

NRC Comments on NEI 18-11, "Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants"

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Purpose

- The purpose of this meeting is to deliver and discuss NRC comments to NEI 18-11, "Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants"

Background

- Shortly after 9/11, NRC staff extended offers to the power reactors to voluntarily apply for facility clearances (FCL) under Part 95 and personnel clearances under Part 25.
- Currently, the majority of the power reactor licensees participate in this voluntary program.

Issues

- Obtaining and maintaining an FCL under Part 95 requires extensive initial submissions and periodic reporting requirements. Power reactor licensees requested the NRC review the program requirements in light of over a decade of operating experience in having access to classified information to see if current implementation of Part 95 requirements are excessive with respect to adequate protection of the classified information program participants are given access to.

Industry Response

- Working with industry, and in discussion with the NRC, NEI developed NEI 18-11, "Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants" as guidance for power reactor licensees under the voluntary program to standardize Part 95 compliance across the industry.

NRC Responsibility

- As a Cognizant Security Agency (CSA), the NRC is responsible to ensure entities it grants access to classified information are eligible for access.

NEI 18-11 Evaluation Criteria

- The NRC evaluation was based on:
 - Compliance with Part 95 and other statutes, Executive Orders, and regulations governing access to classified information.
 - Differences between Part 95 language and NRC policy and/or practice for implementing the program.

NRC Considerations

- The NRC took the following into consideration during its evaluation.
 - The type, sensitivity, and frequency of access to classified information.
 - The location of where the information would be accessed.
 - Participants in the program are not allowed to possess, store, or handle classified information at their sites.
 - Reducing the overall number of personnel security clearances issues.

NRC Comment #1

- Clarifying the scope of the document.
 - The document is only applicable to participants for whom access to classified information is **NOT** a condition of their license but who are participating in the NRC's voluntary program. Currently, power reactors are the only anticipated class of participants in the voluntary program.

NRC Comment #2

- Changes to Ownership, Answers to Original FOCI Questions and Indebtedness.
 - 95.17: “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).”
 - The issue here is the definition of “significant” and whether the change “affects its status....” Because of the complex and fluid nature of FOCI, the NRC cannot establish a “Bright Line” here. For example, a stake in a licensee by a company of one country might be insignificant. A stake in a licensee by a company of a different country might be viewed as significant. As a CSA, the NRC has the responsibility to evaluate these changes.

NRC Comment #3

- Key Management Personnel
 - The NRC reviewed its policy for clearing or excluding Key Management Personnel and determined that for participants in the voluntary program, only the Facility Security Officer (FSO) and a Senior Management Official (SMO) will be required to be cleared or excluded.

NRC Comment #3 (cont'd)

- NEI should revise NEI 18-11 to reflect the following conditions:
 - For new applicants: As per Part 95 requirements, new applicants will submit a list of Officers, Owners, Directors, and Executive Personnel (NRC Form 405F) assigning the FSO and SMO. As part of its evaluation, the NRC will concur with the applicant or direct someone else be assigned. Also, the NRC may identify additional personnel it considers should be cleared. The NRC determination will be provided in its application response.
 - For existing program participants: Current participants desiring to take advantage of the new policy should submit a revised NRC 405F identifying the FSO and SMO. The NRC response to the revised NRC Form 405F will identify that previously cleared KMP are no longer considered KMP and need not be cleared or excluded under Part 85.18.

Anticipated Path Forward

- NEI will incorporate NRC comments and submit a revised document
- NRC will review the revised document for endorsement

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Questions?