[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2014-0077]

Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed ITAAC hearing procedures; public meeting; and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is developing generic procedures for conducting hearings on whether acceptance criteria in combined licenses are met. These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) included in the combined license for a nuclear reactor. Reactor operation may commence only if and after the NRC finds that these acceptance criteria are met. The proposed generic hearing procedures are being issued for public comment. After these generic hearing procedures are finalized, the Commission will use them (with appropriate modifications) in case-specific orders to govern hearings on conformance with the acceptance criteria. The NRC intends to hold a public meeting during the comment period to discuss the proposed procedures.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to

do so, but it is unlikely that consideration of late comments will be practical because of the need to finalize the generic procedures on an expedited basis to support preparation for upcoming hearings for reactors currently under construction.

The NRC intends to hold a public meeting on May 21, 2014, to discuss the proposed procedures. This public meeting will be for information exchange purposes only; no comments will be received at the public meeting. Any stakeholders wishing to comment on the procedures must do so by the means described in this notice.

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

- **Federal Rulemaking Web site:** Go to http://www.regulations.gov and search for Docket ID NRC-2014-0077. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For questions about the procedures, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–4073, e-mail: Michael.Spencer@nrc.gov.

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SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments.

A. Accessing Information.

Please refer to Docket ID NRC-2014-0077 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- **Federal Rulemaking Web Site:** Go to http://www.regulations.gov and search for Docket ID NRC-2014-0077.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the ADAMS Public Documents collection at http://www.nrc.gov/reading-rm/adams.html. To begin the search, select "ADAMS Public Documents" and then 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 accessing documents 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.

B. Submitting Comments.

Please include Docket ID NRC-2014-0077 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at http://www.regulations.gov as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction.

The NRC promulgated Part 52 of Title 10 of the *Code of Federal Regulations* (CFR) on April 18, 1989 (54 FR 15386) to reform the licensing process for future nuclear power plant applicants. The rule added alternative licensing processes in 10 CFR Part 52 for early site permits (ESPs), standard design certifications, and combined licenses (COLs). These were additions to the two-step licensing process that already existed in 10 CFR Part 50. The processes in 10 CFR Part 52 are intended to facilitate early resolution of safety and environmental issues and to enhance the safety and reliability of nuclear power plants through standardization. The centerpiece of 10 CFR Part 52 is the COL, which resolves the safety and

environmental issues associated with construction and operation before construction begins. Applicants for a COL are able to reference other NRC approvals (e.g., ESPs and design certifications) that resolve a number of safety and environmental issues that would otherwise need to be resolved in the COL proceeding.

After the promulgation of 10 CFR Part 52 in 1989, the Energy Policy Act of 1992 (EPAct), Public Law No. 102-486, added several provisions to the Atomic Energy Act of 1954, as amended (AEA), regarding the COL process, including provisions on ITAAC. The inclusion of ITAAC in the COL is governed by Section 185b. of the AEA, and hearings on conformance with the acceptance criteria in the ITAAC are governed by Section 189a.(1)(B) of the AEA. On December 23, 1992 (57 FR 60975), the Commission revised 10 CFR Part 52 to conform to the EPAct. Further additions and revisions to the regulations governing hearings on conformance with the acceptance criteria were made in the final rule entitled "Licenses, Certifications, and Approvals for Nuclear Power Plants" (2007 Part 52 Rule) (72 FR 49352; August 28, 2007), and in the final rule entitled "Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria" (ITAAC Maintenance Rule) (77 FR 51880; August 28, 2012).

The ITAAC are an essential feature of Part 52. To issue a COL, the NRC must make a predictive finding that the facility *will be* constructed and will be operated in accordance with the license, the AEA, and NRC rules and regulations. The ITAAC are used to ensure that, prior to facility operation, the facility *has been* constructed and will be operated in accordance with the license, the AEA, and NRC rules and regulations. The ITAAC are verification requirements that include both the means of verification (the inspections, tests, or analyses) and the standards that must be satisfied (the acceptance criteria). Facility operation cannot commence until the NRC finds, under 10 CFR 52.103(g), that all acceptance criteria in the COL are met. Consistent with the NRC's historical understanding, facility operation begins with the loading of fuel into the reactor. After the NRC finds that the acceptance criteria are met, 10 CFR 52.103(h) provides that the ITAAC cease to be requirements either for the licensee or for license renewal. All of the

ITAAC for a facility, including those reviewed and approved as part of an ESP or a design certification, are included in an appendix to the COL.[1]

As the licensee completes the construction of structures, systems, and components (SSCs) subject to ITAAC, the licensee will perform the inspections, tests, and analyses for these SSCs and document the results onsite. NRC inspectors will inspect a sample of the ITAAC to ensure that the ITAAC are successfully completed.[2] This sample is chosen using a comprehensive selection process to provide confidence that both the ITAAC that have been directly inspected and the ITAAC that have not been directly inspected are successfully completed.

For every ITAAC, the licensee is required by 10 CFR 52.99(c)(1) to submit an ITAAC closure notification to the NRC explaining the licensee's basis for concluding that the inspections, tests, and analyses have been performed and that the acceptance criteria are met. These ITAAC closure notifications are submitted throughout construction as ITAAC are completed. Licensees are expected to "maintain" the successful completion of ITAAC after the submission of an ITAAC closure notification. If an event subsequent to the submission of an ITAAC closure notification materially alters the basis for determining that the inspections, tests, and analyses were successfully performed or that the acceptance criteria are met, then the licensee is required by 10 CFR 52.99(c)(2) to submit an ITAAC post-closure notification documenting its successful resolution of the issue. The licensee must also notify the NRC when all ITAAC are complete as required by 10 CFR 52.99(c)(4). These notifications, together with

[1] *See, e.g.*, Vogtle Unit 3 Combined License, Appendix C (ADAMS Accession No. ML112991102). There are 875 ITAAC in the Vogtle COL.

[2] In addition to ITAAC for SSCs, there are ITAAC related to the emergency preparedness program and physical security hardware. The NRC will inspect the performance of all emergency preparedness program and physical security hardware ITAAC.

the results of the NRC's inspection process, serve as the basis for the NRC's 10 CFR 52.103(g) finding regarding whether the acceptance criteria in the COL are met.

One other required notification, the uncompleted ITAAC notification, must be submitted at least 225 days before scheduled initial fuel load and must describe the licensee's plans to complete the ITAAC that have not yet been completed. 10 CFR 52.99(c)(3). An important purpose served by this notification is to provide sufficient information to members of the public to allow them a meaningful opportunity to request a hearing and submit contentions on uncompleted ITAAC within the required timeframes. When the uncompleted ITAAC are later completed, the licensee must submit an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1).

As the Commission stated in the ITAAC Maintenance Rule (77 FR 51887), the notifications required by 10 CFR 52.99(c) serve the dual purposes of ensuring (1) that the NRC has sufficient information to complete all of the activities necessary for it to find that the acceptance criteria are met, and (2) that interested persons will have access to information on both completed and uncompleted ITAAC sufficient to address the AEA threshold for requesting a hearing under Section 189a.(1)(B) on conformance with the acceptance criteria.

The NRC regulations that directly relate to the ITAAC hearing process are in 10 CFR 2.105, 2.309, 2.310, 2.340, 2.341, 51.108, and 52.103. Because 10 CFR 52.103 establishes the most important requirements regarding operation under a combined license, including basic aspects of the associated hearing process, NRC regulations often refer to the ITAAC hearing process as a "proceeding under 10 CFR 52.103." Additional regulations governing the ITAAC hearing process are in the design certification rules, which are included as appendices to 10 CFR Part 52, for example, "Design Certification Rule for the AP1000 Design," 10 CFR Part 52, Appendix D, Paragraphs VI.B, VIII.B.5.g, and VIII.C.5. In addition, the Commission announced several policy decisions regarding the conduct of ITAAC hearings in its final policy

statement entitled “Conduct of New Reactor Licensing Proceedings” (2008 Policy Statement) (73 FR 20963; April 17, 2008).

While NRC regulations address certain aspects of the ITAAC hearing process, they do not provide detailed procedures for the conduct of an ITAAC hearing. As provided by 10 CFR 2.310(j), proceedings on a Commission finding under 10 CFR 52.103(c) and (g) shall be conducted in accordance with the procedures designated by the Commission in each proceeding. The use of case-specific orders to impose case-specific hearing procedures reflects the flexibility afforded to the NRC by Section 189a.(1)(B)(iv) of the AEA, which provides the NRC with the discretion to determine the appropriate procedures for an ITAAC hearing, whether formal or informal. A case-specific approach has the advantage of allowing the NRC to tailor the procedures to the specific matters in controversy to conduct the proceeding more efficiently. In addition, the NRC can more swiftly implement lessons learned from the first ITAAC hearings to future proceedings. This approach is particularly beneficial given that this is a first-of-a-kind hearing process.

The NRC recognizes, however, that the predictability and efficiency of the ITAAC hearing process would be greatly enhanced by the development, to the extent possible, of generalized procedures that can be quickly and easily adapted to the specific features of individual proceedings. The Commission, in its July 19, 2013 staff requirements memorandum (SRM) on SECY-13-0033, “Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103,” (ADAMS Accession Nos. ML13200A115 and ML12289A928) directed the NRC staff, the Office of the General Counsel (OGC), and the Office of Commission Appellate Adjudication (OCAA) to develop options for ITAAC hearing formats for Commission review and approval. The Commission further directed that the ITAAC hearing procedures “be developed, deliberated, and resolved within the next 12 to 18 months.” Pursuant to this direction, the NRC staff, OGC, and OCAA (together, “the Staff”) have jointly developed the generic ITAAC hearing procedures that are described and referenced in this notice. After

considering the comments made on these procedures, the Staff will modify the general procedures as appropriate and submit the modified procedures, along with responses to comments on the proposed procedures, to the Commission for review and approval later in 2014.

