



## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 52-026; NRC-2008-0252]**

### **Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 4; Background Check Process for Participation in ITAAC Proceeding**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Opportunity to initiate background check for access to safeguards information.

**SUMMARY:** In approximately 4 to 7 months, the U.S. Nuclear Regulatory Commission (NRC) will publish in the *Federal Register* a notice of intended operation, which will allow the public to submit requests for hearing regarding the licensee's conformance with the acceptance criteria in the combined license (COL) for Vogtle Electric Generating Plant (VEGP) Unit 4. These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) included in the COL. If a member of the public believes access to Safeguards Information (SGI) is necessary to file a hearing request, then members of the public must satisfy several standards, including a determination by the NRC that they are "trustworthy and reliable." Because the background checks used to support trustworthiness and reliability determinations take some time to complete, the NRC is providing this "pre-clearance" process, by which members of the public may initiate background checks to be completed by the Defense Counterintelligence and Security Agency (DCSA) well before the hearing process begins.

**DATES:** This pre-clearance process is available until publication in the *Federal Register* of the notice of intended operation for VEGP Unit 4. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 4.

**ADDRESSES:** Please refer to Docket ID **NRC-2008-0252** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2008-0252**. Address questions about Docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). Refer to Section II of this document for instructions on how to submit the request for a background check.

**FOR FURTHER INFORMATION CONTACT:** Cayetano Santos Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-7270, e-mail: [Cayetano.Santos@nrc.gov](mailto:Cayetano.Santos@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The NRC hereby gives notice that members of the public who believe they may need access to SGI to file a hearing request in the upcoming ITAAC proceeding for VEGP Unit 4 may initiate background checks for access to SGI before the proceeding begins. This notice describes how the required background check forms may be obtained and how the required forms and fee must be submitted. Requests to initiate background checks under this notice may be made until publication in the *Federal Register* of the notice of intended operation for VEGP Unit 4. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 4.

A. Requirements for Access to SGI

Safeguards Information is a special category of sensitive unclassified information defined in section 73.2 of title 10 of the *Code of Federal Regulations* (10 CFR) and protected from unauthorized disclosure under Section 147 of the Atomic Energy Act of 1954, as amended (AEA). Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (e.g., privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

To obtain access to SGI in an adjudicatory context, persons must (1) demonstrate a “need to know” for the SGI, (2) be deemed “trustworthy and reliable,” and (3) demonstrate a likelihood of establishing standing. As relevant to adjudications, “need to know” is defined in 10 CFR 73.2 as a determination by the originator of the SGI that the SGI is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and the proposed recipient of the specific SGI possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific SGI in the proceeding. “Trustworthiness and reliability” is defined in 10 CFR 73.2 as the characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of SGI to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability for this purpose is based upon a background check. The standing requirements are in 10 CFR 2.309.

B. Information on ITAAC Closure Process and Associated Hearing Opportunity

Southern Nuclear Operating Company, Inc., was issued a COL for VEGP Unit 4 on February 10, 2012. Appendix C of the COL includes the ITAAC for VEGP Unit 4. The ITAAC establish the means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. Section 185b. of the AEA requires the Commission to ensure that the prescribed inspections, tests, and analyses are performed and to find, prior to operation

of the facility, that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met. Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which begins with initial fuel load.

The NRC's finding on whether the acceptance criteria are met will be based on the licensee's submission of ITAAC notifications required by 10 CFR 52.99(c) and on the results of NRC inspections. Supporting documents pertaining to ITAAC closure for VEGP Unit 4 are available electronically at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog4.html>. These supporting documents include an ITAAC status report (<https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog4-icnsr.pdf>), which provides links to (1) the licensee's ITAAC notifications submitted under 10 CFR 52.99(c); (2) NRC construction and vendor inspection reports; (3) Verification Evaluation Forms, which document the NRC staff's review of ITAAC closure notifications submitted under 10 CFR 52.99(c)(1) and ITAAC post-closure notifications submitted under 10 CFR 52.99(c)(2); and (4) Uncompleted ITAAC Notification Checklists (UINCs), which document the NRC staff's review of uncompleted ITAAC notifications submitted under 10 CFR 52.99(c)(3).<sup>1</sup> The NRC staff determinations made in items (3) and (4) are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The NRC staff will periodically update these sources of information to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents.

