

NRC Facility Security Clearance Program: Helpful Resources For Licensees, Applicants, And Other Entities



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OVERVIEW

The purpose of this document is to provide licensees, applicants, and other entities with preliminary information and resources to help navigate the communication and application process for a U.S. Nuclear Regulatory Commission (NRC) facility security clearance (FCL). An NRC FCL is required before any entity is granted access to classified information. Classified information means information that has been determined, pursuant to Executive Order 13526, “Classified National Security Information,” dated December 29, 2009 (or any predecessor or successor order), and the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure in the interest of national security. Classified information includes national security information, restricted data, and formerly restricted data. NRC requirements for the protection of classified information are set forth 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,” and 10 CFR Part 25, “Access Authorization.” Additionally, NRC licensees, applicants, and other entities are required to comply the requirements in 32 CFR Part 117, “National Industrial Security Program Operating Manual (NISPOM).”

An NRC FCL, as defined in 10 CFR 95.5, “Definitions,” is an administrative determination that, from a security viewpoint, an entity is eligible for access to classified information at either the Confidential or Secret level. The purpose of an FCL is to demonstrate that the entity can properly protect classified information from unauthorized disclosure. There are two types of FCLs. A possessing FCL would allow a licensee, applicant, or other entity to possess and use classified information. A nonpossessing FCL would allow a licensee, applicant, or other entity to have access to classified information at an approved location. Licensees, applicants, or other entities seeking an NRC nonpossessing FCL should follow the process outlined in this document.

STEP 1: INITIAL CONTACT WITH THE NRC

Licensees or applicants seeking a license should reach out to their assigned project manager to begin initial discussions regarding a request for an FCL. The applicant may be asked to formally request an FCL through a letter. Other entities should reach out to the Office of Nuclear Security and Incident Response, Information Security Branch, to request an FCL.

Based on this initial contact, the NRC will make a provisional determination on whether the licensee, applicant, or other entity has a need for access to classified information in accordance with 32 CFR 117.9(c)(1). This determination will be based on discussions during the initial contact and a review of any

documents requested by the NRC to support the request for access to classified information. The determination is designed to ensure that the entity has a legitimate need for access to classified information and that such access is consistent with U.S. national security interests as determined by the NRC. If the NRC makes a provisional “need-to-know” determination, the applicant will be asked in writing to submit an FCL package in accordance with 10 CFR 95.15, “Approval for processing licensees and others for facility clearance.” A provisional determination does not constitute a final determination that a licensee, applicant, or other entity has a “need to know” for access to classified information.

STEP 2A: FACILITY SECURITY CLEARANCE PACKAGE

An FCL package prepared by a licensee, applicant, or other entity should include detailed information sufficient to allow the NRC to make a final determination on the need for access to classified information. If the NRC substantiates the need for access to classified information, the staff will issue a “need-to-know” determination letter. Below is an outline of the required documents for an FCL package submittal.

Required FCL documentation:

The NRC will review the FCL package in accordance with 10 CFR 95.17 and 32 CFR 117.9, “Entity eligibility determination for access to classified information,” to determine that the licensee, applicant, or other entity seeking an FCL is able to adequately protect classified information and is not subject to improper foreign ownership, control, or influence (FOCI). Documentation related to FOCI determinations is set forth in appendix C to this document. A licensee, applicant, or other entity is recommended to submit the following documentation to enable the NRC to make these determinations:

- Standard Form (SF)-328, “Certificate Pertaining to Foreign Interests”
- NRC 405F, “List ALL Owners, Officers, Directors, and Executive Personnel (OODEP’s)”
 - See step 2B for additional information on OODEP forms.
- Nonpossessing Standard Practice Procedures Plan (SPPP)
 - A copy of the SPPP template can be found in appendix B.
- Nonpossessing Contract Security Classification Specification (CSCS) Data Sheet
 - A copy of the CSCS template can be found in appendix B.
- Company Organization Chart
- FOCI Data Sheet (outlines documents to be submitted for FOCI determination)
 - A copy of the FOCI Data Sheet can be found in appendix C.

- Exclusion Resolution for Parent Companies (if applicable)
 - A template exclusion resolution can be found in appendix D.
- Exclusion resolution for Key Management Personnel (if applicable)
 - A template exclusion resolution can be found in appendix D.