III. Public Meeting.

In addition to the comment request period, the NRC intends to hold a public meeting on May 21, 2014, to discuss the proposed procedures. This public meeting will be for information exchange purposes only; no comments will be received at the public meeting. Any stakeholders wishing to comment on the procedures must do so by the means described in this notice. The public meeting will be held at the NRC's headquarters in Rockville, MD. Further information regarding the specific time and location of the meeting will be included in a public meeting notice to be issued in the future. This public meeting notice will be made available electronically in ADAMS and posted on the NRC's Public Meeting Schedule Web site at http://www.nrc.gov/public-involve/public-meetings/index.cfm. The agenda for the public meeting will be noticed no fewer than 10 days prior to the meeting on the Public Meeting Schedule Web site. Any meeting updates or changes will be made available on this Web site. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site.

IV. Existing Law and Policy Governing ITAAC Hearings.

In developing ITAAC hearing procedures, the Staff has implemented existing law and policy governing ITAAC hearings. In particular, the procedures were developed with an eye

toward the overarching statutory requirement for the expeditious completion of an ITAAC hearing found in AEA § 189a.(1)(B)(v). This section provides that the Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel into the reactor, whichever is later. Other provisions of existing law and policy, the discussion of which directly follows, may be grouped into three categories: (1) provisions relating to hearing requests, (2) provisions relating to interim operation, and (3) provisions relating to the initial decision of the presiding officer on contested issues after a hearing.

A. Hearing Request.

Section 189a.(1)(B)(i) of the AEA and 10 CFR 52.103(a) provide that not less than 180 days before the date scheduled for initial loading of fuel into the reactor, the NRC will publish in the *Federal Register* a notice of intended operation, which will provide that any person whose interest may be affected by operation of the plant may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license. The contents of the notice of intended operation are governed by 10 CFR 2.105. With respect to the timing of this notice, the Commission's goal is to publish the notice of intended operation 210 days before scheduled fuel load (72 FR 49367), and, as explained later in this notice, the NRC proposes to publish the notice of intended operation even earlier, if possible.

Hearing requests are governed by 10 CFR 2.309. In accordance with 10 CFR 2.309(a), a hearing request in a proceeding under 10 CFR 52.103 must include a demonstration of standing and contention admissibility, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for ITAAC hearings as it provides for other proceedings. Thus, discretionary intervention pursuant to § 2.309(e) does not apply to ITAAC hearings as it does to other proceedings. As reflected in 10 CFR 2.309(f)(1)(i), the issue of law or fact to be raised in an ITAAC hearing request must be directed at demonstrating that one or more of the

acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety.[3]

In addition to the normal requirements for hearing requests, ITAAC hearing requests must, as required by AEA § 189a.(1)(B)(ii), show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and must show, *prima facie*, the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This required "*prima facie*" showing is implemented in 10 CFR 2.309(f)(1)(vii). Section 2.309(f)(1)(vii) also provides a process for petitioners to claim that a licensee's 10 CFR 52.99(c) report is incomplete and that this incompleteness prevents the petitioner from making the necessary *prima facie* showing. To employ this process, which this notice terms a "claim of incompleteness," the petitioner must identify the specific portion of the licensee's 10 CFR 52.99(c) report that is incomplete and explain why this deficiency prevents the petitioner from making the necessary *prima facie* showing.

Also, as provided by 10 CFR 51.108, the NRC is not making any environmental finding in connection with its finding under 10 CFR 52.103(g) that the acceptance criteria are met, and the Commission will not admit any contentions on environmental issues in an ITAAC hearing. Instead, the 10 CFR 52.103(g) finding is a categorical exclusion as provided in 10 CFR

[3] Because the ITAAC were previously approved by the NRC and were subject to challenge as part of the COL proceeding, a challenge to the ITAAC themselves will not give rise to an admissible contention, but the ITAAC could be challenged in a petition to modify the terms and conditions of the COL that is filed under 10 CFR 52.103(f). *See* 2007 Part 52 Rule, 72 FR 49367 n.3. Such petitions must be filed with the Secretary of the Commission and will be processed in accordance with 10 CFR 2.206. Because 10 CFR 52.103(f) petitions are outside the scope of the ITAAC hearing process, the 10 CFR 52.103(f) process is outside the scope of this notice.

51.22(c)(23).[4] As the Commission explained (72 FR 49428) when promulgating 10 CFR 51.108 and 10 CFR 51.22(c)(23): (1) The major federal action with respect to facility operation is issuing the COL because the COL authorizes operation subject to successful completion of the ITAAC; (2) the environmental effects of operation are evaluated in the COL environmental impact statement; and (3) the 52.103(g) finding is constrained by the terms of the ITAAC, i.e., it involves only a finding on whether the predetermined acceptance criteria are met. Therefore, the environmental effects of operation were considered, and an opportunity for a hearing on these effects was provided, during the proceeding on issuance of the COL.

Design certification rules contain additional provisions regarding ITAAC hearing requests. Any proceeding for a reactor referencing a certified design would be subject to the design certification rule for that particular design. For example, any ITAAC hearing for a plant referencing the AP1000 Design Certification Rule in 10 CFR Part 52, Appendix D, would be subject to the requirements of 10 CFR Part 52, Appendix D. Paragraph VIII.B.5.g of 10 CFR Part 52, Appendix D, establishes a process for parties who believe that a licensee has not complied with Paragraph VIII.B.5 when departing from Tier 2 information to petition to admit such a contention into the proceeding.[5] Among other things, such a contention must bear on an asserted noncompliance with the ITAAC acceptance criteria and must also comply with the requirements of 10 CFR 2.309. Paragraph VIII.C.5 establishes a process whereby persons who believe that a change must be made to an operational requirement approved in the design control document or a technical specification (TS) derived from the generic TS may petition to

[4] A "categorical exclusion" is a procedural mechanism by which a class of actions has been found not to have any significant environmental effect, and is therefore categorically excluded from the need for further environmental review.

[5] Tier 2 information is a category of information in a design control document that is incorporated by reference into a design certification rule. The definition of Tier 2 for the AP1000 design certification can be found at 10 CFR Part 52, Appendix D, Paragraph II.E.

admit such a contention into the proceeding if certain requirements, in addition to those set forth in 10 CFR 2.309, are met.

In accordance with 10 CFR 2.309(i), answers to hearing requests are due in 25 days and no replies to answers are permitted. As reflected in 10 CFR 2.309(j)(2), the Commission has decided that it will act as the presiding officer for determining whether to grant the hearing request. In accordance with AEA § 189a.(1)(B)(iii) and 10 CFR 2.309(j)(2), the Commission will expeditiously grant or deny the hearing request. As stated in 10 CFR 2.309(j)(2), this Commission decision may not be the subject of an appeal under 10 CFR 2.311. If a hearing request is granted, the Commission will designate the procedures that govern the hearing as provided by 10 CFR 2.310(j). In accordance with 10 CFR 2.309(g), hearing requests (and by extension answers to hearing requests) are not permitted to address the selection of hearing procedures under 10 CFR 2.310 for an ITAAC hearing.[6]

B. Interim Operation.

The AEA provides for the possibility of interim operation, which is operation of the plant pending the completion of an ITAAC hearing. The potential for interim operation arises if the Commission grants a hearing request that satisfies the requirements of AEA § 189a.(1)(B)(ii). If the hearing request is granted, AEA § 189a.(1)(B)(iii) directs the Commission to allow interim operation if it determines, after considering the petitioners' *prima facie* showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. As is evident from the statutory text, Congress included the interim operation provision to prevent an ITAAC hearing from

[6] However, this notice is affording interested stakeholders the opportunity to comment on the procedures that the Commission will employ in an ITAAC hearing (with appropriate modifications in specific cases).

unnecessarily delaying plant operation if the hearing extends beyond scheduled fuel load.[7] As provided by 10 CFR 52.103(c), the Commission will make the adequate protection determination for interim operation acting as the presiding officer. In accordance with 10 CFR 2.341(a), parties are prohibited from seeking further Commission review of a Commission decision allowing interim operation.

A number of issues concerning interim operation are discussed in SECY-13-0033 and the associated SRM, including the following points relevant to the development of ITAAC hearing procedures:

- The legislative history of the EPAct indicates that Congress did not intend the Commission to rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that will not arise during the interim operation period, or in which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation.

- Because AEA § 185b. requires the NRC to find that the acceptance criteria are met prior to operation, interim operation cannot be allowed until the NRC finds under 10 CFR 52.103(g) that all acceptance criteria are met, including those acceptance criteria that are the subject of an ITAAC hearing.

- The NRC staff proposed, and the Commission approved, that the 52.103(g) finding be delegated to the NRC staff. Among other things, this delegation means that the Commission will not make, in support of interim operation, a merits determination prior to the completion of the hearing on whether the acceptance criteria are met.

[7] The pertinent legislative history supports this view. 138 Cong. Rec. S1686 (February 19, 1992) (statement of Sen. Johnston); S. Rep. No. 102-72 at 296 (1991).

- For operational programs and requirements that are required to be implemented upon a 10 CFR 52.103(g) finding, these programs and requirements would also be implemented in the event that the Commission allows interim operation in accordance with 10 CFR 52.103(c), given that the 10 CFR 52.103(g) finding would be made in support of interim operation.
- As provided by 10 CFR 52.103(h), ITAAC no longer constitute regulatory requirements after the 10 CFR 52.103(g) finding is made. In addition, ITAAC post-closure notifications pursuant to 10 CFR 52.99(c)(2) are only required until the 10 CFR 52.103(g) finding is made. Therefore, ITAAC maintenance activities and associated ITAAC post-closure notifications would no longer be necessary or required after a 10 CFR 52.103(g) finding, including during any period of interim operation.

