

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20555-0001

February 29, 2008

**PROCEDURES TO ALLOW POTENTIAL INTERVENORS TO GAIN ACCESS TO RELEVANT
RECORDS THAT CONTAIN SENSITIVE UNCLASSIFIED NON-SAFEGUARDS
INFORMATION OR SAFEGUARDS INFORMATION**

Intent

The U.S. Nuclear Regulatory Commission (NRC or Commission) has established procedures to allow potential parties and their representatives to gain access to certain records that contain Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI). These procedures will be applicable to persons who have requested or who may request to participate in NRC adjudications conducted under 10 CFR Part 2, Subparts G, K, or L, who, in connection with a particular proceeding, seek to gain access to such records.

Background Information

Commission regulations in 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" govern the conduct of NRC adjudicatory proceedings. Potential parties who may request a hearing or petition to intervene in a hearing under 10 CFR Part 2 may deem it necessary to obtain access to SUNSI (including, but not limited to, proprietary, confidential commercial, security-related information) or SGI (as defined in 10 CFR § 73.2) to meet Commission requirements for hearing requests or for intervention. The Commission has finalized procedures (see the Attachments to this notice) to allow such

potential parties to submit information requests and enter into protective agreements prior to becoming a party to a proceeding so that those who have a need for SUNSI or a “need to know” for SGI can receive relevant information to prepare a valid contention. By notice in the *Federal Register*, the Commission sought public comment on a draft version of these procedures (see 72 FR 43569; August 6, 2007). The Commission has modified the procedures (and this background information section) in response to comments received. In addition, a more detailed response to the comments is provided on the NRC website at ADAMS Accession No. ML080380633.

As explained below, the attached procedures would be included by order in a *Federal Register* notice of hearing or a notice of opportunity for hearing. The Commission expects that requests for such information at this stage of a proceeding will initially be made to and decided by the NRC staff as specified in the procedures. However, these procedures will not be employed automatically in all proceedings, but only to those when the Commission deems them appropriate (e.g., those instances in which the application that is the subject of the potential proceeding contains SUNSI or SGI which is relevant to the licensing action to which the application applies). Although the Commission anticipates that they will be appropriate for most types of proceedings, these procedures will not apply to (1) license transfer adjudications, in which the Commission has already chosen a different procedural approach;¹ and (2) the

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

pending High Level Waste (HLW) Pre-License Application Presiding Officer proceeding (PAPO), or any subsequent adjudication regarding the Department of Energy's expected application for a construction authorization for an HLW repository.

The procedures entail a case-by-case approach for reviewing requests for access to SUNSI and SGI, and incorporate the principles that have previously been applied for access to sensitive financial information in license transfer proceedings. These principles include requiring a showing of need for the information and a reasonable likelihood of establishing standing. The procedures reflect the longstanding practice of NRC staff access determinations in the first instance, subject to review by a presiding officer if contested. The procedures also describe how the public will be informed of this process. The procedures address:

- (1) When and where to submit requests for access to SUNSI and SGI that is possessed by the NRC;²
- (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;
- (4) Use of nondisclosure affidavits/agreements and protective orders; and

² The procedures do not address information possessed solely by a licensee or applicant.

- (5) Time periods for making standing, need, and access determinations, producing documents, submitting contentions, and seeking review of determinations.

Discussion

Under current Commission practice, access to sensitive financial information by those seeking participation in license transfer proceedings should be granted when the NRC has a reasonable basis to believe a petitioner can establish standing. The Commission believes this approach should be followed for granting access to the broader class of SUNSI and to Safeguards Information, because the approach is essential for determining whether a request is for the legitimate purpose of preparing a hearing request or intervention petition.

In addition to the likelihood of establishing standing, a showing of “need” (for access to SUNSI) or “need to know”³ (for SGI access) is also important to prevent misuse or unnecessary disclosure of sensitive information. A need to know for SGI access includes demonstrating technical competence, and is required in order to prevent a “fishing expedition” by untutored lay persons.⁴ A showing of technical competence is required of anyone (whether a potential party,

³ “Need to know” is more than a general relevance test and includes a determination that the SGI requested is indispensable and that the “recipient” is technically competent to evaluate the information requested. See, *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 72-73 (2004); *Catawba*, CLI-04-21, 60 NRC 21, 27-31 (2004). Broad SGI requests under these procedures are highly unlikely to meet this standard; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with the need to know requirement. As SGI access determinations under these procedures remain subject to need to know, these procedures do not authorize unrestricted disclosure or less scrutiny than ordinarily would be applied in connection with an already-admitted contention.