STEP 2B: PERSONNEL CLEARANCE PROCESS

The licensee, applicant, or other entity should reach out to the Personnel Security Branch (PSB) at nrlicenseeaccessauthorization.resource@nrc.gov to begin the personnel security process. PSB handles all personnel security actions related to NRC clearances; each applicant will pay a prescribed fee for each personnel clearance. The initial personnel security clearances are issued to the essential key management personnel (KMP) listed on the OODEP form. Security clearances are issued to additional individuals as needed after the essential KMP are cleared and the FCL has been issued. The submitted OODEP form will list all KMP in accordance with 32 CFR 117.9(c)(5) and 10 CFR 95.18, “Key personnel.”

KMP are defined as an applicant’s senior management official (SMO), facility security officer (FSO), insider threat program senior official (ITPSO), and all other entity officials who have direct or indirect authority to influence or decide issues affecting the management or operations of the applicant or classified contract performance. In most cases, the FSO can also hold the ITPSO role.

The NRC requires that the essential KMP (the SMO, FSO, and ITPSO) be cleared at a level commensurate with the FCL. Those other KMP listed on the OODEP who are not cleared at the same level of the FCL will need to be excluded from access to classified information for which they do not possess the appropriate clearance through an exclusion resolution. Appendix D contains sample exclusion resolutions.

STEP 3: FACILITY SECURITY CLEARANCE APPROVAL PROCESS

After the NRC reviews the FCL package and makes a determination, the staff will send a written notification of the determination to the applicant as defined in 10 CFR 95.15. The approval letter will specify the level of the FCL and include a caveat that the FCL is not considered active until the essential KMP have been issued their personnel clearances.

The appendices in this resource include several templates outlined within the previous sections. It is important to note that these templates are not required but rather present one way of fulfilling the requirements of 10 CFR Part 95. These documents may be reviewed and completed as part of the FCL package. The SPPP and CSCS outline the security requirements required as part of the FCL approval process. The SPPP is reviewed and signed by the FSO, acknowledging the security requirements have been met. Exclusion resolution templates provided by the Defense Counterintelligence and Security Agency may be used on a case-by-case basis, as determined by the corporate structure and KMP personnel clearance status. In certain cases, the exclusion resolution can be tailored to meet specific requirements. In these cases, the entity should reach out to the NRC staff for further information before submitting the document.

Paperwork Reduction Act Statement:

This NUREG provides voluntary guidance for implementing the mandatory information collections in 10 CFR Part 25, 10 CFR Part 95, and the NRC Insider Threat Program that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget (OMB), under control numbers 3150-0046, 3150-0047 and 3150-0251, respectively. Send comments regarding this information collection to the FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, or by e-mail to infocollects.Resource@nrc.gov, and to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0046, 3150-0047 and 3150-0251), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street, NW Washington, DC 20503.

Public Protection Notification:

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.”

APPENDIX A ACRONYMS AND REFERENCES

CFR	<i>Code of Federal Regulations</i>
CSCS	Contract Security Classification Specification
FCL	Facility Security Clearance
FOCI	Foreign Ownership, Control, or Influence
FSO	Facility Security Officer
ITPSO	Insider Threat Program Senior Official
KMP	key management personnel
NISPOM	National Industrial Security Program Operating Manual
NRC	U.S. Nuclear Regulatory Commission
OODEP	Owners, Officers, Directors, and Executive Personnel
PSB	Personnel Security Branch
SF	Standard Form
SMO	Senior Management Official
SPPP	Standard Practice Procedures Plan

References:

Executive Order 13526, "Classified National Security Information,"
December 29, 2009

U.S. *Code of Federal Regulations*

10 CFR Part 25, "Access Authorization"

10 CFR Part 95, "Facility Security Clearance and Safeguarding of
National Security Information and Restricted Data"

32 CFR Part 117, "National Industrial Security Program
Operating Manual (NISPOM)"

Templates:

NRC 405F, "List ALL Owners, Officers, Directors, and Executive
Personnel (OODEP's)"

SF-328, "Certificate Pertaining to Foreign Interests"

Standard Practice Procedures Plan (Agencywide Documents Access
and Management System Accession No. ML24159A637)

APPENDIX B NONPOSSESSING STANDARD PRACTICE PROCEDURES PLAN

Standard Practice Procedures Plan

The following Standard Practice Procedures Plan applies to facilities authorized to use but not possess classified information.

This document outlines the security responsibilities of: (Company Name)

with its principal office and place of business at (Street, City, State and ZIP Code)

doing business at the address below:

The provisions of our agreement with the U.S. Nuclear Regulatory Commission (NRC) do not require our company to receive, store, transmit, or originate classified information within our facility(ies). This company's personnel will, however, have authorized access to classified information at approved NRC facility(ies). The NRC security clearances granted to our personnel have been issued by NRC Headquarters.