C. Initial Decision.

After the completion of an ITAAC hearing, the presiding officer will issue an initial decision pursuant to 10 CFR 2.340(c) on whether the acceptance criteria have been or will be met. As provided by 10 CFR 2.340(f), an initial decision finding that acceptance criteria in a COL have been met is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective. In accordance with 10 CFR 2.340(j), the Commission or its delegate (i.e., the NRC staff) will make the 10 CFR 52.103(g) finding within 10 days from the date of issuance of the initial decision, if:

1) the Commission or its delegate can find that the acceptance criteria not within the scope of the initial decision are met,

2) the presiding officer has issued a decision that the contested acceptance criteria have been met or will be met, and the Commission or its delegate can thereafter find that the contested acceptance criteria are met, and

3) notwithstanding the pendency of a 10 CFR 2.345 petition for reconsideration, a 10 CFR 2.341 petition for review, a 10 CFR 2.342 stay motion, or a 10 CFR 2.206 petition.

Section 2.340(j) is intended to describe how the 52.103(g) finding may be made after an initial decision by the presiding officer that the acceptance criteria have been, or will be, met. However, in amending § 2.340(j) in the ITAAC Maintenance Rule, the Commission stated (77 FR 51885-86) that § 2.340(j) was being amended to "clarify some of the possible paths" for making the 52.103(g) finding after the presiding officer's initial decision and that § 2.340(j) "is not intended to be an exhaustive 'roadmap' to a possible 10 CFR 52.103(g) finding that acceptance criteria are met." Thus, there may be situations in which the mechanism and circumstances described by 10 CFR 2.340(j) are not wholly applicable. For example, if interim operation is allowed, then the 52.103(g) finding will have been made prior to the initial decision. In such a case, there is no need for another 52.103(g) finding after an initial decision finding that the contested acceptance criteria have been met because the initial decision will have confirmed the correctness of the 52.103(g) finding with respect to the contested acceptance criteria.[8]

V. General Approach to ITAAC Hearing Procedure Development.

With these procedures, the Staff has attempted to develop an efficient and feasible process that is consistent with existing law and policy and that will allow the presiding officer

[8] Other scenarios not covered by 10 CFR 2.340(j) include those in which the presiding officer does not find that the acceptance criteria have been or will be met, a decision which might be made after a period of interim operation has been authorized. How a negative finding by the presiding officer would be resolved by a licensee, and the effect such a finding would have on interim operation, would depend on the facts of the case and the nature of the presiding officer's decision. Therefore, such eventualities are not further addressed in these generic procedures.

and the parties a fair opportunity to develop a sound record for decision. To achieve this objective, the Staff has used the following general approach.

A. Use of Existing Part 2 Procedures.

The procedures described in this notice are based on the NRC's rules of practice in 10 CFR Part 2, modified as necessary to conform to the expedited schedule and specialized nature of ITAAC hearings. The ITAAC hearing procedures have been modeled on the existing rules of practice because the existing rules have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures if they are already familiar with the existing rules.

B. Choice of Presiding Officer to Conduct an Evidentiary Hearing.

While the Commission has decided that it will be the presiding officer for the purposes of deciding whether to grant hearing requests, designating hearing procedures, and determining whether there is adequate protection during interim operation, the Commission has not yet decided what entity will serve as the presiding officer for an evidentiary hearing on admitted contentions. For the evidentiary hearing, the Commission or a licensing board might serve as the presiding officer, or the presiding officer might be a single legal judge (assisted as appropriate by technical advisors). Therefore, the Staff has developed procedures that will accommodate all of these possibilities.

If the Commission chooses not to conduct the evidentiary hearing, then the presiding officer would be a licensing board or a single legal judge. In the proposed procedures, the Commission would delegate to the Chief Administrative Judge the choice of whether to employ a licensing board or a single legal judge (assisted as appropriate by technical advisors). However, the Commission would retain the option of choosing who will conduct the evidentiary hearing in each proceeding.

With the exception of procedures that specifically pertain to interactions between the Commission and a licensing board (or single legal judge assisted as appropriate by technical advisors), the procedures for an ITAAC hearing are the same whether the presiding officer is the Commission, a licensing board, or a single legal judge. Depending on the Commission's choice of presiding officer for the evidentiary hearing, procedures pertaining to interactions between the Commission and a licensing board (or single legal judge assisted as appropriate by technical advisors) will be retained or omitted.[9]

C. Schedule.

As explained earlier, AEA § 189a.(1)(B)(v) provides that the Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel into the reactor, whichever is later. While the AEA does not require that the hearing be completed by the later of these two dates in all cases, the procedures described in this notice have been developed with the intent of satisfying the statutory goal for timely completion of the hearing. However, there may be cases where the ITAAC hearing extends beyond scheduled initial fuel load because of unusual situations or because of circumstances beyond the control of the NRC.

Because the Commission intends to publish the notice of intended operation 210 days before scheduled initial fuel load, the later of the two dates identified in AEA § 189a.(1)(B)(v) will, in practice, be scheduled initial fuel load. Of these 210 days, 85 days will be consumed by the 60-day period for filing hearing requests and the 25-day period for filing answers to hearing requests. Thus, meeting the statutory goal for completing the hearing will ordinarily require that

[9] For simplicity of discussion and unless otherwise noted, the remainder of this notice will use "licensing board" rather than "licensing board (or single legal judge assisted as appropriate by technical advisors)." Any procedure that would apply to a licensing board would also apply to a single legal judge if a single legal judge were selected to be the presiding officer.

the NRC be able to determine whether to grant the hearing request, hold a hearing on any admitted contentions, and render a decision after hearing within 125 days of the submission of answers to hearing requests.[10]

To meet the statutory objective for timely completion of the hearing, the NRC must complete the hearing process much faster than is usually achieved in NRC practice for other hearings. However, the ITAAC hearing process is different from other NRC hearings in that the contested issues will be narrowly constrained by the terms of the ITAAC and the required *prima facie* showing. In addition, the NRC anticipates that with the required *prima facie* showing and the answers thereto, the parties will have already substantially established their hearing positions and marshalled their supporting evidence. Furthermore, the parties' initial filings, in conjunction with other available information (including licensee ITAAC notifications describing the completion, or the plans for completing, each ITAAC), will provide the parties with at least a basic understanding of the other parties' positions from the beginning of the proceeding.

Given the differences between an ITAAC hearing and other NRC hearings, the Staff took several steps to expedite the ITAAC hearing process. The most important step is that the hearing preparation period will begin as soon as the hearing request is granted. In other NRC proceedings associated with license applications, hearing requests are due soon after the license application is accepted for NRC staff review, and the preparation of pre-filed written testimony and position statements does not begin until months or years later, after the NRC staff completes its review. However, the parties to an ITAAC hearing can begin preparing their

[10] A licensee is required by 10 CFR 52.103(a) to notify the NRC of its scheduled date for initial fuel load no later than 270 days before the scheduled date and to update its schedule every 30 days thereafter. Thus, a licensee might, in a schedule update after the issuance of the notice of intended operation, attempt to move its scheduled fuel load date to an earlier time. However, a contraction of the initial fuel load schedule after the issuance of the notice of intended operation is contrary to the intent of the AEA. The AEA contemplates that the hearing process will be triggered, and the schedule will in part be determined, by issuance of the notice of intended operation, the timing of which is based on the fuel load schedule that the licensee provides to the NRC before the issuance of the notice of intended operation.

testimony and position statements as soon as a hearing request is granted given the focused nature of an ITAAC hearing and given the information and evidence already available to, and established by, the parties at that point in the proceeding. Beginning the hearing preparation process upon the granting of a hearing request is expected to dramatically reduce the length of the hearing process, which should reduce overall resource burdens on participants in the hearing.[11]

Another important step is to eliminate procedures from the hearing process that are time-consuming, resource-intensive, and unnecessary under the particular circumstances of an ITAAC proceeding. For example, because the hearing will be concluded within a few months of the granting of a hearing request, there is little purpose served by summary disposition motions and contested motions to dismiss.[12] In addition, by preparing ahead of time detailed procedures for the conduct of ITAAC hearings, the NRC is avoiding delays that might occur if detailed procedures were not developed and the presiding officer needed to make ad hoc decisions on how to address foreseeable issues that could have been considered earlier.

To instill discipline with respect to meeting the hearing schedule, the ITAAC hearing procedures provide that the Commission, when imposing procedures for the conduct of the hearing, will set a strict deadline for the issuance of a presiding officer's initial decision after the hearing. This strict deadline can only be extended upon a showing that "unavoidable and extreme circumstances"[13] necessitate the delay. This strict deadline provision, which would be

[11] Some stakeholders have complained that a lengthy NRC hearing process requires greater resources from intervenors. *See* Anthony Z. Roisman, Comments on Proposed Amendments to Adjudicatory Process Rules and Related Requirements (76 FR 10781), at 2-4 (April 26, 2011) (ADAMS Accession No. ML11119A231); Letter from Diane Curran to NRC Commissioners, Comments on NRC Public Participation Process, at 10, 12 (February 26, 2013) (ADAMS Accession No. ML13057A975).

[12] However, to avoid holding a hearing unnecessarily, joint motions to dismiss that are agreed to by all parties will be entertained.

[13] This standard is taken from the Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

included whether the Commission or a licensing board is the presiding officer, will serve to prevent delays in the hearing decision, including delays in any intermediate step of the hearing process that might delay the hearing decision.

