

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0190]

**Protective Order Templates for Hearings on Conformance
with the Acceptance Criteria in Combined Licenses**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final protective order templates.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is announcing the availability of final protective order templates to be used in hearings associated with closure of inspections, tests, analyses, and acceptance criteria (ITAAC). The templates have the purpose of facilitating quick development of case-specific protective orders to support the accelerated ITAAC hearing schedule. Participants in ITAAC hearings may, but are not required to, use the templates as the basis for proposed protective orders.

DATES: The final templates are available on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2018-0190 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0190. Address questions about NRC Docket IDs in Regulations.gov to Krupskaya Castellon; telephone: 301-287-9221; email: Krupskaya.Castellon@nrc.gov. For other questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC’s Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission; telephone: 301-287-9115, e-mail: Michael.Spencer@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2016 (81 FR 43266), the NRC published final procedures for hearings on conformance with the acceptance criteria in combined licenses (COLs) issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) (ITAAC Hearing Procedures). The acceptance criteria are part of the ITAAC included in the COL. In accordance with 10 CFR 52.103(g), the NRC must find that the acceptance criteria are met before facility operation may begin. Section 189a.(1)(B) of the Atomic Energy Act of 1954, as amended (AEA), provides members of the public an opportunity to request a hearing on the facility’s compliance with the acceptance criteria. The ITAAC Hearing

Procedures describe the requirements for such hearing requests and the procedures to be used throughout the hearing process. The procedures for a particular ITAAC proceeding will be imposed by case-specific orders, and the ITAAC Hearing Procedures reference templates to be used for such orders.

Some NRC proceedings involve sensitive information. For ITAAC proceedings in particular, the NRC determined that a potential party may deem it necessary to obtain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) for the purpose of meeting Commission requirements for intervention. Therefore, the ITAAC Hearing Procedures include templates for orders governing requests for access to SUNSI and SGI. If a hearing participant qualifies for access to sensitive information, then a protective order and non-disclosure declaration would be needed to ensure that the information is protected appropriately. The presiding officer for a proceeding would issue the protective order, and recipients of the sensitive information would sign a non-disclosure declaration agreeing to protect the information in accordance with the protective order. Typically, the presiding officer issues a protective order in response to a motion from the hearing participants proposing a draft protective order and non-disclosure declaration for the presiding officer's consideration.

The NRC received comments on the proposed ITAAC Hearing Procedures suggesting that model templates would facilitate quick development of protective orders. In response, the NRC stated that protective order templates would be developed in a separate process allowing for stakeholder input.

To fulfill this commitment, the NRC staff published a *Federal Register* notice on September 4, 2018 (83 FR 44925) seeking comment on two draft protective order templates, one for SUNSI and one for SGI. The comment period closed on October 19, 2018. The NRC received one comment submission (ADAMS Accession No.

ML18298A267), which came from Southern Nuclear Operating Company. The NRC staff responded to comments and described any resulting changes to the templates in a document available at ADAMS Accession Number ML19036A732. In addition to changes made in response to comments, the NRC staff revised the templates as follows:

- Consistent with the signature requirements in 10 CFR 2.304(d), the NRC staff added spaces for the signer's address, phone number, and email address to the non-disclosure declarations and termination of possession declarations in both templates.
- The NRC staff added a requirement for the petitioner to preserve evidence of an infraction in cases where the petitioner has reason to believe that SGI may have become lost or misplaced, or that SGI has otherwise become available to unauthorized persons. This requirement is in addition to the existing notification requirements in the SGI template.
- The NRC staff made editorial corrections and minor clarifications to both templates.

Participants in ITAAC hearings may, but are not required to, rely on the final protective order templates as the basis for proposed protective orders.

II. Discussion

The NRC staff has developed two final protective order templates for ITAAC hearings, one for SUNSI (ADAMS Accession No. ML19036A727) and one for SGI (ADAMS Accession No. ML19036A718). Although the templates were developed for use in ITAAC hearings, the vast majority of the content is not specific to ITAAC

proceedings. The final SUNSI and SGI templates have the following ITAAC-specific provisions:

- The templates reflect the possibility that the presiding officer might be a single legal judge assisted as appropriate by technical advisors.
- Consistent with the accelerated ITAAC hearing schedule, petitioners are given less time to execute non-disclosure declarations, and licensees and the NRC staff are given less time to provide SUNSI or SGI to the petitioners, than is ordinarily the case.

