reinvestigation program or other
sources, will be evaluated relative to
an individual's continued eligibility in
accordance with the procedures of this
part.
[64 FR 15645, Apr. 1, 1999]

Subpart D—Miscellaneous

§ 10.36 Terminations.
In the event the individual is no
longer an applicant for access author-
ization and/or employment clearance
or no longer requires such, the proce-
dures of this part shall be terminated
without a final determination as to the
individual's eligibility for access au-
thorization and/or employment clear-
ance.

§ 10.37 Attorney representation.
In the event the individual is rep-
resented by an attorney or other rep-
resentative, the individual shall file
with the Director, Office of Adminis-
tration, a document designating such
attorney or representative and author-
izing such attorney or representative
to receive all correspondence, tran-
scripts, and other documents per-
taining to the proceeding under this
part.
[47 FR 38676, Sept. 2, 1982, as amended at 52
FR 31610, Aug. 21, 1987; 54 FR 53316, Dec. 28,
1989]

§ 10.38 Certifications.
Whenever information is made a part
of the record under the exceptions au-
thorized by §10.28 (i), (j), or (l), the
record shall contain certificates evi-
dencing that the required determina-
tions have been made.

PART 11—CRITERIA AND PROCE-
DURES FOR DETERMINING ELIGI-
BILITY FOR ACCESS TO OR CON-
TROL OVER SPECIAL NUCLEAR
MATERIAL

GENERAL PROVISIONS

Sec. 11.1 Purpose.
11.3 Scope.
11.5 Policy.
11.7 Definitions.
11.9 Specific exemptions.
11.10 Maintenance of records.

REQUIREMENTS FOR SPECIAL NUCLEAR
MATERIAL ACCESS AUTHORIZATION

11.11 General requirements.
11.13 Special requirements for transpor-
tation.
11.15 Application for special nuclear mate-
rial access authorization.

CRITERIA FOR DETERMINING ELIGIBILITY FOR
ACCESS TO, OR CONTROL OVER, SPECIAL NU-
CLEAR MATERIAL

11.21 Application of the criteria.

VIOLATIONS

11.30 Violations.
11.32 Criminal penalties.

AUTHORITY: Sec. 161, 68 Stat. 948, as amend-
ed (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as
amended (42 U.S.C. 5841); sec. 1704, 112 Stat.
2750 (44 U.S.C. 3504 note).
Section 11.15(e) also issued under sec. 501,
SOURCE: 45 FR 76970, Nov. 21, 1980, unless
otherwise noted.

GENERAL PROVISIONS

§ 11.1 Purpose.
This part establishes the require-
ments for special nuclear material ac-
thorization, and the criteria and
procedures for resolving questions con-
cerning the eligibility of individuals to
receive special nuclear material access
authorization for conduct of certain ac-
tivities, licensed or otherwise, which
involve access to or control over spe-
cial nuclear material.

§ 11.3 Scope.
(a) The requirements, criteria, and
procedures of this part apply to the es-
tablishment of and eligibility for spe-
cial nuclear material access authoriza-
tion for employees, contractors, con-
sultants of, and applicants for employ-
ment with licensees or contractors of
the Nuclear Regulatory Commission.
This employment, contract, service, or
consultation may involve any duties or
assignments within the criteria of
§11.11 or §11.13 requiring access to, or
control over, formula quantities of spe-
cial nuclear material (as defined in
part 73 of this chapter).
(b) The requirements, criteria, and procedures of this part are in addition to and not in lieu of any requirements, criteria, or procedures for access to or control over classified special nuclear material.

§ 11.5 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its authority to establish and administer, in a manner consistent with traditional American concepts of justice, a personnel security program in the interests of the common defense and security for the purpose of safeguarding special nuclear material and preventing sabotage which would endanger the public by exposure to radiation. To this end, the Commission has established criteria for determining eligibility for special nuclear material access authorization and will afford affected individuals the opportunity for administrative review of questions concerning their eligibility for special nuclear material access authorization.

§ 11.7 Definitions.

As used in this part:

Terms defined in parts 10, 25, 50, 70, 72, 73, and 95 of this chapter have the same meaning when used in this part.

NRC-"R" special nuclear material access authorization means an administrative determination based upon a national agency check with law and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of §11.11(a)(2).