⁴ See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 31 (2004) (boards should not tolerate “fishing expeditions” in the security arena).

counsel or prospective witness) who requests access to SGI. Technical competence can be shown either by a demonstration by the individual seeking access that he/she has the requisite expertise to evaluate the requested information, or through reliance on an expert, consultant, or other person who possesses the knowledge, skill, experience, or training to understand and use the SGI sought. This dual showing of need to know and likelihood of establishing standing will ensure, consistent with the Commission's admonition, that access to SGI "be as narrow as possible," limiting disclosure to that "necessary or required."⁵ Finally, because granting access to SGI additionally involves a determination that the recipient is trustworthy and reliable, these procedures describe the process by which a potential party can request the initiation of the necessary background check.

The procedures, which would be included by order in a Federal Register notice of hearing or a notice of opportunity for hearing, would instruct persons who claim a need for access to SUNSI or SGI in order to prepare a hearing request or intervention petition to submit a request within ten days of the issuance of the notice. The notice would further indicate that any requests submitted subsequent to this 10-day period would not be entertained unless the requester demonstrates good cause for late submission.

The procedures include time periods for submission of requests, for NRC staff determinations, and for challenges to NRC staff determinations (both favorable and adverse). These periods are intended to minimize the potential for delay in the admission of contentions. These

⁵ *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-06, 59 NRC 62, 74 (2004) (citing 10 CFR §§ 73.2, 73.21, 95.5).

procedures also include a “pre-clearance” process that would permit a potential party who may seek access to SGI to request initiation of the necessary background check in advance of a notice of hearing or notice of opportunity for hearing. The Commission considers this pre-clearance process to be available to potential parties in connection with a particular action even before the general procedures are published in the Federal Register with respect to that action.

Assuming that both need and a likelihood of establishing standing are shown, a requester could be granted access to SUNSI within 30 days of receipt of the request or as soon as redacted versions could be prepared (if not already supplied by an applicant or licensee) and/or reviewed by the NRC staff to ensure that information beyond the scope of the request (or not shown to be needed) is not disclosed.⁶

The target date for SGI access determinations under these procedures is within 180 days after receipt of a request; however, there could be instances when processing of the request could take longer.⁷ A determination of whether to grant access to SGI will await completion of background checks to verify that the intended recipient is trustworthy and reliable, the completion of a readiness inspection of the recipient’s information protection systems,

⁶ Confidential commercial information is routinely made available in NRC licensing proceedings under a protective order without background investigations. See, 10 CFR §§ 2.390(b)(6), 2.390(b)(2), 2.705(c).

⁷ The NRC staff’s best estimate is that determinations can be completed in four to six months. However, because 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.

preparation or review of redactions, and agreement on disclosure terms. To reduce the potential for delay in a proceeding, the procedures provide that the NRC staff will gather, redact, or review redacted SGI documents and complete any pre-disclosure inspections prior to the completion of a background check by outside agencies and an NRC staff determination that the proposed recipient is trustworthy and reliable.⁸ Consistent with current practice, access to sensitive information would be provided only after execution of a Non-Disclosure Agreement (if an applicant or licensee is providing access to sensitive financial information) or a Non-Disclosure Affidavit that reflects an agreement to abide by the terms of a protective order, as well as the issuance of a protective order by the presiding officer.

Disputes concerning the NRC staff's "need" or access determination would be reviewable by 1) the presiding officer in the ongoing licensing proceeding; 2) if no presiding officer has yet been assigned, by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, or if he or she is unavailable, with another administrative judge, or with an administrative law judge with jurisdiction pursuant to 10 CFR § 2.318(a); or 3) if an officer has been designated to rule on information access issues, by such an officer. Following action on the access request pursuant to such review, the procedures would give way to the normal process for litigating disputes concerning access to information.⁹ The Commission has approved a final rule that expands 10

⁸ However, if a potential party uses the "pre-clearance" process (described in the Attachments to this notice) to request initiation of a background check for SGI access, it is possible that the background check would be complete before the other procedural steps could be taken.

