

AB 99-2  
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SEP 20 1984

MEMORANDUM FOR: Richard Dopp, Chief  
Security Policy Branch  
Division of Security, ADM

FROM: Willard B. Brown, Chief  
Fuel Facility SG Licensing Branch  
Division of Safeguards, NMSS

SUBJECT: PART 11, CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY  
FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

As discussed in a September 11, 1984 meeting between L. Himmelsback of your staff and C. Rossomondo of my staff, we are requesting that your office begin preparation of the Material Access Authorization Acknowledgement Form. We are currently amending Part 11 for issuance as a proposed rule. We hope to have the proposed rule published sometime in Summer 1985.

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Willard B. Brown, Chief  
Fuel Facility SG Licensing Branch  
Division of Safeguards, NMSS

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## REGULATORY ANALYSIS

### Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material (10 CFR Part 11)

#### Statement of Problem

Paragraph 10 CFR 11.11 requires each licensee who uses, processes, stores, transports or delivers to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR Part 73) to identify all jobs under <sup>its</sup> ~~his~~ control in which an individual could steal or divert special nuclear material, or commit sabotage which could endanger the public by exposure to radiation. This paragraph further requires that persons who occupy the identified job positions must be granted the appropriate level of NRC special nuclear material access authorization for initial or continued employment in such positions ("NRC-U" authorization for persons whose jobs permit them to have direct access to the special nuclear material; and "NRC-R" authorization for those who do not have direct access to the special nuclear material, but do have a requirement for unescorted access to protected areas wherein such material is located).

Paragraph 10 CFR 11.15 requires the initial and renewal applications for NRC special nuclear material access authorization for the affected licensee employees to be submitted on forms supplied by the Commission. This paragraph authorizes the Commission to accept certification of access authorization and investigative data from other Federal Government agencies for more expeditious and less costly processing of their applications. It also allows affected licensees to grant unescorted access to special nuclear material or to protected areas to employees of the Commission, the Department of Energy (DOE) and the Department of Defense (DOD), when such employees have personnel access authorizations or clearances which were based on investigations which are comparable

to the investigations required for the level of access to special nuclear material or protected areas needed during official business visits at affected facilities. However, there are no provisions for formally granting NRC special nuclear material access authorizations to persons who have similar personnel access authorizations or clearances and are in, or applying for, positions at an NRC Licensed facility which require continuing access to special nuclear material or protected areas.

At the time that 10 CFR Part 11 was promulgated (1980), more than a dozen nuclear fuel facilities were affected by it. The rationale for requiring application on NRC forms by all affected personnel was to provide a uniformed system which was tailored to the needs of most licensees; and at the same time, establish a central investigative data file at the Commission Headquarters for all special nuclear material access authorizations granted by the Commission. Since that time, the number of licensed fuel facilities having formula quantities of special nuclear material has been significantly reduced. All of those remaining have requirements, to varying degrees, for NRC and/or DOE personnel access authorizations. The levels of these authorizations are the same (Q and L); and they are based on the same type of investigations (full field Background Investigation and National Agency Check, respectively). Accordingly, current investigative data (less than five years old) on file with either of these two agencies would be acceptable for granting the comparable level of access to special nuclear material (i.e., "Q" to "NRC-U" and "L" to "NRC-R"). The granting of access to special nuclear material to employees of other Federal agencies (e.g., the Department of Defense) which have comparable current investigative data on file would be consistent with this policy. Also, forms issued by other Federal agencies which are of similar design and contain all of the information required on the NRC application forms would be acceptable substitutes for the NRC forms.