In addition, to provide additional background information to members of the public, <https://www.nrc.gov/reactors/new-reactors/col-holder/vog4.html> includes links to

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<sup>1</sup> The NRC staff is not required to review the licensee's uncompleted ITAAC notifications but may do so if the licensee provides them far enough in advance so that staff review of these notifications contribute to the ITAAC closure process. The staff's review of an uncompleted ITAAC notification focuses on the ITAAC completion methodology described in the notification.

other supporting documents, such as the combined license (which includes the ITAAC); the updated final safety analysis report (UFSAR) for the facility; licensee reports on departures from the UFSAR; NRC-issued licensing actions for the facility; the NRC's final safety evaluation report for the COL application review; information on the AP1000 design certification, which the facility references; and information on processes related to ITAAC. Finally, to search for documents in ADAMS using the VEGP Unit 4 docket number, 52-026, one should enter the term "05200026" in the "Docket Number" field when using the web-based search (advanced search) engine in ADAMS.

As required by Section 189a.(1)(B)(i) of the AEA and 10 CFR 52.103(a), the NRC must publish in the *Federal Register* a notice of intended operation at least 180 days before scheduled initial fuel load. This notice shall provide 60 days for any person whose interest may be affected by operation of the plant to request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL. For a hearing request in an ITAAC proceeding to be granted, the petitioner must show standing as required by 10 CFR 2.309 and must submit a contention meeting the standards of 10 CFR 2.309(f)(1)(i) through (v) and (vii).<sup>2</sup> In accordance with Section 189a.(1)(B)(ii) of the AEA, the contention standards include the requirement that the petitioner show, *prima facie*, that one or more of the acceptance criteria in the COL 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. Section 189a.(1)(B)(v) of the AEA requires the NRC, to the maximum possible extent, to render a decision on the issues raised by the hearing request within 180 days of the notice of intended operation or by scheduled initial fuel load, whichever is later.

The Commission published detailed generic procedures for the ITAAC hearing process in "Final Procedures for Conducting Hearings on Conformance with the

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<sup>2</sup> The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to ITAAC proceedings.

Acceptance Criteria in Combined Licenses” (ITAAC Hearing Procedures)

(81 FR 43266; July 1, 2016). The Commission intends to use these generic procedures (with appropriate modifications) in case-specific orders that will govern ITAAC proceedings. The ITAAC Hearing Procedures differ from 10 CFR part 2 in a number of ways, primarily because of the need to meet the statutory goal for timely completing the hearing. To meet this goal, the ITAAC hearing process will be conducted on a much shorter schedule than is used for other NRC hearings. Therefore, the NRC encourages interested members of the public to study the ITAAC Hearing Procedures and commence their hearing preparations well before publication of the notice of intended operation for VEGP Unit 4.

The notice of intended operation must be published at least 180 days prior to scheduled fuel load, but the NRC announced its intention in the ITAAC Hearing Procedures to publish the notice of intended operation between 210 and 285 days before scheduled fuel load.<sup>3</sup> Based on current projections, the NRC anticipates publishing the notice of intended operation for VEGP Unit 4 in approximately 4 to 7 months. This anticipated publication window is based on the licensee’s schedule for constructing the facility and submitting ITAAC notifications required by 10 CFR 52.99(c). The notice of intended operation may be published outside this window if the licensee’s schedule changes.

C. Access to SGI in ITAAC Hearings

Given the range of matters covered by the ITAAC, the NRC believes that petitioners may deem it necessary to obtain access to SGI for the purpose of submitting an admissible contention. Therefore, as discussed in the ITAAC Hearing Procedures, the notice of intended operation will set forth procedures providing such petitioners the opportunity to demonstrate they meet the requirements for access to SGI in the ITAAC

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<sup>3</sup> The NRC intends to publish the notice of intended operation 210 days before scheduled fuel load if the licensee submits its uncompleted ITAAC notifications 225 days before scheduled fuel load as required by 10 CFR 52.99(c)(2). However, if the licensee submits its uncompleted ITAAC notifications earlier than required and meets certain other prerequisites, the NRC intends to publish the notice of intended operation at a correspondingly earlier time, but not prior to 285 days before scheduled fuel load.

hearing context. These requirements include a demonstration of “need to know,” a determination of “trustworthiness and reliability,” and a demonstration of likelihood to establish standing. If access is granted, non-disclosure agreements/affidavits will need to be executed before access is provided. Also, handling, storage, and processing of SGI must satisfy the requirements of 10 CFR part 73.

The background check used to support trustworthiness and reliability determinations can take some time, and delay could occur if persons seeking access to SGI are not already cleared for access and do not seek clearance until the notice of intended operation is published.<sup>4</sup> To avoid delays in an already-abbreviated hearing schedule, the NRC is providing this pre-clearance process, by which members of the public may initiate background checks well before the hearing process begins. The other requirements for access to SGI (i.e., need to know and likelihood of standing) would be addressed in a request for access to SGI submitted after the notice of intended operation is published. Access to SGI will only be provided if all requirements are satisfied.