We understand that our company will be responsible for ensuring that the following security requirements are met:

- Initial and refresher briefings (annually) are conducted and documented as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data," and that the Standard Form SF-312, "Classified Information Nondisclosure Agreement," is signed and processed before any access to classified information.
- Termination briefings are conducted and documented in accordance with 10 CFR Part 25, "Access Authorization," and 10 CFR Part 95 for all cleared personnel leaving our employment, losing their clearances, or no longer requiring a clearance. Termination statements are forwarded to NRC Headquarters.

- Provisions of the Privacy Act are met when handling and mailing/delivering completed personnel security clearance request documents.
- Cleared company personnel are apprised of, and comply with, the personnel clearance reporting requirements.
- Foreign national employees are not placed in a position to exercise control or influence over properly cleared U.S. citizens who have been granted access to NRC classified information.
- Reporting requirements involving foreign ownership, control, or influence conditions are complied with.
- Procedures are developed that describe internal company processes for performing functions to accomplish each of the items above. Applicable company employees will be familiar and comply with security procedures and be informed of their individual responsibilities in executing and supporting these procedures.
- Designated representatives of the NRC are required to periodically inspect the procedures, methods, and facilities used by the company in complying with the requirements of the terms and conditions of 10 CFR Part 25 and 10 CFR Part 95. The company shall assist by providing necessary documentation for review.
- Establish an insider threat program (ITP) that meets the National Industrial Security Program requirements.

The following are the National industrial Security Program Operating Manual minimum standards:

- Formal appointment by the company of an ITP Senior Official (ITPSO) who is a U.S. citizen employee and a senior official of the company
- Annual company self-review including self-inspection of the ITP (Report completion of the self-inspection to the ITPSO)
- Initial and refresher insider threat training for the awareness of cleared program management and cleared individuals
- Requirements to report to the ITPSO any detection of an insider threat to the company

CERTIFICATIONS

I have been designated Facility Security Officer and will be responsible for ensuring compliance with the above requirements.

Typed Name

Signature and Date

Phone Number

The management representative undersigned certifies that the Facility Security Officer has been given the resources and management support needed to accomplish the above. A new Standard Practice Procedures Plan will be executed if a new Facility Security Officer is appointed.

Certified by (typed name):

Title:

Signature and Date:

STANDARD PRACTICE PROCEDURES PLAN (SPPP)

Information for Nonpossessing Facility Clearances

This information is to be provided by the company Facility Security Officer and attached to the Standard Practice Procedures Plan (SPPP) for nonpossessing facility clearance requests:

Name of Entity: _____

1. Description of work to be performed:

2. Classification of matter to be accessed (check all that apply):

_____ C-NSI _____ S-SNSI _____ C-RD _____ S-RD

3. Access authorization: _____ "L" _____ "Q"

4. Contractor is: _____ Prime Contractor _____ Subcontractor

Prime Contractor Name

(For subcontractors to another subcontractor, only the Prime Contractor to the cleared entity need be listed.)

5. In support of the NRC-cleared entity, the contractor will (check all that apply):

_____ Have access to classified matter only at the cleared facility or an NRC-approved facility (identify the site).

_____ Generate classified information (describe the information the contractor will generate and reference appropriate controls in the cleared-entity SPPP (e.g., derivative classification procedures)).

_____ Receive classified information (describe what classified matter the cleared entity will provide when performing the contract and reference appropriate controls in the cleared-entity SPPP).

_____ Perform services that require unescorted access to security areas where classified matter may be present but whose services do not require explicit access to classified matter (describe the services and reference security areas in the cleared-entity SPPP that contractors will access).

6. Estimated contract completion date: _____

Facility Security Officer

Date

Paperwork Reduction Act Statement:

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APPENDIX C FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE DATA SHEET

COMPANY NAME:

Listed below are documents required to complete a foreign ownership, control, or influence determination:

Documents common to all business structures.