The procedures in this notice have been developed on the assumption that the notice of intended operation will be issued 210 days before scheduled fuel load. There is a practical difficulty with issuing the notice of intended operation earlier than 210 days before scheduled fuel load: uncompleted ITAAC notifications are not required to be submitted until 225 days before scheduled fuel load. Until these uncompleted ITAAC notifications are received, members of the public will not have a basis on which to file contentions with respect to uncompleted ITAAC. Thus, the notice of intended operation cannot be issued until after the receipt and processing of all uncompleted ITAAC notifications. Nevertheless, if a licensee voluntarily submits all uncompleted ITAAC notifications somewhat earlier than 225 days before scheduled initial fuel load, then the notice of intended operation could be issued earlier. Even though early submission is not required by NRC regulations, the NRC would like to explore the possibility of a licensee's voluntary early submittal, thereby permitting the NRC to issue the notice of intended operation somewhat earlier than 210 days before scheduled initial fuel load. Early issuance of the notice of intended operation might facilitate the completion of the hearing by scheduled fuel load notwithstanding the occurrence of some event that would otherwise cause delay. The NRC requests comment on the pros and cons of this approach and on how early the NRC might reasonably issue the notice of intended operation.

Finally, and unavoidably, meeting the statutory goal for completing the ITAAC hearing will require the parties to exercise a high degree of diligence in satisfying their obligations as participants in the hearing. To this end, the proposed ITAAC hearing procedures shorten a number of deadlines from those provided by current regulations. While this will require greater alertness and efficiency on the part of hearing participants, the deadlines in these procedures are feasible, and the burden on participants will be somewhat ameliorated by the focused nature

of ITAAC hearings. In addition, a shorter hearing period will lessen the overall resource burden on participants, which may be advantageous to participants with limited financial resources.

D. Hearing Formats.

The hearing format used to decide admitted contentions depends, in the first instance, on whether testimony will be necessary to resolve the contested issues. While testimony is employed in the vast majority of NRC hearings because contentions almost always involve issues of fact, the NRC sometimes admits legal contentions, i.e., contentions that raise only legal issues.[14] The procedures for legal contentions, which are explained in more detail later in this notice, will involve the Commission setting a briefing schedule at the time it grants the hearing request, with the briefing schedule determined on a case-by-case basis.

Hearings involving testimony are necessarily more complex. A threshold question for such hearings is whether testimony should be delivered entirely orally, delivered entirely in written form, or as in the case of proceedings under Subpart L of 10 CFR Part 2, delivered primarily in written form with an oral hearing being used primarily to allow the presiding officer to gain a better understanding of the testimony and to clarify the record. For the following reasons, the Staff believes that the best choice is the Subpart L approach, which is the most widely used approach in NRC hearings and which has demonstrated its effectiveness since implementation in its current form in 2004.

The Subpart L approach has many benefits. Written testimony and statements of position allow the parties to provide their views with a greater level of clarity and precision, which is important for hearings on scientific and engineering matters. With the positions of the parties clearly established, oral questions and responses can be used to quickly and efficiently probe the positions of the parties. The use of oral questions and responses is more efficient

[14] *See, e.g.*, *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588-591 (2009).

than written questions and responses because oral questioning allows for back-and-forth communication between the presiding officer and the witnesses that can be completed more quickly than written questioning. In addition, the submission of testimony prior to the oral hearing increases the quality of the oral hearing because it allows more time for the presiding officer to thoughtfully assess the testimony and carefully craft questions that will best elucidate those matters crucial to the presiding officer's decision. Finally, there are certain efficiencies gained by the use of written testimony that are not available with entirely oral testimony. In Subpart L proceedings, pre-filed written testimony and exhibits are often admitted en masse at the beginning of the oral hearing, and the presiding officer's questioning can be completed in a relatively short amount of time. In the absence of pre-filed written testimony, however, an oral hearing will consume more time because the entirety of the evidentiary record will need to be established sequentially and orally, and the admission of exhibits would be subject to the more cumbersome and time-consuming admission process typical of trials.

The Staff considered, but rejected, a hearing format based on the procedures in 10 CFR Part 2, Subpart N, "Expedited Proceedings with Oral Hearings." As the Commission explained in the final rule entitled "Changes to Adjudicatory Process" (69 FR 2214-15; January 14, 2004), Subpart N is intended to be a "'fast track' process for the expeditious resolution of issues in cases where the contentions are few and not particularly complex, and therefore may be efficiently addressed in a short hearing using simple procedures and oral presentations." In addition, "the [Subpart N] procedures were developed to permit a quick, relatively informal proceeding where the presiding officer could easily make an oral decision from the bench, or in a short time after conclusion of the oral phase of the hearing." At this time, several years before the first ITAAC hearing commences, the NRC does not have sufficient experience to conclude that the issues to be resolved in an ITAAC hearing will be simple enough to profitably employ the procedures of Subpart N and forego the advantages accruing from written testimony and statements of position.

In addition, Subpart N does not appear to be superior to a Subpart L type approach with respect to the timely completion of the hearing. The model milestones in 10 CFR Part 2, Appendix B, Paragraph IV for an enforcement hearing under Subpart N contemplate that the time between the granting of the hearing request and an initial decision is 90 days plus the time taken by the oral hearing and the closing of the record. However, the two alternative hearing tracks described later in this notice contemplate that the time between the granting of the hearing request and an initial decision will be either 80 days or 95 days.

VI. Proposed General ITAAC Hearing Procedures.

Employing the general approach described in the previous section, the Staff has developed, and is seeking comment on, four templates with procedures for the conduct of an ITAAC hearing. The first template, Template A "Notice of Intended Operation and Associated Orders" (ADAMS Accession No. ML14097A460), includes the notice of intended operation, which informs members of the public of their opportunity to file a hearing request, includes an order imposing procedures for requesting access to sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI) for the purposes of contention formulation (SUNSI-SGI Access Order),[15] and includes an order imposing additional procedures specifically pertaining to an ITAAC hearing.

The second, third, and fourth templates (Templates B, C, and D) are for Commission orders imposing procedures after the Commission has made a determination on the hearing request. Specifically, the second template, Template B "Procedures for Hearings Involving

[15] SUNSI-SGI Access Orders accompany hearing notices in cases where the NRC believes that a potential party may deem it necessary to obtain access to SUNSI or SGI for the purposes of meeting Commission requirements for intervention. *See* 10 CFR 2.307(c). Given the range of matters covered by the ITAAC, it is appropriate to issue a SUNSI-SGI Access Order with the notice of intended operation.

Testimony" (ADAMS Accession No. ML14097A468), includes procedures for the conduct of a hearing involving testimony. The third template, Template C "Procedures for Hearings Not Involving Testimony" (ADAMS Accession No. ML14097A471), includes procedures for resolving legal contentions. The fourth template, Template D "Procedures for Resolving Claims of Incompleteness" (ADAMS Accession No. ML14097A476), includes procedures for resolving valid claims of incompleteness.

One issue not addressed by the templates is the potential for delay caused by the need to undergo a background check (including a criminal history records check) for access to SGI. This background check can take several months, and delay could occur if the persons seeking access to SGI are not already cleared for access and do not seek clearance until the notice of intended operation is issued. However, the "Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information" (SUNSI-SGI Access Procedures) (February 29, 2008) (ADAMS Accession No. ML080380626) provide a "pre-clearance" process, by which a potential party who might seek access to SGI is allowed to request initiation of the necessary background check in advance of the notice providing an opportunity to request a hearing. Therefore, to avoid the potential for delays from background checks, the Staff contemplates that a plant-specific *Federal Register* notice announcing a pre-clearance process would be published 180 days prior to the expected publication of the notice of intended operation for that plant.[16] This "pre-clearance notice" would inform potential parties that if they do not take advantage of this pre-clearance opportunity, the NRC will not delay its actions in completing the hearing or making the 52.103(g) finding. In other words, members of the public who do not take advantage of the pre-clearance process would have to take the proceeding as they find it if they ultimately

[16] Because the NRC expects to issue the notice of intended operation 210 days before scheduled fuel load, this pre-clearance notice would be issued about 390 days before scheduled fuel load.

obtain access to SGI for contention formulation. This is necessitated by the plain language of the AEA, which directs the Commission to complete the hearing to the maximum possible extent by scheduled fuel load, and is consistent with the existing SUNSI-SGI Access Procedures (Attachment 1, p. 11), which caution potential parties that "given the strict timelines for submission of and rulings on the admissibility of contentions (including security-related contentions) . . . potential parties should not expect additional flexibility in those established time periods if they decide not to exercise the pre-clearance option."

In the following subsections, this notice will provide a broad overview of the procedures, will address certain significant procedures described in the templates, and will request specific comment on areas where the Staff has developed multiple possible approaches to an issue but has not yet decided which approach to recommend to the Commission. Certain procedures of lesser significance, and the rationales therefor, are described solely in the templates.

A. Notice of Intended Operation.

The *Federal Register* notice of intended operation, the contents of which are governed by 10 CFR 2.105, will provide that any person whose interest may be affected by operation of the plant, may, within 60 days, request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL. Among other things, the notice of intended operation (1) will specifically describe how the hearing request and answers thereto may be filed, (2) will identify the standing, contention admissibility, and other requirements applicable to the hearing request and answers thereto, and (3) will identify where information that is potentially relevant to a hearing request may be obtained. In addition, the notice of intended operation will be accompanied by a SUNSI-SGI Access Order, and an order imposing additional procedures specifically pertaining to an ITAAC hearing (Additional Procedures Order). The following subsections describe the significant procedures included in the notice of intended operation template.

1. *Prima Facie Showing.*

To obtain a hearing on whether the facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, AEA § 189a.(1)(B)(ii) provides that a petitioner's request for hearing shall show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This requirement is implemented in 10 CFR 2.309(f)(1)(vii), which requires this *prima facie* showing as part of the contention admissibility standards. Without meeting this requirement, the contention cannot be admitted and the hearing request cannot be granted.