⁹ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations regarding information access (because the appeals must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

CFR § 2.311 to permit interlocutory review by the Commission of orders ruling on such NRC staff determinations.¹⁰

Contact

Tison Campbell
Attorney, Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone 301-415-8579
E-mail tison.campbell@nrc.gov

Attachments:

1. Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation
2. General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) in Adjudicatory Proceedings

¹⁰ See STAFF REQUIREMENTS - AFFIRMATION SESSION, 12:55 P.M., THURSDAY, FEBRUARY 7, 2008, COMMISSIONERS' CONFERENCE ROOM . . . I. SECY-07-0217 - FINAL RULE - 10 CFR 2.311 "INTERLOCUTORY REVIEW OF RULINGS ON REQUESTS FOR HEARINGS/PETITIONS TO INTERVENE, SELECTION OF HEARING PROCEDURES, AND REQUESTS BY POTENTIAL PARTIES FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION."

**Procedures for Access to Sensitive Unclassified
Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)
for Contention Preparation**

1. When the circumstances of a potential adjudicatory proceeding make it appropriate to do so, a notice of hearing or opportunity for hearing published by the NRC will contain an order with instructions regarding how to request access to documents containing sensitive unclassified information (including SUNSI and SGI).¹

2. Within ten (10) days after publication of such a notice of hearing or opportunity for hearing, any potential party, as defined in 10 CFR 2.4, who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI needed for participation in a proceeding or hearing under 10 CFR Part 2, Subparts G, K, or L.² A “potential party” is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR § 2.309. Requests submitted later than ten (10) days will not be considered absent a

¹ The NRC staff will publish a notice of receipt of a license application that contains SUNSI and/or SGI at the earliest reasonable time. This should further enable potential parties to review portions of an application in which they are interested during the routine 30-day period in which the NRC staff considers whether the application is acceptable for docketing, before the 10-day period for submitting information access requests would commence.

² These procedures do not apply to license transfer adjudications, nor do they apply to the pending High Level Waste (HLW) Pre-License Application Presiding Officer (PAPO) proceeding, or any subsequent adjudication regarding the Department of Energy’s expected application for a construction authorization for a HLW repository.

showing of good cause for the late filing, addressing why the request could not have been filed earlier. To minimize delays, potential parties who anticipate seeking access to SGI may elect to request initiation of the background check component of the access determination in advance of a notice of hearing being issued; procedures for this “pre-clearance” process are described below in paragraph 11.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are HearingDocket@nrc.gov and OGCmail@nrc.gov, respectively. The request must include the following information:
 - a. A description of the licensing or enforcement action with citations to the *Federal Register* notice of hearing or opportunity for hearing concerning a licensing or regulatory action, or the NRC web notice of opportunity for hearing, if any;
 - b. The name and address of the potential party and a description of the potential party’s particularized interest that could be harmed by the potential licensing or enforcement action identified in (a) or harmed if the enforcement action is not sustained;

- c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in an adjudicatory proceeding, particularly why publicly available versions of an application would not be sufficient to provide the basis and specificity for a proffered contention;

- d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:
 - (i) Why the information is indispensable to meaningful participation in a licensing proceeding; and

 - (ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information 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 demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

- e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-415-0320.³ The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of [\$191.00]⁴ to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the:

Office of Administration
Security Processing Unit
Mail Stop T-6E46
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. Note: copies of these forms do not need to 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 described above.