Due to a delay in the Congressional approval for the Commission to collect the fees associated with applications for special nuclear material access authorization; and the fluctuation, during the period of 1980 through 1982, in the number of fuel facilities which would be affected by the regulations contained in 10 CFR Part 11, the Commission has delayed full implementation of those regulations. Now that all of the necessary legal and administrative

arrangements have been made to collect the application fees, and that the number of affected licensees is stabilized, the time is ideal to modify these regulations to allow the following:

- (a) Conversion of NRC and DOE personnel access authorizations to equivalent levels of NRC special nuclear material access authorizations (i.e., "Q" to "NRC-U" and "L" to "NRC-R", respectively), when the investigations on which such personnel access authorizations were based are current (less than five years old) and equivalent to those required for the level of access to special nuclear material for which applications are being made.
- (b) Acceptance of forms accompanying the application for SNM access authorization which are issued by other Federal agencies, when such forms contain all of the information required on the prescribed NRC forms.
- (c) Acceptance by the Commission, <sup>when</sup> ~~certification~~ <sup>ed</sup> ~~from~~ <sup>by</sup> other Federal agencies, of current investigative data (less than five years old) when personnel of such agencies are making application for NRC special nuclear material access authorization and the investigative data on file are equivalent to that required for the level of special nuclear material access authorization for which applications are being made.
- (d) Incorporation of minor administrative changes which have occurred since publication of the original rule in 1980 (e.g., date for annual revision of fees schedule has been changed from December to July; and ~~changing~~ the fee for a full field investigation <sup>has been changed</sup> from \$1550.00 to \$1665.00).

As a result of the delay in the full implementation of 10 CFR Part 11, no applications for NRC SNM access authorization have been filed under the existing system. Therefore, no licensee has been adversely impacted by the stringent application requirements of the original rule. An amendment to effect the

foregoing changes to the rule would achieve all of the Commission's objectives of its special nuclear material access authorization program; and at the same time, not require licensees to duplicate efforts and expenditures for equivalent investigations and application data which have been accomplished to satisfy requirements of other Federal agencies.

The significance of taking no action to resolve this problem would be to require unnecessary and unreasonable expenditures and personnel time loss on the part of licensees and their employees to acquire information which is already available from other Federal sources.

### Objective

The objective of this rulemaking action is to provide an effective program for the Commission to grant special nuclear material access authorizations without imposing undue hardships on licensees. This can be achieved by effecting the foregoing changes to the existing rule, which will allow the Commission to "grandfather" certain cleared licensee employees into the program and to accept application forms and investigative data provided by other Federal agencies.

### Alternatives

Two alternatives were considered, in detail:

- 1) Fully implement the current rule, without further delay.
- 2) Amend the current rule to achieve the stated objective.

### Consequences

The costs and/or benefits of this rulemaking action are summarized as follows:

- 1) Due to a delay by the Commission in fully implementing the current rule (as expressed in the above stated problem) licensees have not



filed any applications for special nuclear material access authorization, or paid any fees for personnel investigations for this purpose.

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- 2) For each applicant for an NRC-"U" special nuclear material access authorization who has had a current full field background investigation conducted to satisfy personnel clearance requirements of another Federal agency, the amended rule will allow the employing licensee to submit a conversion fee of \$15.00, as opposed to \$1665.00, which is currently required for the full field investigation. In some instances, this may be as many as one third of the total number of employees who require initial NRC special nuclear material access authorization. Additionally, fewer forms are required for applicants in this category and considerably less processing time is expended by the NRC reviewing officials, as well as the applicants.
- 3) There will be no cost or impact on NRC operations other than the normal staff time expended and the cost of publishing the amendment notices in the Federal Register. The staff time required for drafting, coordinating and preparing the notice for final publication has, for the most part, already been expended. Only a small amount of future effort, on the part of the staff, is anticipated. The cost per page for publication in the Federal Register is approximately \$400. This notice should take less space than two full pages. Thus, the cost for publishing both a proposed and final rule notice will be less than \$1600.
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### Conclusion

Alternative 2 ("Amend the current rule to achieve the stated objective") should be implemented. The monetary cost to the Commission is minimum, as compared to the adverse impact of imposing on fuel facility licensees, outmoded and unreasonable requirements of the existing rule (i.e., less than the cost of one full field background investigation to amend the rule).