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

2. *Claims of Incompleteness.*

While a *prima facie* showing is required before a contention can be admitted and a hearing request granted, 10 CFR 2.309(f)(1)(vii) provides a process for petitioners to claim that the licensee's 10 CFR 52.99(c) report is incomplete and that this incompleteness prevents the petitioner from making the necessary *prima facie* showing. The petitioner must identify the specific portion of the licensee's 10 CFR 52.99(c) report that is incomplete and explain why this deficiency prevents the petitioner from making the necessary *prima facie* showing. If the Commission determines that the claim of incompleteness is valid, it intends to issue an order,

described later in this notice that will require the licensee to provide the additional information and provide a process for the petitioner to file a contention based on the additional information. If the petitioner files an admissible contention thereafter, and all other hearing request requirements have been met, then the hearing request will be granted.

3. *Interim Operation.*

As stated earlier, the AEA requires the Commission to determine, after considering the petitioner's *prima facie* showing and answers thereto, whether there is reasonable assurance of adequate protection of the public health and safety during a period of interim operation while the hearing is being completed. Because this adequate protection determination is based on the parties' initial filings, the notice of intended operation will specifically request information from the petitioners, the licensee, and the NRC staff regarding the time period and modes of operation during which the adequate protection concern arises and any mitigation measures proposed by the licensee. The notice of intended operation would also inform the petitioners, the NRC staff, and the licensee that, ordinarily, their initial filings will be their only opportunity to address adequate protection during interim operation.

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

If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination. If the Commission makes this determination, then it will issue a briefing order concurrently with the granting of the hearing

request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission would issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.[17]

The Commission has discretion regarding the timing of the adequate protection determination for interim operation, but since the purpose of the interim operation provision is to prevent the hearing from unnecessarily delaying fuel load, an interim operation determination will be sufficiently expeditious if it is made by scheduled fuel load. With respect to the relationship between the timing of the NRC staff's 52.103(g) finding and the Commission's adequate protection determination, the Staff believes it is best if the adequate protection determination precedes the 52.103(g) finding because the 40-year term of the issued COLs commences when the 52.103(g) finding is made and because certain regulatory and license requirements related to operation are triggered by the 52.103(g) finding. Concurrent with the 52.103(g) finding, the NRC staff could issue an order that would allow interim operation and include any terms and conditions on interim operation that are imposed by the Commission as part of its adequate protection determination. In addition, because the NRC staff intends to inform the Commission that the NRC staff is prepared to make the 52.103(g) finding prior to it actually making the finding, the Commission could make the adequate protection determination after this NRC staff notification but before the 52.103(g) finding.

Finally, if the Commission determines that there is adequate protection during the period of interim operation, a request to stay the effectiveness of this decision would not be

[17] Because an interim operation determination is necessary only if contentions are admitted, it makes sense to have additional briefing on licensee-proposed mitigation measures only after a decision on the hearing request. However, as explained later, a different process applies to contentions submitted after the hearing request is granted because of the greater need for an expedited decision on interim operation.

entertained. The interim operation provision serves the purpose of a stay provision because it is the Congressionally-mandated process for determining whether the 52.103(g) finding that the acceptance criteria are met will be given immediate effect. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the 52.103(g) finding and issues an order allowing interim operation.

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

The notice of intended operation includes procedures governing hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline because such filings might be made between the deadline for hearing requests and a Commission decision on hearing requests. Filings after the initial deadline must show good cause as defined by 10 CFR 2.309(c), which includes the § 2.309(c)(1)(iii) requirement that the filing has been submitted in a timely fashion based on the availability of new information. In other proceedings, licensing boards have typically found that good cause will be satisfied if the filing is made within 30 days of the availability of the information upon which the filing is based, and § 2.309(i)(1) allows 25 days to answer the filing. The Staff believes that timeliness expectations should be clearly stated in the notice of intended operation, but is also considering whether these time periods should be shortened in the interest of expediting the proceeding. Because the Staff believes that these time periods might be shortened by, at most, 10 days, the following three options are under consideration: (1) the petitioner is given 30 days from the new information to make its filing and the other parties have 25 days to answer; (2) the petitioner is given 20 days from the new information to make its filing and the other parties have 15 days to answer; or (3) the petitioner is given [some period between 20 and 30 days] from the new information to make its filing and the other parties have [some period between 15 and 25 days] to answer. The Staff specifically requests comment on the feasibility and desirability of these options.

The Commission would also need to consider issues associated with interim operation with respect to any grant of a hearing request, intervention petition, or new or amended contention filed after the original deadline. Therefore, the interim operation provisions described previously would also apply to hearing requests, intervention petitions, or new or amended contentions filed after the original deadline. A claim of incompleteness, however, does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing. Interim operation would be addressed after any incompleteness was cured if the petitioner files a contention on that topic.

In its 2008 Policy Statement (73 FR 20973), the Commission stated that to lend predictability to the ITAAC compliance process, it would be responsible for three decisions related to ITAAC hearings: (1) the decision on whether to grant the hearing request, (2) the adequate protection determination for interim operation, and (3) the designation of the ITAAC hearing procedures. Accordingly, the Staff believes that it would be consistent with this policy choice for the Commission to rule on all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures for the newly admitted contentions and would determine whether there will be adequate protection during the period of interim operation with respect to the newly admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 CFR 2.309(f)(1)(vii), the Commission would designate separate procedures for resolving the claim.

For motions for leave to file amended contentions, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission will have

provided direction on the admissibility of the relevant issues when it ruled on the original contention. Thus, it seems appropriate for the Commission to retain the option of delegating rulings on amended contentions to a licensing board. If the Commission delegates a contention admissibility ruling to a licensing board and the licensing board admits the amended contention, then the Commission would still make the adequate protection determination for interim operation. In addition, the hearing procedures governing the adjudication of the original contention would also apply to the amended contention if admitted by the licensing board. Furthermore, the deadline for an initial decision on the amended contention (which is a strict deadline) would be the same date as the deadline for an initial decision on the original contention. Consistent with the provisions for strict deadlines, the deadline for an initial decision can only be changed upon a showing of unavoidable and extreme circumstances.

The Staff is considering, and requesting comment on, whether to eliminate the need to address the standards for a motion to reopen for a hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline. A possible rationale for not applying the reopening provisions in such situations is that the purposes served by the reopening provisions—to ensure an orderly and timely disposition of the hearing—would be addressed by the requirements applying to hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline. Specifically, one could argue that any timeliness concerns are addressed by the good cause requirement in 10 CFR 2.309(c) and that concerns regarding newly raised issues being significant and substantiated are addressed by the *prima facie* showing requirement in 10 CFR 2.309(f)(1)(vii).

Finally, because the Commission would be ruling on (or delegating a ruling on) all hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after the original deadline, all such filings

after the original deadline would be filed with the Commission. The Commission contemplates that a ruling would be issued within 30 days of the filing of answers.

5. *SUNSI-SGI Access Order.*

The SUNSI-SGI Access Order included with the notice of intended operation is based on the template for the SUNSI-SGI Access Order that is issued in other proceedings, with the following modifications:

- To expedite the proceeding, initial requests for access to SUNSI or SGI must be made electronically by e-mail, unless use of e-mail is impractical, in which case delivery of a paper document must be made by hand delivery or overnight mail. All other filings in the proceeding must be made through the E-filing system with certain exceptions described later in this notice.
- To expedite the proceeding, the expectation for NRC staff processing of documents and the filing of protective orders and non-disclosure agreements has been reduced from 20 days after a determination that access should be granted to 10 days.
- As with SUNSI-SGI Access Orders issued in other proceedings, requests for access to SUNSI or SGI must be submitted within 10 days of the publication of the *Federal Register* notice, and requests submitted later than this period will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier. For the purposes of the SUNSI-SGI Access Order issued with the notice of intended operation, the showing of good cause has been defined as follows: the requestor must demonstrate that its request for access to SUNSI or SGI has been filed by the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.
- The SUNSI-SGI Access Orders issued in other proceedings provide that any contentions based on the requested SUNSI or SGI must be filed no later than 25 days after the requestor is

granted access to that information, except that such contentions may be filed with the initial hearing request if more than 25 days remain between the granting of access to the information and the deadline for the hearing request. However, as stated previously, the NRC requests comment on the time generally given for new or amended contentions filed after the original deadline, and it is possible that the Commission will choose to give less than 25 days for the filing of new or amended contentions. If the Commission chooses a time period for new or amended contentions that is less than 25 days, the Staff believes that it is reasonable to use this same reduced period for contentions based on access to SUNSI or SGI, and the SUNSI-SGI Access Order would be modified accordingly.

- Because the Commission is ruling on the initial hearing request and because the proceeding may be expedited by removing a layer of possible appellate review, the Commission might wish to hear, in the first instance, requests for review of NRC staff determinations on access to SUNSI or SGI. On the other hand, the Commission might wish to delegate rulings on such requests for review to a licensing board. Both of these possibilities are included as alternative options in the SUNSI-SGI Access Order, and it is contemplated that one of these alternatives would be chosen by the Commission when it approves the final general ITAAC hearing procedures. If the Commission decides that a licensing board will rule on requests for review of NRC staff access determinations, a procedure for interlocutory appeal of these licensing board decisions would be included in the Additional Procedures Order issued with the notice of intended operation.

6. *Filing of Documents and Time Computation.*

To support the expedited nature of this proceeding, the provisions in 10 CFR 2.302 and 10 CFR 2.305 for the filing and service of documents are being modified such that, for requests to file documents other than through the E-Filing system, first-class mail will not be one of the allowed alternative filing methods. The possible alternatives will be limited to transmission either by fax, e-mail, hand delivery, or overnight mail to ensure expedited delivery. Use of

overnight mail will only be allowed if fax, e-mail, or hand delivery is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if separated into smaller files, the filer must segment the document and file the segments separately. In a related modification, the time computation provisions in 10 CFR 2.306(b)(1) through 2.306(b)(4), which allow additional time for responses to filings made by mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.