³ The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

⁴ The cost of conducting the background check is expected to change periodically. Therefore, the Commission will state the applicable amount at the time the procedures are noticed in the Federal Register in connection with a particular proceeding.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in an NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in an NRC proceeding⁵ and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in the proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent

⁵ Broad SGI requests under these procedures are thus highly 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 requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:
 - a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in a licensing or enforcement proceeding;
 - b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;
 - c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and
 - d. The presiding officer has issued a protective order concerning the information or documents requested.⁶ Any protective order issued shall provide that the hearing or intervention petitioner must file SUNSI or SGI contentions 25 days

⁶ In the instances when a notice of hearing or a notice of proposed action has been issued, but a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to the proceeding⁷ and the hearing or intervention petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.
9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity

⁷ Parties other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in the licensing or enforcement proceeding identified in the original request for access; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR § 2.311.⁸

⁸ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See, Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those intervenors/petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

11. Pre-clearance procedures for potential parties who may seek access to SGI. As discussed in the general procedures above, one requirement for access to SGI is a determination that the recipient is trustworthy and reliable, a determination that the NRC staff makes based on a background check. Because background checks may take up to several months to complete, potential parties seeking access to SGI may elect to request initiation of the background check in advance of an application being filed that may contain or concern SGI.⁹ By following the procedures described below, potential parties may submit such a request as early as **180 days** before the projected date of the filing of an application. Such a projected application date may be described, for example, in an applicant's letter of intent that is made publicly available through the NRC

served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

⁹ As with the general procedures above, this pre-clearance process does not apply to license transfer adjudications or to the pending High Level Waste (HLW) Pre-License Application proceeding (PAPO), or any subsequent adjudication regarding the Department of Energy's expected application for a construction authorization for a HLW repository. The Commission also recognizes that "potential parties" is an imperfect term in the "pre-clearance" context, because such requests may be submitted before an application has been filed or a hearing noticed and no proceeding may ultimately occur.

website. This procedure likewise would allow potential parties to submit a request after an application has been received by the NRC but before it has been docketed and the notice of opportunity for hearing issued.

By offsetting a portion of the lead time that may be involved in completing background checks, the Commission intends this process to minimize unnecessary delays in preparing (and, if appropriate, adjudicating) security-related contentions. However, this pre-clearance process alone will not authorize access to SGI; as described in the general procedures, other steps are necessary, including a showing of need to know, analysis of the likelihood of establishing standing,¹⁰ and the implementation of non-disclosure agreements/affidavits. Because those steps are contingent on an application ultimately being docketed for review, there is no guarantee that the early initiation of the background check will be of practical use to a potential party. For example, applicants may choose not to submit the application, application dates may be delayed, an application may not be accepted for docketing based on the NRC staff's docketing review, or an application may not contain or concern SGI. Also, it is possible that the requesting party ultimately will not satisfy the other requirements for access to SGI.

Consequently, it is the potential party's choice whether to pursue the pre-clearance process. The costs for initiating the background check are not refundable even if no

¹⁰ Full evaluation of a "pre-clearance" requester's likelihood of establishing standing is not necessary until a subsequent specific request for access. For the limited purpose of determining whether to initiate the requested background check, the NRC staff will review the pre-clearance requester's brief statement of interest in the proceeding or anticipated proceeding only to confirm that there is some description of why the requester's interest could be affected.

application is ultimately submitted and docketed. Nor are those costs refundable in the event of an adverse determination on the background check or on failure to satisfy other requirements for access such as need to know. Nevertheless, given the strict timelines for submission of and rulings on the admissibility of contentions (including security-related contentions) once an application is docketed, potential parties should not expect additional flexibility in those established time periods if they decide not to exercise the pre-clearance option.

Pre-Clearance Procedures

(A) A pre-clearance request should be submitted by letter, addressed as per **paragraph 3** above, that:

- (i) Identifies the anticipated or noticed application or action and requests initiation of a background check for the purposes of determining trustworthiness and reliability for access to SGI that may be relevant to such an application or action;
- (ii) Identifies the Federal Register notice, NRC website notice, letter of intent, or other notice that prompted the request;
- (iii) Provides the information requested in **paragraph 3.b** above (the name and address of the potential party and a brief description of its interest in the potential action); and
- (iv) States that the completed forms and fees requested in **paragraph 3.e** above (for each individual requesting initiation of a background check for access to SGI and, if applicable, for each individual who will aid the

requester in evaluating the SGI) have been submitted as provided in that paragraph.¹¹

The NRC staff will not begin processing the requested background check if the potential party fails to provide the information in items (i)-(iv) above. As stated in **paragraph 4** above, potential parties should review all forms for completeness and accuracy before submitting them to the NRC.

