



# NEI 18-11, “Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants”

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## Executive Summary

Following the terrorist attacks in 2001, the U.S. Nuclear Regulatory Commission (NRC) invited certain facilities, including power reactors, certain fuel cycle facilities and NEI, to participate in a voluntary facility clearance (FCL) program that would allow access to classified information. Those licensees that agreed to participate in the voluntary program were required to obtain an FCL and personnel security clearances in accordance with the requirements in Title 10 of the Code of Federal Regulations (10 CFR) Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data." These facilities do not possess classified information and do not require routine access to classified material. Rather, these facilities have personnel cleared for access to national security information in order to attend classified discussions, including periodic threat briefings.

NEI 18-11 is intended to provide guidance that may be used to maintain an NRC issued FCL for licensees that have voluntarily established a security program in accordance with 10 CFR Part 95.

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# 1 INTRODUCTION

## 1.1 Purpose

This document provides guidance that entities in the NRC's voluntary facility clearance program may use to comply with 10 CFR Part 95 requirements related to maintaining an FCL. Specifically, NEI 18-11 is intended to provide a clear and uniform approach to addressing certain administrative requirements associated with maintaining an FCL. It is a further objective of this document to ensure that the facility's Part 95 security program continues to protect national security information.

This document provides the following guidance:

- Section 2, "Significant Events or Changes That May Affect Status Concerning FOCl," provides approaches to meeting the Foreign Ownership, Control or Influence (FOCI), and Owners, Officers, Directors and Executive Personnel (OODEP) reporting requirements associated with the FCL.
- Section 3, "Key Management Personnel," describes approaches to exclude key management personnel (KMP) such that they may retain a personnel clearance (PCL) if necessary but are excluded from influencing the clearances program.
- Section 4, "Updates to Facility Clearances," provides an approach for performing the five-year FCL update.
- Section 5, "Annual Certifications and Notifications," discusses annual certification and annual notification requirements.

## 1.2 Scope

NEI 18-11 may be used by facilities in the voluntary security program, including nuclear power plants, certain fuel cycle facilities and NEI. This guidance is not intended for use by facilities that require access to classified national security information in order to perform NRC licensed activities. Please consult the NRC if you have questions regarding the applicability of this guidance to your facility.

Facilities maintaining an NRC issued FCL must comply with the requirements of 10 CFR Part 95. While NEI 18-11 does not address all FCL-related requirements in Part 95, it is intended to cover the following requirements:

- Portions of 10 CFR 95.17(a)(1), "Processing Facility Clearance"
- 10 CFR 95.18, "Key Personnel"
- 10 CFR 95.19(c), "Changes to Security Practices and Procedures"

10 CFR Part 95 provisions related to maintaining the FCL that are not addressed in NEI 18-11 include but are not limited to:

- 10 CFR 95.19(a)
- 10 CFR 95.19(b)
- 10 CFR 95.57

In 2018, the NRC began notifying voluntary program FCL holders by letter regarding certain 10 CFR Part 95 reporting requirements. In these letters the NRC informed FCL holders that,

“As a Cognizant Security Agency, the NRC is required to ensure that licensees receiving an FCL follow the applicable requirements in the National Industrial Security Program Operating Manual (NISPOM). The NISPOM contains additional reporting requirements beyond those in 10 CFR Part 95.”

The letters state that the NRC expects FCL holders to comply with NISPOM [Ref. 5] reporting requirements. While NEI 18-11 specifically addresses Part 95 requirements, the guidance is consistent with and addresses corresponding NISPOM requirements related to maintaining the FCL, where applicable.

### 1.3 Acronyms

The following acronyms, some of which are defined in 10 CFR 95.5, are used in NEI 18-11. To enhance readability for individuals familiar with FCL programs, these acronyms may not be defined on first use.

CSA – Cognizant Security Agency (the NRC is the CSA for voluntary program participants)

FCL – Facility Clearance

FOCI – Foreign Ownership, Control or Influence

KMP – Key Management Personnel

NISPOM – National Industrial Security Program Operating Manual

OODEP – Owners, Officers, Directors, and Executive Personnel

PCL – Personnel Clearance

### 1.4 References

1. 10 CFR Part 25, “Access Authorization”  
<https://www.nrc.gov/reading-rm/doc-collections/cfr/part025/full-text.html>
2. 10 CFR Part 95, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data”  
<https://www.nrc.gov/reading-rm/doc-collections/cfr/part095/full-text.html>

3. FCL Orientation Handbook, “Defense Security Services, Industrial Security Field Operations”  
[https://www.dss.mil/documents/facility-clearances/FCL\\_Orientation\\_Handbook\\_18FEB15.pdf](https://www.dss.mil/documents/facility-clearances/FCL_Orientation_Handbook_18FEB15.pdf)
4. Form 405F, “List ALL Owners, Officers, Directors, and Executive Personnel (OODEP's),” U.S. NRC  
<https://www.nrc.gov/reading-rm/doc-collections/forms/nrc405f.pdf>
5. “National Industrial Security Program Operating Manual (NISPOM) Incorporating Change 2,”  
May 18, 2016, Department of Defense (DoD 5220.22-M)  
<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/522022M.pdf>

## 2 SIGNIFICANT EVENTS OR CHANGES THAT MAY AFFECT STATUS CONCERNING FOCI

Section 2 provides guidance for complying with 10 CFR 95.17(a)(1) which states in part:

“The licensee, certificate holder, or other person must advise the NRC within 30 days of any significant events or changes that may affect its status concerning foreign ownership, control, or influence (e.g., changes in ownership; changes that affect the company's answers to original FOCI questions; indebtedness; and changes in the required form that identifies owners, officers, directors, and executive personnel).”