KEY MANAGEMENT PERSONNEL FORM (ODOEP) _____

REQUEST FOR INFORMATION STATEMENT (if applicable) _____

STANDARD FORM 328 CERTIFICATE PERTAINING TO FOREIGN INTERESTS _____

WEB PAGE ADDRESS (if applicable) _____

Additional documents required to be included for a PUBLICLY TRADED CORPORATION

ARTICLES OF INCORPORATION _____

SEC 10-K REPORT _____

PROXY STATEMENT _____

SEC SCHEDULES 13D AND 13G _____

CORPORATE BYLAWS _____

IRS FORM 5471 _____

ANNUAL REPORT WITH FINANCIAL INFORMATION _____

Additional documents required to be included for a PRIVATELY OWNED CORPORATION

ARTICLES OF INCORPORATION _____

CORPORATE BY-LAWS _____

IRS FORM 5471 (if applicable) _____

ANNUAL REPORT WITH FINANCIAL INFORMATION _____

Additional documents required for a PARTNERSHIP

PARTNERSHIP AGREEMENT _____

SEC 10-K REPORT _____

PROXY STATEMENT _____

SEC SCHEDULES 13D AND 13G _____

IRS FORMS 5471 AND 1065 _____

LATEST ANNUAL REPORT WITH FINANCIAL INFORMATION _____

MOST CURRENT BOARD MEETING MINUTES
IDENTIFYING EXECUTIVE APPOINTMENTS/CHANGES _____

Additional documents required for a PROPRIETORSHIP

TAX ID NO/STATE REGISTRATION CERTIFICATE _____

IRS FORM 1040 _____

ANNUAL REPORT OR AUDITED FINANCIAL
INFORMATION FOR MOST RECENT FISCAL YEAR _____

IF COMMUNITY PROPERTY STATE (AZ, CA, ID, LA, NV, NM,
TX, WA, WI), SPOUSAL INFORMATION IS ALSO REQUESTED _____

Additional documents required for a LIMITED LIABILITY CORPORATION

CERTIFICATE OF ORGANIZATION _____

OPERATING AGREEMENT _____

AUDITED FINANCIAL INFORMATION FOR MOST
RECENT FISCAL YEAR
(IF UNAUDITED, THE CFO/TREASURER MUST
SIGN AND DATE THE FINANCIAL STATEMENT
CERTIFYING IT IS CURRENT AND CORRECT) _____

Additional documents required for a COLLEGE/UNIVERSITY

UNIVERSITY CHARTER _____

LATEST ANNUAL REPORT _____

MOST CURRENT BOARD MEETING MINUTES
IDENTIFYING EXECUTIVE APPOINTMENTS/CHANGES _____

APPENDIX D EXCLUSION RESOLUTION TEMPLATES

D.1 Highest Cleared Entity Noting Excluded Entity’s Exclusion and Resolution to Exclude Parent Organization

I, (Insert Full Name), the duly elected Secretary of (Insert Name of Highest Cleared Entity), a corporation in the State of (Insert Name of State), do hereby certify that the following is a true and complete copy of a resolution passed at a meeting of the Board of Directors of said Corporation, at which a quorum was present, duly called, and held (Insert Month Day, Year).

BE IT RESOLVED that officials of (Insert Name of Highest Tier Excluded Entity and any Intermediate Entities), the ultimate tier entity organization, or any of the intermediate tier entities of (Insert Name and Address of Highest Cleared Entity), shall not require and shall not have access to classified information in the custody of (Insert Name of Highest Cleared Entity), a subsidiary organization, or any other facilities reporting to (Insert Name of Highest Cleared Entity) that require access to classified information.

BE IT FURTHER RESOLVED that (Insert Name of Highest Cleared Entity) hereby acknowledges the execution of a resolution by (Insert Name and Address of Highest Excluded Entity) whereby the Corporation, its officers and directors, as such, and intermediate entities will not require and will not have access to classified information in the custody of (Insert Name of Highest Cleared Entity), a subsidiary corporation, and further that this action will not affect adversely the policies of said subsidiary involving the security and safeguarding of classified information or performance of classified contracts.

BE IT FURTHER RESOLVED that these actions of the Board of Directors of the (Insert Name of Highest Cleared Entity) are taken for the purpose of exempting the (Insert Name of Highest Tier Excluded Entity and Intermediate Tiers) from the necessity of being processed for a facility security clearance equivalent to that held by the (Insert Name of Highest Cleared Entity) in conformity with the “National Industrial Security Program Operating Manual (NISPOM).”

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of (Insert Name of Highest Cleared Entity) this (Insert Date).

_____ Signature

D.2 Exclusion Resolution of Corporate Organization

I, (Insert Full Name), the duly elected Secretary of (Insert Name of Highest Tier Excluded Entity), a corporation organized in the State of (Insert Name of State), located at (Insert Address of Highest Tier Excluded Entity), do hereby certify that the following is a true and complete copy of a resolution passed at a meeting of the Board of Directors of said Corporation, at which a quorum was present, duly called, and held (Insert Month Day, Year).