There is no guarantee that early initiation of the background check will be of practical use to a petitioner. For example, the petitioner might not satisfy the other requirements for access to SGI. Consequently, it is the petitioner’s choice whether to pursue the pre-clearance process. The costs for initiating the background check are not refundable even if the background check is of no practical use to a petitioner (e.g., an adverse determination is made on the background check or the petitioner fails to satisfy other requirements for access such as need to know). Nevertheless, while use of the pre-clearance process is voluntary, the ITAAC Hearing Procedures (81 FR 43282) state:

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

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<sup>4</sup> Our most recent information indicates that the average time to perform a background check that supports the NRC’s trustworthiness and reliability determinations for access to SGI is 69 days. This average time is subject to change and should not be relied upon. The time needed for any particular background investigation may be more or less than the average time because of the subject’s personal history or the investigating agency’s work load. Also, some additional time beyond that taken by the DCSA will be needed for the NRC’s Office of Administration to make a decision based on the information it has received.

obtain access to SGI for contention formulation. The pre-clearance process is designed to prevent the SGI background-check process from becoming a barrier to timely public participation in the hearing process. As stated in Attachment 1 to the SUNSI–SGI Access Procedures (p. 11), “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.”

## **II. Pre-Clearance Process**

The pre-clearance process in this notice is based on the pre-clearance process in the “Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information,” dated February 29, 2008 (ADAMS Accession No. ML080380626), as modified and supplemented by provisions in the ITAAC Hearing Procedures and the final rule, “Protection of Safeguards Information” (73 FR 63546; October 24, 2008).

A. Any potential party<sup>5</sup> who believes access to SGI may be necessary to formulate contentions for the upcoming ITAAC proceeding for VEGP Unit 4 may request initiation of a pre-clearance background check. Requestors should submit these requests within 20 days of publication of this pre-clearance notice. Requests may be initiated after 20 days, but a delay in submitting the request will lead to a corresponding delay in NRC action on the request. Requests for a pre-clearance background check may be made until the notice of intended operation is published for VEGP Unit 4. Once published, the notice of intended operation will govern access to SGI.

B. To request initiation of the background check to be conducted by the DCSA, the requestor must submit a background check request letter, two forms, and the fee for the background check, as discussed in Section II.C of this notice.

(1) To initiate the background check, Form FD-258 (fingerprint card) and Form SF-85, “Questionnaire for Non-Sensitive Positions,” must be completed and submitted. The requestor should contact the NRC’s Office of Administration at 301-415-3710 to

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<sup>5</sup> A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.



request a package containing the Form FD-258 and to obtain access to Form SF-85. To obtain access to Form SF-85, each individual for whom a background check is being requested will be asked to provide the individual's full legal name, social security number, date and place of birth, telephone number, and email address.<sup>6</sup> Instructions for completing these two forms will be provided directly to the individual for whom the background check is being requested. Form FD-258 and the fee must be delivered to the following address:

U.S. Nuclear Regulatory Commission  
Office of Administration  
Personnel Security Branch  
ATTN: Pre-Clearance SGI Background Check Materials for ITAAC Proceeding  
Mail Stop TWFN 07-D04M  
11555 Rockville Pike  
Rockville, MD 20852

(2) The requestor must submit a background check request letter to the Office of the Secretary, U.S. Nuclear Regulatory Commission, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel. Email submission is preferred. The email addresses for the Office of the Secretary and the Office of the General Counsel are [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov) and [RidsOgcMailCenter.Resource@nrc.gov](mailto:RidsOgcMailCenter.Resource@nrc.gov), respectively. The U.S. mail address for both offices is U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852.

#### C. Forms, Fee, and Background Check Request Letter

(1) Required Forms: The requestor must submit the following forms:

(a) A completed Form FD-258 (fingerprint card), signed in original ink, for each individual for whom a background check is being requested. Copies of Form FD-258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested.

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<sup>6</sup> After providing this information, the individual usually should be able to obtain access to the online Form SF-85 within two business days.

The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and AEA Section 149, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check;

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions" for each individual for whom a background check is being requested. The completed Form SF-85 will be used to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the individual's trustworthiness and reliability. For security reasons, Form SF-85 is completed electronically through a secure website that is owned and operated by the DCSA.