7. *Motions.*

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in 10 CFR Part 2, Subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, and answers to motions shall be filed within 7 days of the motion.

Motions for extension of time will be allowed, but good cause must be shown for the requested extension of time based on an event occurring before the deadline. To meet the statutory mandate for the timely completion of the hearing, deadlines must be adhered to strictly and only exceptional circumstances should give rise to delay. Therefore, in determining whether there is good cause for an extension, the factors in 10 CFR 2.334 will be considered, but "good cause" will be interpreted strictly, and a showing of "unavoidable and extreme circumstances" will be required for more than very minor extensions. The Staff requests comment on whether "very minor extensions" should be defined in a more objective manner or whether a showing of unavoidable and extreme circumstances should be required for all extension requests, no matter how minor.

Motions for extension of time shall be filed as soon as possible, and, absent exceptional circumstances, motions for extension of time will not be entertained if they are filed more than

two business days after the moving party discovers the event that gives rise to the motion.[18] The Staff selected an event-based trigger for the filing of an extension request because meritorious motions will likely be based on events outside the party's control given the strict interpretation of good cause. The Staff, however, requests comment on whether a deadline-based trigger (e.g., "motions for extension of time shall be filed as soon as possible, but no later than 3 days before the deadline") should be used in lieu of, or in combination with, an event-based trigger.

With respect to motions for reconsideration, three options are under consideration. In Option 1, the 10 CFR 2.323(e) provisions for motions for reconsideration will be retained with the only modification being the reduced filing period described previously. The rationale for this option is that it may be premature, given the NRC's lack of experience with ITAAC hearings, to limit the opportunity to seek reconsideration. Option 2 restricts motions for reconsideration to a presiding officer's initial decision and Commission decisions on appeal of a presiding officer's initial decision. The rationale for allowing reconsideration of these decisions is that these are the most important decisions in the proceeding and reconsideration of these decisions does not prevent them from taking effect. With respect to prohibiting reconsideration in other circumstances, the rationale is that (1) reconsideration of other decisions is unlikely to be necessary, (2) the resources necessary to prepare, review, and rule on requests for reconsideration take time away from other hearing-related tasks, (3) interlocutory rulings that have a material effect on the ultimate outcome of the proceeding can be appealed, and (4) the appeals process will not cause undue delay given the expedited nature of the proceeding.

[18] Consistent with practice under 10 CFR 2.307, a motion for extension of time might be filed shortly after a deadline has passed, e.g., an unanticipated event on the filing deadline prevented the participant from filing. Further discussion of this practice is found in the final rule entitled "Amendments to Adjudicatory Process Rules and Related Requirements" (77 FR 46562, 46571; August 3, 2012).

Option 3 prohibits motions for reconsideration. This option is based on the rationale that such motions consume the resources of the parties and the presiding officer without compensating benefit. Reconsideration is unlikely to be necessary for many decisions, and the resources necessary to prepare, review and rule on requests for reconsideration of interlocutory decisions would take time away from other hearing-related tasks. In addition, parties who disagree with a presiding officer's order may seek redress through the appellate process, which should not cause undue delay given the expedited nature of the proceeding.

In addition, Options 2 and 3 include a limitation on motions for clarification. To prevent motions for clarification from becoming *de facto* motions for reconsideration, only motions for clarification based on an ambiguity in a presiding officer order would be permitted. In addition, a motion for clarification must explain the basis for the perceived ambiguity and may offer possible interpretations of the purportedly ambiguous language, but the motion for clarification may not advocate for a particular interpretation of the presiding officer order.

8. *Notifications Regarding Relevant New Developments in the Proceeding.*

Section 189a.(1)(B)(i)-(ii) of the AEA and 10 CFR 2.309(f)(1)(vii), 2.340(c) require contentions to be submitted, and permit a hearing to go forward, on the predictive question of whether one or more of the acceptance criteria in the combined license *will* not be met. Additionally, a licensee might choose to re-perform an inspection, test, or analysis as part of ITAAC maintenance or to dispute a contention,[19] or events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. As a consequence, it is possible for the factual predicate of a contention to change over the course of the proceeding, thus affecting the contention or the hearing schedule. Given this and as

[19] The legislative history of the EPAct suggests that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143-44 (February 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

directed by the Commission in *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 470 (2006), the parties have a continuing obligation to notify the other parties and the presiding officer of relevant new developments in the proceeding. In addition, to ensure that the parties and the Commission stay fully informed of the status of challenged ITAAC as a hearing request is being considered, any answers to the hearing request from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.

After answers are filed, the parties must notify the Commission and the other parties in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include notifying the Commission and the parties of information related to re-performance of an ITAAC that might bear on the proposed contentions. In addition, after answers are filed, the licensee must notify the Commission and the parties of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed on the same day that the ITAAC closure notification or ITAAC post-closure notification is submitted to the NRC.

9. *Stays.*

The stay provisions of 10 CFR 2.342 and 2.1213 apply to this proceeding, but in the interests of expediting the proceeding, (1) the deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days, and (2) the deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is likewise reduced to 7 days. In addition, as explained previously, a request to stay the effectiveness of the Commission's decision on interim operation will not be entertained.

10. *Interlocutory Appeals of Decisions on Access to Sensitive Information.*

Until the hearing request is granted, all rulings will be made by the Commission unless the Commission delegates to a licensing board the task of ruling on appeals of NRC staff determinations on requests for access to SUNSI or SGI. For this reason, the Part 2 provisions for interlocutory appeals and petitions for review would not apply, but instead would be replaced

by a case-specific provision providing a right to appeal to the Commission a licensing board order with respect to a request for access to SUNSI or SGI. This case-specific provision is modeled after the relevant provisions of 10 CFR 2.311, but because of the expedited nature of the proceeding, such an appeal must be filed within 10 days of the order, and any briefs in opposition will be due within 10 days of the appeal.

Consistent with the relevant provisions of 10 CFR 2.311, a licensing board order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted. A licensing board order granting a request for access to SUNSI or SGI may be appealed only on the question of whether the request should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

11. *Licensee Hearing Requests.*

In accordance with 10 CFR 2.105(d)(1), a notice of proposed action must state that, within the time period provided under 10 CFR 2.309(b), the applicant may file a request for a hearing. While this provision literally refers to applicants as opposed to licensees, it makes sense and accords with the spirit of the rule to provide an equivalent opportunity to licensees seeking to operate their plants, which have legal rights associated with possessing a license that must be protected. The situation giving rise to such a hearing request would be a dispute between the licensee and the NRC staff on whether the acceptance criteria are met.

With respect to the contents of a licensee request for hearing, the *prima facie* showing requirement would not apply because the licensee would be asserting that the acceptance criteria are met rather than asserting that the acceptance criteria have not been, or will not be, met. Licensees requesting a hearing would be challenging an NRC staff determination that the acceptance criteria are not met; this NRC staff determination would be analogous to a *prima*

facie showing that the acceptance criteria have not been met. Given this, it seems appropriate to require a licensee requesting a hearing to specifically identify the ITAAC whose successful completion is being disputed by the NRC staff, and to identify the specific issues that are being disputed.

The Staff does not believe that separate hearing procedures need to be developed for a licensee hearing request. Such hearing requests should be highly unusual because disputes between the NRC staff and the licensee are normally resolved through interactions outside the adjudicatory process. Also, many of the hearing procedures described in this notice could likely be adapted, with little change, to serve the purposes of a hearing requested by a licensee.

B. Procedures for Hearings Involving Testimony.

With the exception of procedures for licensee hearing requests, the procedures described previously for inclusion with the notice of intended operation would also be included in the order setting forth the procedures for hearings involving testimony, with the following modifications:

- In the procedures issued with the notice of intended operation, additional briefing on licensee-proposed mitigation measures would occur only after a decision on the hearing request. However, because of the greater need for an expedited decision on interim operation for contentions submitted after the hearing request is granted, a different process is necessary. Therefore, if the licensee's answer addresses proposed mitigation measures to assure adequate protection during interim operation, the NRC staff and the proponent of the hearing request, intervention petition, or motion for leave to file a new or amended contention filed after the original deadline may, within 20 days of the licensee's answer, file a response that addresses only the effect these proposed mitigation measures would have on adequate protection during the period of interim operation.

- The provisions and options described earlier for motions for reconsideration under 10 CFR 2.323(e) also apply to petitions for reconsideration under 10 CFR 2.345.

- Additional procedures would be imposed regarding notifications of relevant new developments related to *admitted* contentions. Specifically, if the licensee notifies the presiding officer and the parties of an ITAAC closure notification, an ITAAC post-closure notification, or the re-performance of an ITAAC related to an admitted contention, then the notice shall state the effect that the notice has on the proceeding, including the effect of the notice on the evidentiary record, and whether the notice renders moot, or otherwise resolves, the admitted contention. This notice requirement applies as long as there is a contested proceeding in existence on the relevant ITAAC (including any period in which an appeal of an initial decision may be filed or during the consideration of an appeal if an appeal is filed). Within 7 days of the licensee's notice, the other parties shall file an answer providing their views on the effect that the licensee's notice has on the proceeding, including the effect of the notice on the evidentiary record, and whether the notice renders moot, or otherwise resolves, the admitted contention. However, the intervenor is not required in this 7-day timeframe to address whether it intends to file a new or amended contention. In the interest of timeliness, the presiding officer may, in its discretion, take action to determine the notice's effect on the proceeding (e.g., hold a prehearing conference, set an alternate briefing schedule) before the 7-day deadline for answers.