BE IT RESOLVED that (Insert Name and Address of Highest Tier Excluded Entity and Intermediate Entities), its officers and directors, as such, will not require and will not have access to classified information in the custody of (Insert Name of Highest Cleared Entity), or any other facilities reporting to (Insert Name of Highest Cleared Entity) that require access to classified information, and further that (Insert Name of Highest Cleared Entity) has been delegated full authority to act completely independent of (Insert Name of Highest Tier Excluded Entity and Intermediate Tiers) in all matters that involve or relate to (Insert Name of Highest Cleared Entity)'s responsibility to perform on classified contracts, to include safeguarding classified information.

BE IT FURTHER RESOLVED that this action is taken for the purpose of exempting (Insert Name of Highest Tier Excluded Entity and Intermediate Tiers) from the necessity of being processed for a facility security clearance (FCL) in conformity with the "National Industrial Security Program Operating Manual (NISPOM)." In lieu of an FCL, (Insert Name of Highest Tier Excluded Entity) will report any changed conditions, as defined in NISPOM 2-102, within the complete organizational structure that may impact the FCL eligibility of (Insert Name of Highest Cleared Facility). Any changes that may impact the FCL eligibility of (Insert Name of Highest Cleared Facility) will be disclosed to the Facility Security Officer at (Insert Name of Highest Cleared Facility) or, in special circumstances, directly to the Defense Security Service.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of (Insert Name of Company) this (Insert Date).

_____ Signature

D.3 Exclusion Resolution for LLC Member (Organization)

I, (Insert Full Name), the duly elected (Management Official Title) of (Insert Name of LLC Member), a (Type of Organization) organized in the State of (Insert Name of State), located at (Insert Address of LLC Member), do hereby certify that the following is a true and complete copy of a resolution passed at a meeting of the (Type of Management Board) of (Management Officials) of said (Type of Organization), at which a quorum was present, duly called, and held (Insert Month Day, Year).

BE IT RESOLVED that (Insert Name and Address of LLC Member) and its management officials, as such, will not require, shall not have, and can be effectively and formally excluded from access to classified information disclosed to (Insert Name of subject LLC), a Limited Liability Company, and further

that (Insert Name of subject LLC), has been delegated full authority to act completely independent of (Insert Name of LLC Member) in all matters that involve or relate to (Insert Name of subject LLC)'s responsibility to safeguard information.

BE IT FURTHER RESOLVED that (Insert Name and Address of LLC Member) is taken for the purpose of exempting the (Insert Name of LLC Member) from the necessity of being processed for a facility security clearance in conformity with the "National Industrial Security Program Operating Manual (NISPOM)."

Signature _____

Date _____
(Senior Management Official of LLC Member)

D.4 Exclusion Resolution for Certain Directors, Officers, and LLC Members (If Person)

I, (Insert Full Name), do hereby certify that I am (Identify eligible Key Management Personnel Officer/Position Title) of (Insert Name of Corporation), a (Insert Corporation, Company) organized and existing under the laws of the State of (Insert Name of State), and that the following is a true and correct copy of a resolution adopted by the Board of Directors, management board, or a similar type of executive body of the said (Insert Corporation, Company) at a meeting held at (Insert Location) on (Insert Month Day, Year), at which time a quorum was present.

WHEREAS, current U.S. Department of Defense regulations contain a provision making it mandatory that the Chairman of the Board, Senior Management Official, and Facility Security Officer meet the requirements for eligibility for access to classified information established for a contractor facility security clearance; and

WHEREAS, said U.S. Department of Defense regulations permit the exclusion from the personnel of the requirements for access to classified information of certain members of the Board of Directors and other officers, provided that this action is recorded in the corporate minutes.

NOW THEREFORE BE IT DECLARED that the Chairman of the Board, Senior Management Official, and Facility Security Officer at the present time do possess, or will be processed for, the required eligibility for access to classified information; and

BE IT RESOLVED that in the future, when any individual enters upon any duties as Chairman of the Board, Senior Management Official, and Facility Security Officer, such individual shall immediately make application for the required eligibility for access to classified information; and

BE IT RESOLVED AND DIRECTED that the following members of the Board of Directors and other officers or members shall not require, shall not have, and can be effectively and formally excluded from access to all CLASSIFIED information disclosed to the corporation/company and shall not affect adversely corporate/company policies or practices in the performance of classified contracts for the U.S. Department of Defense or the Government contracting activities (User Agencies) of the National Industrial Security Program.

NAME	TITLE

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of (Insert Name of Company) this (Insert Day/Month of Year).

Signature

NRC FORM 335 (12-2010) NRCMD 3.7	U.S. NUCLEAR REGULATORY COMMISSION	1. REPORT NUMBER (Assigned by NRC, Add Vol., Supp., Rev., and Addendum Numbers, if any.) NUREG-0532
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