(2) A check or money order payable in the amount of \$326.00 to the U.S. Nuclear Regulatory Commission for each individual for whom a background check is being requested.

(3) Background Check Request Letter: The background check request letter must:

(a) Request initiation of a background check for the purpose of determining trustworthiness and reliability for access to SGI that may be relevant to the upcoming ITAAC proceeding for VEGP Unit 4.

(b) Provide the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by an NRC finding that the acceptance criteria in the combined license are met.<sup>7</sup>

(c) Identify each individual for whom access to SGI will be requested, including the identity of any expert, consultant, or assistant who will aid the petitioner in evaluating the SGI.

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<sup>7</sup> The NRC staff will review this statement of interest for the limited purpose of determining whether to initiate the requested background check. The NRC staff will review the statement of interest only to confirm that there is some description of why the potential party's interest could be affected. A positive determination by the NRC staff is not a conclusion that the potential party has met the requirements for standing under 10 CFR 2.309.

(d) If the requestor or any individual for whom access to SGI will be requested believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should provide a statement identifying which exemption the person is invoking and explaining the person's basis for believing that the exemption applies. While processing the request, the Office of Administration will make a final determination on whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of the person's exemption status prior to submission of the background check request. Persons who are exempt from the background check are not required to submit the forms and fee described in Sections II.C.(1) and II.C.(2) of this notice; however, all other requirements for access to SGI, including need to know, still apply.

(e) State that the completed forms and fee described in Sections II.C.(1) and II.C.(2) of this notice have been submitted for each individual for whom access to SGI will be requested (except for those exempted by 10 CFR 73.59).

(4) To avoid delays in processing background check requests, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

#### D. Results of Background Check

(1) If the background check results in a favorable trustworthiness and reliability determination, the NRC staff will so notify the requestor. In its discretion, the responsible NRC staff may proceed at that time with an inspection of the requestor's information protection system to confirm it is sufficient to protect SGI from inadvertent release or disclosure.<sup>8</sup> Once the notice of intended operation is published, an

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<sup>8</sup> The requestor may wish to defer this inspection to a later time, but if the NRC staff decides that an inspection is necessary to confirm that the requestor's information protection system is sufficient, this inspection must be conducted before SGI is provided to the requestor. However, the requestor may opt to view SGI at an approved SGI storage location rather than establish its own SGI protection program to meet SGI protection requirements.

associated request for access to specified SGI will still need to address the other requirements for access, in accordance with the requirements in the notice of intended operation.

(2) If the background check results in an adverse trustworthiness and reliability determination, the NRC staff will so notify the requestor with a brief statement of the reasons for denial.

(a) Before the Office of Administration makes a final adverse determination, the individual against whom the adverse determination has been made must be provided an opportunity to correct or explain information. Specifically, the Office of Administration will (i) provide to the individual any records, including those required to be provided under 10 CFR 73.57(e)(1), that were considered in the trustworthiness and reliability determination; and (ii) resolve any challenge by the individual to the completeness or accuracy of these records. The individual may make this challenge by submitting information and/or an explanation to the Office of Administration within 10 days of the distribution of the records described previously.

(b) The requestor may challenge a final adverse determination by submitting a request for review of the adverse determination to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel (ASLBP) in accordance with 10 CFR 2.336(f)(1)(iv) and by the method described in the final adverse determination. Because a final adverse determination is sufficient grounds for denying a subsequent request for SGI access submitted after the notice of intended operation is published, the requestor should not wait until a subsequent denial to appeal the adverse trustworthiness and reliability determination.

(3) If the notice of intended operation is published while the background check is in progress or while an appeal of an adverse determination is pending, the petitioner should still submit the other components of its request for access consistent with the requirements set forth in the notice of intended operation. Those elements of the access determination will be handled in accordance with the procedures and timelines in the

notice of intended operation. The petitioner's submission of its request need not repeat the information already submitted specifically for the background check—it may simply reference the pre-clearance background check request—but it must provide all other information requested in the notice of intended operation.<sup>9</sup> To avoid confusion, however, the submission should identify the petitioner's contact information, the agency action, and the notice of intended operation.

Dated: November 20, 2020.

For the Nuclear Regulatory Commission.

Omar R. López-Santiago,  
Chief,  
Vogtle Project Office,  
Office of Nuclear Reactor Regulation.

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<sup>9</sup> If a background check has been initiated using the pre-clearance process and the NRC staff has made a final adverse determination, the requestor should timely appeal that determination if it intends to pursue its request for access; the staff will rely on that determination and will not initiate a second background check if the requestor submits the complete access request described in the notice of intended operation.