

§ 11.15

10 CFR Ch. I (1-1-05 Edition)

NRC-U special nuclear material access authorization, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) or (b), or both.

(b) Each licensee who, 365 days after Commission approval of the amended security plan submitted in accordance with § 11.11(a), transports or delivers to a carrier for transport special nuclear material subject to the physical protection requirement of §§ 73.20, 73.25, 73.26, or 73.27 of this chapter shall confirm and record prior to shipment the name and special nuclear material access authorization number of all individuals identified in paragraph (a) of this section assigned to the shipment. The licensee shall retain this record for three years after the last shipment is made. However, the licensee need not confirm and record the special nuclear material access authorization number in the case of any individual for whom an application has been submitted and is pending before the NRC in accordance with paragraph (a) of this section.

[50 FR 39078, Sept. 27, 1985, as amended at 53 FR 19245, May 27, 1988]

§ 11.15 Application for special nuclear material access authorization.

(a)(1) Application for special nuclear material access authorization, renewal, or change in level must be filed by the licensee on behalf of the applicant with the Director, Division of Facilities and Security, Mail Stop T7-D57, either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/eie.html>, by calling (301) 415-6030, by e-mail to EIE@nrc.gov, or by writing the Office of the Chief Information Officer, U.S. Nu-

clear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. Applications for affected individuals employed on October 28, 1985, shall be submitted within 60 days of notification of Commission approval of the amended security plan.

(2) Licensees who wish to secure NRC-U or NRC-R special nuclear material access authorizations for individuals in possession of an active NRC Q or L access authorization or other security clearance granted by another Federal agency based on an equivalent investigation shall submit a "Security Acknowledgment" (NRC Form 176) and a "Request for Access Authorization" (NRC Form 237). NRC will process these requests by verifying the data on an NRC-cleared individual, or by contacting the Federal agency that granted the clearance, requesting certification of the security clearance, and determining the investigative basis and level of the clearance. Licensees may directly request the Federal agency that administered the security clearance, if other than NRC, to certify to the NRC that it has on file an active security clearance for an individual and to specify the investigative basis and level of the clearance.

(b) Applications for special nuclear material access authorization for individuals, other than those qualifying under the provisions of § 11.15(a)(2), must be made on forms supplied by the Commission, including:

(1) Questionnaire for National Security Positions (SF-86, Parts 1 and 2);

(2) Two completed standard fingerprint cards (FD-258);

(3) Security Acknowledgment (NRC Form 176);

(4) Other related forms where specified in accompanying instruction (NRC-254); and

(5) A statement by the employer, prospective employer, or contractor identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC-U special nuclear material access authorizations must be renewed every five years from the date of issuance. Except as provided in paragraph (c)(3) of this section, NRC-R special nuclear material access authorizations must be renewed every ten years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five-year period for NRC-U and ten-year period for NRC-R, respectively, and must include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC-U or an NRC-R special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) The Questionnaire for National Security Positions (SF-86, Parts 1 and 2);

(iii) Two completed standard fingerprint cards (FD-258); and

(iv) Other related forms specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the time for submission of NRC-U special nuclear material access authorization renewal applications and the paperwork required is provided for individuals who have a current and active DOE-Q access authorization and are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF-86 pursuant to DOE Reinvestigation Program requirements (generally every five years) will satisfy the NRC renewal submission and paperwork requirements even if less than five years has passed since the date of issuance or renewal of the NRC-U access authorization. Any NRC-U special nuclear material access authorization renewed in response to provisions of this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(3) An exception to the time for submission of NRC-R special nuclear material access authorization renewal applications and the paperwork required is provided for individuals who have a current and active DOE-L or DOE-Q ac-

cess authorization and are subject to DOE Reinvestigation Program requirements. For these individuals, the submission to DOE of the SF-86 pursuant to DOE Reinvestigation Program requirements will satisfy the NRC renewal submission and paperwork requirements even if less than ten years have passed since the date of issuance or renewal of the NRC-R access authorization. Any NRC-R special nuclear material access authorization renewed pursuant to this paragraph will not be due for renewal until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program.

(4) Notwithstanding the provisions of paragraph (c)(2) of this section, the period of time for the initial and each subsequent NRC-U renewal application to NRC may not exceed seven years.

(5) Notwithstanding the provisions of paragraph (c)(3) of this section, the period of time for the initial and each subsequent NRC-R renewal application to NRC may not exceed twelve years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within seven years of the previous submission, for a NRC-U renewal or twelve years of the previous submission for a NRC-R renewal, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the seven year period for NRC-U or twelve year period for NRC-R renewal.

(d) If at any time, due to new assignment or assumption of duties, a change in a special nuclear material access authorization level from NRC "R" to "U" is required, the individual shall apply for a change of level of special nuclear material access authorization. The application must include a description of the new duties to be assigned or assumed, justified by appropriate reference to the licensee's security plan.