- In addition to an interlocutory appeal as of right for a licensing board decision on access to SUNSI or SGI, two options are under consideration with respect to whether, and to what extent, there should be an additional opportunity to petition for interlocutory review. The Staff specifically requests comment on these options. Under Option 1, no other requests for interlocutory review of licensing board decisions would be entertained. The rationale for this option is that interlocutory review of decisions other than on requests for access to SUNSI or SGI are unnecessary and unproductive given the expedited nature of the proceeding. Under

Option 2, the interlocutory review provisions of 10 CFR 2.341(f) are retained without modification. However, even under Option 2, interlocutory review will be disfavored, except in the case of decisions on access to SUNSI or SGI, because of the expedited nature of an ITAAC hearing.

Additional significant procedures that specifically relate to hearings involving witness testimony are as follows.

1. *Schedule and Format for Hearings Involving Witness Testimony.*

As discussed earlier, the Staff proposes a Subpart L-type approach to evidentiary hearings that features pre-filed written testimony, an oral hearing, and questioning by the presiding officer rather than by counsel for the parties.[20] Two alternative hearing tracks have been developed, Track 1 and Track 2, with the only difference between these two tracks being whether both pre-filed initial and rebuttal testimony are permitted (Track 1) or whether only pre-filed initial testimony is permitted (Track 2).

The Staff requests comment on the factors the Commission should consider in choosing between Track 1 and Track 2 in an individual proceeding. Track 2 has a schedule advantage in that it is shorter, and pre-filed rebuttal testimony, which is not available under Track 2, might not be necessary in some cases. ITAAC hearings are focused on specifically delineated issues, and the parties should have, early on, at least a basic understanding of the other parties' positions due to the availability of the licensee's plans for completing the ITAAC and the parties' initial filings, which are expected to be more detailed given the required *prima facie* showing. Pre-filed rebuttal testimony might not be necessary in cases where the contested issues and the parties' positions are defined well enough to allow the parties to, in their initial testimony, advance their own positions while effectively rebutting the positions taken by the other parties.

[20] However, as explained later, there is an opportunity to file motions to conduct cross-examination.

Further development of the record could be accomplished at the oral hearing, and Track 2 allows the parties to propose questions to be asked of their own witnesses to respond to the other parties' filings (this is a form of oral rebuttal). However, if the parties are not able to effectively rebut the other parties' positions in their initial filings, then in a Track 2 proceeding, the presiding officer likely would not possess a complete understanding of the parties' positions until the oral hearing. It is important in a Subpart L-type proceeding for the presiding officer to have a thorough understanding of the parties' positions *before* the oral hearing to allow the presiding officer to formulate focused questions for the witnesses and to reach conclusions on the contested issues soon after the hearing is concluded. Therefore, if the presiding officer does not have such a thorough understanding by the oral hearing due to the absence of pre-filed rebuttal testimony, substantial effort toward reaching a decision could be delayed until after the hearing is held. This is an argument in favor of using a hearing track with pre-filed rebuttal testimony (Track 1) in more complex cases.

To ensure the completion of the hearing by the statutorily-mandated goal, the Staff envisions that the Commission would establish a "strict deadline" for the issuance of the initial decision that could only be extended upon a showing that "unavoidable and extreme circumstances" necessitate a delay. If a licensing board is the presiding officer, then the licensing board would have the authority to extend the strict deadline after notifying the Commission of the rationale for its decision. The licensing board would be expected to make this notification at the earliest practicable opportunity after the licensing board determines that an extension is necessary. In addition to this strict deadline, the schedule includes two other types of target dates: default deadlines and milestones. "Default deadlines" are requirements to which the parties must conform, but they may be modified by the presiding officer for good cause. Default deadlines are used for the completion of certain tasks soon after the decision on the hearing request that the parties must begin working toward as soon as the hearing request is granted. Target dates that have not been designated as a "strict deadline" or a "default

deadline" are "milestones," which are not requirements, but a licensing board is expected to adhere to milestones to the best of its ability in an effort to complete the hearing in a timely fashion. The presiding officer may revise the milestones in its discretion, with input from the parties, keeping in mind the strict deadline for the overall proceeding.

The Track 1 and Track 2 schedules are reproduced in Table 1.

Table 1 – Track 1 and Track 2 Schedules

Event	**Target Date**	**Target Date**	**Target Date Type**
	Track 1	*Track 2*	
Prehearing Conference	Within 7 days of the grant of the hearing request	Within 7 days of the grant of the hearing request	Milestone
Scheduling Order	Within 3 days of the prehearing conference	Within 3 days of the prehearing conference	Milestone
Document Disclosures; Identification of Witnesses; and NRC Staff Informs the Presiding Officer and Parties of its Decision on Whether to Participate as a Party	15 days after the grant of the hearing request	15 days after the grant of the hearing request	Default Deadline
Pre-filed Initial Testimony	35 days after the grant of the hearing request	35 days after the grant of the hearing request	Milestone
Pre-filed Rebuttal Testimony	15 days after initial testimony	No rebuttal	Milestone
Proposed Questions; Motions for Cross-Examination/Proposed Cross-Examination Plans	7 days after rebuttal testimony	7 days after initial testimony	Milestone
Answers to Motions for Cross-Examination	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	5 days after the motion for cross-examination OR oral answer to motion presented just prior to the beginning of the hearing	Milestone
Oral Hearing	15 days after rebuttal testimony	15 days after initial testimony	Milestone
Joint Transcript Corrections	7 days after the hearing	7 days after the hearing	Milestone
Findings (if needed)	15 days after the hearing or such other time as the presiding officer directs	15 days after the hearing or such other time as the presiding officer directs	Milestone

Event	Target Date	Target Date	Target Date Type
Initial Decision	30 days after the hearing	30 days after the hearing	Strict Deadline

The Track 1 schedule takes 95 days (including one day for the oral hearing), and the Track 2 schedule takes 80 days (including one day for the oral hearing). As stated earlier, the answers to the hearing request would be due 125 days before scheduled fuel load. Thus, if the Track 1 option is used, the Commission would need to issue the decision on the hearing request 30 days after the answers are due in order to complete the hearing by scheduled fuel load. If the Track 2 option is used, the Commission would need to issue the decision on the hearing request 45 days after the answers are due in order to complete the hearing by scheduled fuel load. To accommodate both possible hearing tracks, the procedures contemplate a Commission ruling 30 days from the due date for answers to the hearing request. The Staff recognizes that it is possible that one of the two tracks might be eliminated from consideration before the issuance of the generic procedures in final form. If the Track 1 procedures are eliminated, the Staff contemplates that the 15 days gained from eliminating the possibility for rebuttal testimony would be distributed to the time periods for rendering a decision on the hearing request or issuing an initial decision after the hearing given the already short deadlines for these decisions.[21]

Both the Track 1 and Track 2 hearing schedules are aggressive, but this is necessary to satisfy the statutorily-mandated goal for timely completion of the hearing. The Staff believes that these schedules are feasible and will allow the presiding officer and the parties a fair opportunity to develop a sound record for decision. However, it will require the parties to schedule their resources such that they will be able to provide a high, sustained effort during the last 3-4 months before fuel load. The parties are obligated to ensure that their representatives and witnesses are available during this period to perform all of their hearing-related tasks on

[21] Also, notwithstanding the detailed schedules set forth in the hearing tracks, the Commission retains the flexibility to modify these dates, as well as the other procedures set forth in this notice, on a case-specific basis.

time. The competing obligations of the parties' representatives or witnesses will not be considered good cause for any delays in the schedule.

The specific provisions governing the evidentiary hearing tasks are set forth in detail in Template B. Except for the mandatory disclosure requirements, these provisions are drawn from 10 CFR Part 2, Subpart L, but are subject to the schedule set forth previously and the following significant modifications or additional features:

- The prehearing conference and scheduling order would be expected to occur soon after the hearing request is granted. To meet this schedule, the Staff envisions that a licensing board would be designated well before the decision on the hearing request so that this licensing board would be familiar with the record and disputed issues and would be able to immediately commence work on evidentiary hearing activities once the hearing request is granted.
- Other than a joint motion to dismiss supported by all of the parties, motions to dismiss and motions for summary disposition are prohibited. The time frame for the hearing is already time-limited, and the resources necessary to prepare, review, and rule on a motion to dismiss or motion for summary disposition would take time away from preparing for the hearing and likely would not outweigh the potential for error should it later be decided on appeal that a hearing was warranted.
- Written statements of position may be filed in the form of proposed findings of fact and conclusions of law. Doing so would allow the parties to draft their post-hearing findings of fact and conclusions of law by updating their pre-hearing filings. Also, if the parties choose this option, the presiding officer should consider whether it might be appropriate to dispense with the filing of written findings of fact and conclusions of law after the hearing.

- Written motions in limine or motions to strike[22] will not be permitted because such motions would lead to delay without compensating benefit. The parties' evidentiary submissions are expected to be narrowly focused on the discrete technical issues that would be the subject of the admitted contentions, and the presiding officer is capable of judging the relevance and persuasiveness of the arguments, testimony, and evidence without excluding them from the record. In addition, the parties' rights will be protected because they will have an opportunity to address the relevance or admissibility of arguments, testimony, or evidence in their pre- and post-hearing filings, or at the hearing.

- Consistent with 10 CFR 2.1204(b)(3), cross-examination by the parties shall be allowed only if it is necessary to ensure the development of an adequate record for decision. Cross-examination directed at persons providing eyewitness testimony would be allowed upon request. The expectation is that the presiding officer will closely manage and control cross-examination. The presiding officer need not, and should not, allow cross-examination to continue beyond the point at which it is useful. Similarly, in the sound exercise of its discretion, the presiding officer need not ask all (or any) questions that the parties request the presiding officer to consider propounding to the witnesses.

