *OR* Presiding Officer} order); or (c) the date that an order terminating this proceeding is no longer subject to judicial review (for any SGI that is needed to pursue or defend against an appeal of a {Board *OR* Presiding Officer} order). Within sixty (60) days of the Access Termination Date, the Petitioner shall either destroy all materials containing SGI or return such materials to the participant that provided the SGI to the Petitioner. Each Authorized SGI Recipient shall take those actions necessary for the Petitioner to satisfy this obligation, but Authorized SGI Recipients may retain copies of filings, official transcripts, exhibits, and notes that have been redacted so that only those portions not containing SGI remain accessible. Any destruction of SGI shall be in accordance with 10 C.F.R. § 73.22(i). Each Authorized SGI Recipient shall execute the attached Termination of Possession

Declaration (Attachment 2) stating that the SGI within his or her possession or control has been returned or destroyed. The Petitioner shall send a copy of the executed Declaration(s) to counsel for the Licensee and NRC Staff within sixty (60) days of the Access Termination Date.

14. Nothing in this Protective Order shall preclude a participant to this proceeding from objecting to the use of an exhibit, testimony, or a pleading because it contains SGI. The {Board OR Presiding Officer} may issue additional orders concerning the use of SGI.

15. Nothing in this Protective Order shall preclude any person from seeking public disclosure of SGI in accordance with NRC regulations and applicable federal law. Nothing in this Protective Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding any information protected by this Protective Order.

16. Any violation of this Protective Order or of any Non-Disclosure Declaration executed hereunder may result in the imposition of sanctions as the {Board OR Presiding Officer} or the Commission deems appropriate. Nothing in this Protective Order restricts or waives the Licensee's or the NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SGI.

17. The Petitioner must file executed Non-Disclosure Declarations within two (2) business days after the issuance of this Protective Order. Within two (2) business days after filing of the executed Non-Disclosure Declarations, the {Licensee OR NRC Staff} shall provide the Petitioner's representative with a copy of the following SGI: [identify that SGI for which the Petitioner's need has been determined] The [Licensee OR NRC Staff] will also provide a copy of this SGI to the {NRC Staff OR Licensee}.

{18. Filing deadlines for contentions and answers may be included, if appropriate.}

NON-DISCLOSURE DECLARATION

I, _____, state:

1. I have read the [Date], {Atomic Safety and Licensing Board's (Board's) OR Presiding Officer's} Protective Order issued in this proceeding for [Plant], [Docket Nos.], and will comply in all respects with its terms and conditions regarding the Safeguards Information (SGI) produced in connection therewith. I will protect from unauthorized disclosure all SGI in accordance with the terms of this Non-Disclosure Declaration and 10 C.F.R. § 73.22. I have read and understand the requirements in 10 C.F.R. § 73.22 and the other Part 73 regulations referenced in the Protective Order (available at [website for Part 73]).
2. I will protect documents containing SGI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents containing such SGI), so that the SGI contained therein remains at all times under the control of an Authorized SGI Recipient and is not revealed to anyone else.
3. I will use or store documents containing SGI only in accordance with the requirements of 10 C.F.R. § 73.22(c).

I do ☐ or do not ☐ possess a locking "Security Storage Container" that meets the criteria of the definition provided in 10 C.F.R. § 73.2. If I do possess a locking security storage container suitable for storing SGI, I will store SGI only in this container. If I do not possess a locking security storage container suitable for storing SGI, I will store SGI only at [an approved SGI storage location identified in the Joint Motion].
4. I will prepare and mark documents containing SGI that I create in accordance with the requirements of 10 C.F.R. § 73.22(d).
5. I will reproduce documents containing SGI only in accordance with the requirements of 10 C.F.R. § 73.22(e).
6. I will transmit documents containing SGI only in accordance with the requirements of 10 C.F.R. § 73.22(f) and the additional procedures specified in the Protective Order for this proceeding.
7. **I do ☐ or do not ☐** possess electronic equipment for processing SGI that meets the requirements of 10 C.F.R. § 73.22(g). If I do possess electronic equipment suitable for processing SGI, I will use only this equipment to electronically process SGI and will do so in accordance with 10 C.F.R. § 73.22(g). If I do not possess electronic equipment suitable for processing SGI, I will {not use electronic equipment to process SGI OR process SGI on electronic equipment only at [identify location], as discussed in the Joint Motion, and will do so in accordance with 10 C.F.R. § 73.22(g)}.
8. I will not remove information from the SGI category, as stated in the Protective Order.
9. When SGI is no longer needed for participation in the proceeding named in paragraph 1 of this Non-Disclosure Declaration, I will either destroy all documents containing SGI in accordance with the requirements of the Protective Order and 10 C.F.R. § 73.22(i), or

return all documents containing SGI in accordance with the requirements of the Protective Order.

10. Neither during nor after this proceeding, will I publicly reveal any SGI that I receive by virtue of this proceeding as long as the information remains SGI or otherwise constitutes sensitive information.
11. I acknowledge that any violation of the terms of this declaration or the {Board's *OR* Presiding Officer's} Protective Order, which incorporates the terms of this declaration, may result in the imposition of such sanctions on me that the {Board *OR* Presiding Officer} or the Commission may deem to be appropriate, or any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SGI.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and I do solemnly agree to protect from unauthorized disclosure such SGI as may be disclosed to me in this proceeding, in accordance with the terms of this declaration.

Signature

Executed on _____
Date

TERMINATION OF POSSESSION DECLARATION

I, _____, state:

In accordance with the [Date], {Atomic Safety and Licensing Board's *OR* Presiding Officer's} Protective Order, I have properly destroyed or returned all SGI in my possession by one or more of the following methods (check all that apply):

_____ I have destroyed materials containing SGI in accordance with the methods described in 10 C.F.R. § 73.22(i).

_____ I have returned SGI to the participant (Licensee or NRC Staff) that provided the SGI to the Petitioner.

_____ I have returned SGI to the Petitioner's representative so that he or she can destroy or return the SGI in accordance with the Protective Order.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Signature

Executed on _____
Date