(e)(1) The Office of Personnel Management (OPM) bills NRC for the cost of each background investigation conducted in support of an application for special nuclear material access authorization. The combined cost of the OPM investigation and NRC's application

§ 11.15

10 CFR Ch. I (1-1-05 Edition)

processing overhead are recovered from the licensee through a material access authorization fee calculated with reference to current OPM personnel investigation billing rates {OPM rate + [(OPM rate × 11.6%), rounded to the nearest dollar] = NRC access authorization fee}. Updated OPM billing rates are published periodically in a Federal Investigations Notice (FIN) issued by OPM's Investigations Service. Copies of the current OPM billing schedule can be obtained by phoning the NRC's Security Branch, Division of Facilities and Security, Office of Administration at 1-800-368-5642. Any change in the NRC's access authorization fees will be

applicable to each access authorization request received on or after the effective date of OPM's most recently published investigations billing schedule.

(2) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission. Applicants shall calculate the access authorization fee according to the stated formula {OPM rate + [(OPM rate × 11.6%), rounded to the nearest dollar] = NRC access authorization fee} and with reference to the following table:

| The NRC application fee for an access authorization of type * * * | Is the sum of the current OPM billing rate charged for an investigation of type * * * | Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the OPM billing rate for the type of investigation referenced multiplied by * * * |
|--|---|--|
| i. NRC-R ¹ | NACLC—National Agency Check with Law and Credit (Standard Service, Code B). | 11.6% |
| ii. NRC-R ¹ (expedited processing) | NACLC—National Agency Check with Law and Credit (Expedite Handling, Code A). | 11.6% |
| iii. NRC-R based on certification of comparable investigation ² . | No fee assessed for most applications. | |
| iv. NRC-R renewal ¹ | NACLC—National Agency Check with Law and Credit (Standard Service, Code B). | 11.6% |
| v. NRC-U requiring single scope investigation | SSBI—Single Scope Background Investigation (120 Day Service, Code C). | 11.6% |
| vi. NRC-U requiring single scope investigation (expedited processing). | SSBI—Single Scope Background Investigation (35 Day Service, Code A). | 11.6% |
| vii. NRC-U based on certification of comparable investigation ² . | No fee assessed for most applications. | |
| viii. NRC-U renewal ² | LBI—Limited Background Investigation (120 Day Service, Code C). | 11.6% |

¹ If the NRC, having reviewed the available data, deems it necessary to perform a single scope investigation, the appropriate NRC-U fee will be assessed prior to the conduct of the investigation.

² If the NRC determines, based on its review of available data, that a single scope investigation is necessary, the appropriate NRC-U fee will be assessed prior to the conduct of the investigation.

(3) Certain applications from individuals having current Federal access authorizations may be processed expeditiously at no cost to the licensee because the Commission, at its discretion, may decide to accept the certification of access authorizations and investigative data from other Federal government agencies that grant personnel access authorizations.

access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable single scope background investigation may be permitted, in accordance with §11.11, the same level of unescorted access that an NRC-U special nuclear material access authorization would afford.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE-Q

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses

Nuclear Regulatory Commission

§ 11.21

an active NRC or DOE-L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a comparable or greater background investigation consisting of a national agency check with law and credit may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC-R special nuclear material access authorization would afford. An NRC or DOE-L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check with credit granted or being processed by another Federal agency before January 1, 1998, is acceptable to meet this requirement.

[64 FR 15645, Apr. 1, 1999, as amended at 68 FR 62511, Nov. 5, 2003; 68 FR 65765, Nov. 21, 2003; 68 FR 58800, Oct. 10, 2003]

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or canceled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Facilities and Security immediately, by telephone, so that the investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Facilities and Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the single scope investigation at the time of withdrawal or cancellation.

[64 FR 15647, Apr. 1, 1999]

CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO, OR CONTROL OVER, SPECIAL NUCLEAR MATERIAL

§ 11.21 Application of the criteria.

(a) The decision to grant or deny special nuclear material access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, that to grant or deny

special nuclear material access authorization is or is not inimical to the common defense and security and is or is not clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in § 10.11 of this chapter a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which in the opinion of the Commission create a question as to the individual's eligibility for special nuclear material access authorization. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of an investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it creates a question as to the individual's eligibility for special nuclear material access authorization. In these cases, the application of the criteria must be made in light of and with specific regard to whether the existence of the information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Facilities and Security, may authorize the granting of a special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of the interview and other investigation as the Director deems appropriate, may authorize the granting of a special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for a special nuclear material access authorization must be resolved in accordance with the procedures set forth in §§ 10.20 through 10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for a special nuclear