- Written answers to motions for cross-examination would be due 5 days after the filing of the motion, or, alternatively, if travel arrangements for the hearing interfere with the ability of the parties and the presiding officer to file or receive documents, an answer may be delivered orally at the hearing location just prior to the start of the hearing.[23] At the prehearing conference, the

[22] Collectively, written motions in limine and motions to strike are written motions to exclude another party's arguments, testimony, or evidence.

[23] Because cross-examination plans are filed non-publicly, answers to cross-examination motions would only address the public motion, which would likely include less detail. This justifies the shorter deadline for answers and the reasonableness of having answers be delivered orally.

presiding officer and the parties would address whether answers to motions for cross-examination will be in written form or be delivered orally.

- With respect to proposed findings of fact and conclusions of law, the Staff recognizes that proposed findings of fact and conclusions of law may assist the presiding officer in reaching its decision in certain cases or on certain issues, but the Staff also recognizes that there may be cases or issues for which proposed findings of fact and conclusions of law are unnecessary and may cause delay. Therefore, the Staff is considering and requesting comment on the following two options. Option 1 would allow proposed findings of fact and conclusions of law unless the presiding officer, on its own motion or upon a joint agreement of all the parties, dispenses with proposed findings of fact and conclusions of law for some or all of the hearing issues. Option 2 would not permit proposed findings of fact and conclusions of law unless the presiding officer determines that they are necessary. Under Option 2, the presiding officer may limit the scope of proposed findings of fact and conclusions of law to certain specified issues.

2. *Mandatory Disclosures/Role of the NRC Staff.*

The Staff believes that discovery should be limited to the mandatory disclosures required by 10 CFR 2.336(a), with certain modifications. The required disclosures, pre-filed testimony and evidence, and the opportunity to submit proposed questions should provide a sufficient foundation for the parties' positions and the presiding officer's ruling, as they do in other informal NRC adjudications. Any information that might be gained by conducting formal discovery under 10 CFR Part 2, Subpart G, likely would not justify the time and resources necessary to gain that information, particularly considering the limited time frame in which an ITAAC hearing must be conducted. Accordingly, depositions, interrogatories, and other forms of discovery provided under 10 CFR Part 2, Subpart G, would not be permitted. Modifications to the mandatory disclosure requirements of 10 CFR 2.336 would be as follows:

- For the sake of simplicity, NRC staff disclosures would be based on the provisions of 10 CFR 2.336(a), as modified for ITAAC hearings, rather than on § 2.336(b). The categories of documents covered by § 2.336(a) and § 2.336(b) are likely to be the same in the ITAAC hearing context, and it is reasonable in an ITAAC hearing to impose a witness identification requirement on the NRC staff with its initial disclosures since initial testimony is due soon after the initial disclosures.

- The witness identification requirement of 10 CFR 2.336(a) is clarified to explicitly include potential witnesses whose *knowledge* provides support for a party's claims or positions in addition to opinion witnesses.

- All parties would provide disclosures of documents relevant to the admitted contentions and the identification of fact and expert witnesses within 15 days of the granting of the hearing request. This short deadline is necessary to support the expedited ITAAC hearing schedule. In addition, it is expected that the parties will be able to produce document disclosures and identify witnesses within 15 days of the granting of the hearing request because of the focused nature of an ITAAC hearing and because the parties will have already compiled much of the information subject to disclosure in order to address the *prima facie* showing requirement for ITAAC hearing requests.

- Disclosure updates will be due every 14 days (instead of monthly) to support the expedited ITAAC hearing schedule.

- The Subpart L provisions for NRC staff participation as a party are retained, but the procedures in this notice also provide that the Commission may direct the NRC staff to participate as a party in the Commission order imposing hearing procedures.

In addition to the disclosure provisions of 10 CFR 2.336(a), the provisions of the SUNSI-SGI Access Order would apply to all participants (including admitted parties)[24] subject to the following modifications/clarifications:

- For a party seeking access to SUNSI or SGI relevant to the *admitted* contentions, the 10 CFR 2.336(a) disclosures process will be used in lieu of the SUNSI-SGI Access Order. As part of the disclosures process, a party seeking SUNSI or SGI related to an admitted contention would first seek access from the party possessing the SUNSI or SGI. Any disputes among the parties over access to SUNSI would be resolved by the presiding officer, and any disputes over access to SGI would be resolved in accordance with 10 CFR 2.336(f).
- The timeliness standard for requests for access is the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.
- Any contentions based on SUNSI or SGI obtained pursuant to the SUNSI-SGI Access Order must be filed within 25 days of the receipt of the SUNSI or SGI, except that if the Commission chooses a time period for new or amended contentions filed after the original deadline that is less than 25 days, then that reduced time period will be used instead of 25 days, as explained earlier in this notice.

[24] In other proceedings, the provisions of the SUNSI-SGI Access Order do not apply to admitted parties, as explained in *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 461-62 (2010). However, an ITAAC hearing differs from most NRC proceedings because there would be no hearing file, and disclosures would be limited to those documents relevant to the admitted contentions. As explained in the *South Texas Project* decision (CLI-10-24, 72 NRC at 462 n.70), broader disclosure and hearing file requirements provide information to parties to support new contentions. Because the disclosures process in an ITAAC hearing does not allow admitted parties to access SUNSI or SGI for the purposes of formulating contentions unrelated to admitted contentions, it makes sense to apply the provisions of the SUNSI-SGI Access Order to admitted parties.

As for the 10 CFR 2.1203 hearing file that the NRC staff is obligated to produce in Subpart L proceedings, the Staff is not recommending that this requirement be made applicable to ITAAC hearings because the more narrowly defined NRC disclosure provisions discussed previously are sufficient to disclose all relevant documents. The scope of an ITAAC hearing is narrowly focused on whether the acceptance criteria in the pre-approved ITAAC are met, unlike other NRC adjudications that involve the entire combined license application. And unlike other NRC adjudicatory proceedings that may involve numerous requests for additional information, responses to requests for additional information, and revisions to the application, an ITAAC hearing will focus on licensee ITAAC notifications and related NRC staff review documents that would be referenced in a centralized location on the NRC Web site. Consequently, it is unlikely in an ITAAC hearing that a member of the public would obtain useful documents through the hearing file required by 10 CFR 2.1203 that it would not obtain through other avenues.

3. *Certified Questions/Referred Rulings.*

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

C. Procedures for Hearings Not Involving Testimony (Legal Contentions).

Admitted contentions that solely involve legal issues would be resolved based on written legal briefs. The briefing schedule would be determined by the Commission on a case-by-case basis. In the order imposing procedures for the resolution of these contentions, the Commission would designate either itself, a licensing board, or a single legal judge (assisted as appropriate by technical advisors) as the presiding officer for issuing a decision on the briefs. The

Commission would impose a strict deadline for a decision on the briefs by the presiding officer. If a licensing board or single legal judge is the presiding officer, then additional procedures would be included. The presiding officer would have the discretion to hold a prehearing conference to discuss the briefing schedule and to discuss whether oral argument is needed, but a decision to hold oral argument would not change the strict deadline for the presiding officer's decision. In addition, the applicable hearing procedures from Template B for hearings involving witness testimony would be included in the Commission's order imposing procedures for legal contentions with the exception of those procedures involving testimony (and with the exception of those procedures involving interactions between the Commission and a licensing board or single legal judge if the Commission designates itself as the presiding officer).

D. Procedures for Resolving Claims of Incompleteness.

If the Commission determines that the petitioner has submitted a valid claim of incompleteness, then it would issue an order that would require the licensee to provide the additional information within 10 days (or such other time as specified by the Commission) and provide a process for the petitioner to file a contention based on the additional information. This contention and any answers to it would be subject to the requirements for motions for leave to file new or amended contentions after the original deadline that are described earlier and included in Template B. If the petitioner files an admissible contention thereafter, and all other hearing request requirements have been met, then the hearing request would be granted and an order imposing procedures for resolving the admitted contention would be issued. If the petitioner submits another claim of incompleteness notwithstanding the additional information provided by the licensee, it shall file its request with the Commission. Any additional claims of incompleteness would be subject to the timeliness requirements for motions for leave to file claims of incompleteness after the original deadline that are described previously and included in Template B. Finally, the Commission order imposing procedures for resolving claims of incompleteness would include the applicable procedures from Template B, with the exception of

procedures related to already-admitted contentions and procedures related to interactions between the Commission and a licensing board or single legal judge.

VII. Availability of Documents.

The NRC is making the documents identified in the following table available to interested persons through the following methods as indicated.

Document	ADAMS Accession No.
Template A "Notice of Intended Operation and Associated Orders"	ML14097A460
Template B "Procedures for Hearings Involving Testimony"	ML14097A468
Template C "Procedures for Hearings Not Involving Testimony"	ML14097A471
Template D "Procedures for Resolving Claims of Incompleteness"	ML14097A476
Vogtle Unit 3 Combined License, Appendix C	ML112991102
SECY-13-0033, "Allowing Interim Operation Under Title 10 of the Code of Federal Regulations Section 52.103" (April 4, 2013)	ML12289A928
SRM on SECY-13-0033 (July 19, 2013)	ML13200A115
Anthony Z. Roisman, Comments on Proposed Amendments to Adjudicatory Process Rules and Related Requirements (76 FR 10781) (April 26, 2011)	ML11119A231
Letter from Diane Curran to NRC Commissioners, Comments on NRC Public Participation Process (February 26, 2013)	ML13057A975
Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information (February 29, 2008)	ML080380626

The NRC will post documents related to this notice, including public comments, on the Federal rulemaking Web site at http://www.regulations.gov under Docket ID NRC-2014-0077. 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-2014-0077); 2) click the "Email Alert" link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

VIII. Plain Language Writing.

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in developing these general procedures, consistent with the Federal Plain Writing Act guidelines.

Dated at Rockville, Maryland, this 10th day of April 2014.

For the Nuclear Regulatory Commission.

Marian Zobler,

Acting General Counsel.

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