The final SGI template has two additional ITAAC-specific provisions:

- Consistent with the ITAAC Hearing Procedures, the final template provides that SGI must be filed by overnight mail. Filings with SGI will not be made on the E-Filing system because the E-Filing system does not comply with SGI security requirements. This provision does not appear in the SUNSI template because SUNSI filings will be made through the E-Filing system.
- The final template quotes the ITAAC Hearing Procedures as stating that the 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.

Both templates are based on current requirements and policies, and would, if appropriate, be updated as those requirements and policies change. For example, NRC policies will change in response to the National Archives and Records Administration's final rule, "Controlled Unclassified Information," (81 FR 63324; September 14, 2016) (CUI Rule). The CUI Rule establishes government-wide requirements for protecting sensitive unclassified information. The CUI Rule applies both to the Federal government and to non-Federal entities receiving CUI from the Federal government. 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. But any future updating of the templates for subsequent ITAAC proceedings would reflect consideration of the CUI Rule and associated guidance.

A. Final SUNSI Protective Order Template

The NRC uses the term SUNSI to refer to a broad spectrum of sensitive information that is neither classified nor SGI. While there are many types of SUNSI, the final SUNSI protective order template is directed at protection of proprietary and security-related information, as discussed in SECY-15-0010 (January 20, 2015) (ADAMS Accession No. ML14343A747). The NRC staff focused on these types of SUNSI because of the NRC's experience with hearings involving reactors and its knowledge of the matters subject to ITAAC. If an ITAAC hearing involves another type of SUNSI with different protection requirements, the template can be adjusted accordingly.

In developing the final SUNSI template, the NRC staff considered protective orders for proprietary and security-related information issued after 2006. The NRC staff also considered guidance in NRC Regulatory Issue Summary (RIS) 2005-26, "Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors" (ADAMS Accession No. ML051430228), dated November 7, 2005. RIS 2005-26 is specifically directed at protection of security-related information for reactors and states that such information is protected in much the same way as commercial or financial information.

Finally, the NRC staff considered the CUI Rule. Although the CUI Rule has not yet been implemented at the NRC, many CUI requirements are consistent with the existing protective provisions for SUNSI that provided the basis for the final template. By

aligning the provisions and terminology in the SUNSI template with the corresponding elements of the CUI Rule, the NRC staff hopes to facilitate any future update of the template to comply with the CUI Rule. The introductory discussion in the template identifies those CUI provisions that were excluded because they differ from, or go beyond, existing protective provisions for proprietary and security-related SUNSI for external stakeholders.

B. Final SGI Protective Order Template

Safeguards Information is a special category of sensitive unclassified information defined in 10 CFR 73.2 and protected from unauthorized disclosure under AEA Section 147. Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (e.g., privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

The SGI protective order template does not rely on prior SGI protective orders because they predate significant changes to the NRC's regulations on SGI and adjudicatory filings. Instead, the NRC staff combined general provisions from the SUNSI template with the SGI protection requirements in 10 CFR part 73 and the adjudicatory filing requirements in 10 CFR part 2. Also, while the NRC staff considered the CUI Rule when developing the SGI template, the template does not reflect any specific CUI provisions. The NRC has not yet implemented the CUI Rule, and in accordance with 32 CFR 2002.4(r), most CUI requirements do not apply to SGI because the authorizing law and regulations for SGI provide specific handling controls.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	ADAMS ACCESSION NO. / FEDERAL REGISTER CITATION
Final Template for Protective Orders Governing the Disclosure and Use of Sensitive Unclassified Non-Safeguards Information (SUNSI) in Hearings Related to Conformance with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)	ML19036A727
Final 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)	ML19036A718
NRC Staff Responses to Public Comments on Draft Protective Order Templates for ITAAC Hearings	ML19036A732
Comment Submission from Southern Nuclear Operating Company, submitted on October 19, 2018	ML18298A267
Protective Order Templates for Hearings on Conformance with the Acceptance Criteria in Combined Licenses, published on September 4, 2018 (draft for comment)	83 FR 44925
Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses, published on July 1, 2016	81 FR 43266
SECY-15-0010, Final Procedures for Hearings on Conformance With the Acceptance Criteria in Combined Licenses, dated January 20, 2015	ML14343A747
Final Rule: Controlled Unclassified Information, published on September 14, 2016	81 FR 63324
NRC Regulatory Issue Summary 2005-26, Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors, dated November 7, 2005	ML051430228

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2018-0190. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to

the docket folder (NRC-2018-0190); 2) click the "Sign up for E-mail Alerts" link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 7th day of February 2019.

For the Nuclear Regulatory Commission.

/RA/

Susan H. Vrahoretis, Assistant General
Counsel for New Reactor Programs,
Office of the General Counsel.