### 2.1 Changes to Ownership, Answers to the Original FOCI Questions and Indebtedness

Where a facility has implemented resolutions to exclude entities (e.g., parent companies, parent company/owner subsidiaries, subsidiary companies, boards of directors, etc.) from access to or influence over the facility’s Part 95 program, the licensee may meet 10 CFR 95.17(a)(1) by reporting any change to the organization that would render the exclusion resolutions ineffective. For example, if a nuclear power reactor is sold to another organization, the exclusion resolutions that the facility has implemented may no longer be effective. This change (condition) should be reported in accordance with 10 CFR 95.17 and may be remediated by implementing new exclusion resolutions. Changes other than those that would render the exclusion resolutions ineffective do not constitute “significant” events for facilities in the voluntary program and need not be reported.

When developing exclusion resolutions, facilities may consider:

- The resolution language in 10 CFR 95.18.
- The example resolutions in Appendix C of the FCL Orientation Handbook [Ref. 3].
- Engaging with the CSA to review draft exclusion language to ensure the resolution is sufficient to enable the reporting threshold described above.

## 2.2 Changes in the Required Form that Identifies Owners, Officers, Directors, and Executive Personnel

Exclusion resolutions mitigate the potential for excluded entities or individuals to influence the Part 95 program. Exclusion resolutions may be used to exclude any entity or individual from access to or influence over the Part 95 program. Board resolutions are generally used to exclude members of boards of directors, owners and subsidiary companies. Exclusions may also be implemented through other means—see Section 3, below—as appropriate.

As OODEPs associated with excluded entities cannot influence the Part 95 program, changes to OODEPs do not constitute significant events for facilities in the voluntary program. Accordingly, changes to OODEPs associated with excluded entities need not be reported. By extension, OODEPs associated with parent entities of excluded entities, or subsidiaries of excluded entities, need not be reported. As discussed in Section 2.1, above, changes to the facility that would render the exclusion resolutions ineffective must be reported and remediated to ensure OODEPs are either excluded or reported to the CSA.

## 3 KEY MANAGEMENT PERSONNEL

Section 3 provides guidance for complying with 10 CFR 95.18 which states in part:

“The senior management official [SMO] and the Facility Security Officer [FSO] must always be cleared to a level commensurate with the Facility Clearance. Other key management officials, as determined by the CSA, must be granted an access authorization or be excluded from classified access.”

When establishing the FCL, the CSA identifies KMPs. The CSA may identify individuals beyond the SMO and FSO. While the SMO and FSO must be cleared, facilities may clear or exclude, as appropriate, any other identified KMP. 10 CFR 95.18 indicates that formal exclusion actions (e.g., board resolution) may be necessary. However, KMPs may generally be excluded through a vehicle other than a formal exclusion resolution. For example, KMPs may be notified in writing that they are excluded. A record of such notification should be retained in accordance with 10 CFR 95.13, “Maintenance of Records.”

Excluded KMPs may retain a national security clearance (PCL). Where the facility wishes to exclude a KMP but retain a PCL for the individual, the exclusion would establish that the excluded individual will not occupy a position within the program that would enable them to adversely affect the facility’s policies or practices in the performance of activities involving classified information.

If the facility excludes a KMP and the individual’s PCL is no longer needed, the PCL should be terminated in accordance with 10 CFR 25.33, “Termination of Access Authorizations.”

When individuals change jobs and a new individual assumes the position identified for a KMP, the new individual must be cleared or excluded.

Facilities must inform the CSA (Form 405F [Ref. 4] may be used) of the status (cleared or excluded) of KMPs.

Nuclear power plants that are organized in a fleet under a common business unit may re-evaluate the structure of their Part 95 program. The program could be structured or re-structured such that a single SMO and FSO have responsibility over a fleet program. For example, a fleet CNO may be the SMO, and an FSO in the corporate office may be identified. Cleared individuals at each station would no longer need to be identified as KMPs—site-specific SMOs and/or FSOs would not be needed. Those individuals could retain their clearances as appropriate but would no longer be identified as KMPs. It may be beneficial to discuss this type of change with the CSA in advance to ensure appropriate implementing protocols are followed.

## 4 UPDATES TO FACILITY CLEARANCES

10 CFR 95.19(c) states:

“A licensee, certificate holder, or other person must update its NRC facility clearance every five years either by submitting a complete Standard Practice Procedures Plan or a certification that the existing plan is fully current to the Division of Security Operations.”

This requirement may be met by submitting a letter conveying a copy of the currently effective SPPP. Alternatively, the facility may submit a letter confirming that the most recently submitted version of the SPPP remains current.

When issuing the post-9/11 FCLs and during subsequent FCL renewals, the FCL renewal letters may have included an enclosure that imposed additional FOCI reporting obligations beyond those specified in 10 CFR Part 95. For example, 10 CFR 95.19(c) requires that entities update their NRC facility clearance every five years either by submitting a complete Standard Practice Procedures Plan or a certification that the existing plan is fully current. In the enclosure letters, this five year update was expanded to require the submittal of a new Certificate Pertaining to Foreign Interests, along with current financial information to the NRC for a new FOCI redetermination. After reviewing the additional FOCI reporting obligations, in 2018 the NRC began notifying voluntary program FCL holders that they no longer need to provide the information identified in the enclosure.

## 5 ANNUAL CERTIFICATIONS AND NOTIFICATIONS

10 CFR Part 95 contains no requirements for annual certifications or annual notifications.

The NISPOM (section 2-303(a)) requires annual certifications for board resolutions implemented as a part of a FOCI action plan. The exclusion resolutions established by voluntary program participants (and discussed in Section 2, above) may not have been implemented to negate or mitigate FOCI. Accordingly, annual certification may not be necessary. Facilities may confirm the need for an annual certification with the CSA.