- (B) Once the background check has been conducted:
- (i) If the background check results in a favorable determination concerning the potential party's trustworthiness and reliability, the NRC staff will so notify the potential party. In its discretion, the responsible staff may proceed at that time with an inspection of the requestor's information protection system as provided in **paragraph 6** above. If a notice of hearing subsequently is issued, an associated request for access to specified SGI will still need to address the other requirements for access, in accordance with the general procedures above.
 - (ii) If the background check results in an adverse determination concerning the potential party's trustworthiness and reliability, the NRC staff will provide the potential party with a brief statement of the reasons for denial. Before the Office of Administration makes an adverse determination, the proposed recipient must be provided an opportunity to correct or explain

¹¹ As noted above, the cost of conducting the background check is expected to change periodically. To confirm the currently applicable fee for conducting the background check, a requester using the pre-clearance process should first contact the NRC's Office of Administration at 301-415-0320.

information. The requester may challenge that adverse determination by following the process described in **paragraph 9** above. Moreover, because such an adverse determination is sufficient grounds for denying a subsequent request for SGI access if a notice of hearing is issued, the requester should not wait until a subsequent denial to appeal the trustworthiness and reliability finding.

- (C) If the notice of hearing or notice of opportunity for hearing is issued while the background check is in progress or while an appeal of an adverse determination is pending, the potential party should still submit the other components of its request for access consistent with the general process above. Those elements of the access determination will be handled in accordance with those general procedures and timelines. The potential party's submission of its request (within 10 days of that notice) need not repeat the information already submitted specifically for the background check – it may simply reference the pre-clearance request letter – but it should provide all other information requested in the general procedures.¹² To avoid confusion, however, the submission should identify the potential party's contact information, the agency action, and the notice of hearing.

¹² If a background check has been initiated using the pre-clearance process and the NRC staff has made an adverse determination, the requester should timely appeal that determination if it intends to pursue its request for access; the staff will rely on that determination and will not initiate a second background check if the requester submits the complete access request described in the general procedures.

General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) in Adjudicatory Proceedings

<u>Day</u>	<u>Event/Activity</u>
---	Initiation of pre-clearance process, up to 180 days before the projected date of the filing of an application. Determinations (and appeals, if necessary) per that process may be complete before an application is docketed; if not, they will proceed concurrent with milestones below. ¹ To further expedite the opportunity for potential parties to determine whether to seek access to SUNSI and/or SGI, the NRC staff will publish a notice of receipt of a license application that contains SUNSI and/or SGI at the earliest reasonable time.
0	Publication of Federal Register notice or other notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and

¹ NRC staff aims to complete any “pre-clearance” process background check (described in the associated procedures for access to SUNSI and SGI) within 180 days of receipt of the request. As with the general target schedule, requesters may challenge the NRC staff’s adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within five (5) days of receipt of that determination. An SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination. However, because the remaining components of such requests for access must await publication of the notice of hearing, the balance of the review would follow the general target schedule.

address; describing the need for the information in order for the potential party to participate meaningfully in an 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, 30 or 60 Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

20 NRC staff informs the requester 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 the NRC staff makes the finding of need for SUNSI and likelihood of standing, the NRC staff begins document processing (preparation of redactions or review of redacted documents). If the NRC staff makes the finding of need to know for SGI and likelihood of standing, the NRC staff begins a background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.

- 25 If the NRC staff finds no “need,” “need to know,” or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff’s denial of access; the NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If the 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 motion seeking a ruling to reverse the NRC staff’s grant of access.
- 30 Deadline for the NRC staff reply to motions to reverse NRC staff determination(s).
- 40 (Receipt +30) If the 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 file Non-Disclosure Agreement for SUNSI.

- 190 (Receipt +180) If the NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for the NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
- 205 Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
- A If access granted: Issuance of presiding officer or other designated 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 SUNSI and/or SGI consistent with decision issuing the protective order.
- A + 28 Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or

opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

- A + 53 (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
- A + 60 (Answer receipt +7) Petitioner/Intervenor reply to answers
- B Decision on contention admission.