NRC-"U" special nuclear material access authorization means an administrative determination based upon a single scope background investigation, normally conducted by the Office of Personnel Management, that an individual in the course of employment is eligible to work at a job falling within the criterion of §11.11(a)(1) or 11.13.

Special nuclear material access authorization means an administrative determination that an individual (including a contractor or consultant) who is employed by or is an applicant for employment with an affected Commission contractor, licensee of the Commission, or contractor of a licensee of the Commission may work at a job which affords access to or control over special nuclear material and that permitting the individual to work at that job would not be inimical to the common defense and security.

§ 11.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0062.

(b) The approved information collection requirements contained in this part appear in §§11.9, 11.11, 11.13, 11.15, and 11.16.

§ 11.9 Specific exemptions.

The Commission may, upon application of any interested party, grant an exemption from the requirements of this part. Exemptions will be granted only if they are authorized by law and will not constitute an undue risk to the common defense and security. Documentation related to the request, notification and processing of an exemption shall be maintained for three years beyond the period covered by the exemption.

§ 11.10 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or
§ 11.11 General requirements.

(a) Each licensee who uses, processes, stores, transports, or delivers to a carrier for transport, formula quantities of special nuclear material (as defined in part 73 of this chapter) subject to the physical protection requirements of §§ 73.20, 73.25, 73.26, 73.45, and 73.46, and each person subject to the general licensing requirements of § 70.20a, shall identify at its facility or plant (excluding all non-power reactor facilities and storage of fuel incident thereto and facilities and plants in which the licensee possesses or uses only irradiated special nuclear material subject to the exemption of § 73.6(b)), describe, and if not already provided, provide to the Commission, by December 26, 1985 by amendment to its security plan:

(1) All jobs in which an individual could steal or divert special nuclear material, or commit sabotage which would endanger the public by exposure to radiation, by working alone or in cooperation with an individual who does not possess an NRC-U special nuclear material access authorization, or by directing or coercing any individual to assist in the theft, diversion, or sabotage. Such jobs include but are not limited to:

(i) All positions in the licensee's security force,

(ii) Management positions with the authority to:

(A) Direct the actions of members of the security force or alter security procedures, or

(B) Direct routine movements of special nuclear material, or

(C) Direct the routine status of vital equipment.

(iii) All jobs which require unescorted access within onsite alarm stations.

(iv) All jobs which require unescorted access to special nuclear material or within vital areas.

(2) All jobs which require unescorted access within protected areas and which do not fall within the criterion of paragraph (a)(1) of this section.

(b) After 365 days following Commission approval of the amended security plan submitted in accordance with paragraph (a) of this section, no individual may be permitted to work at any job determined by the Commission to fall within the criterion of paragraph (a)(1) of this section without an NRC-U special nuclear material access authorization, and no individual may be permitted unescorted access to any protected area at any site subject to this part without either an NRC-U or NRC-R special nuclear material access authorization. The exceptions to the requirement for an NRC-U and NRC-R special nuclear material access authorization are as follows:

(1) Exceptions to the requirement for an NRC-U special nuclear material access authorization for an individual to work at a job within the criteria of paragraph (a)(1) are provided for:

(i) Any individual employed in such a job on October 28, 1985, who is not yet in receipt of an NRC-U special nuclear material access authorization from the Commission, 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) and (b); or

(ii) Any individual in possession of an NRC-L or R access authorization or an equivalent active Federal security clearance but not yet in receipt of the NRC-U special nuclear material access authorization, provided that a complete application has been submitted to

2This does not alter the requirement for methods to observe individuals within material access areas as stated in § 73.46(e)(9) of this chapter.
Nuclear Regulatory Commission

§ 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://

and is pending before the NRC for processing for that employee in accordance with §11.15 (a) or (b), or both.

(2) Exceptions to the requirement for an NRC-R special nuclear material access authorization for an individual to have unescorted access to a protected area are provided for:

(i) Any individual employed in such a job on October 28, 1985 who is not yet in receipt of an NRC-R special nuclear material access authorization from the Commission, 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) and (b); or

(ii) Any individual in possession of an NRC-L access authorization or an equivalent active Federal security clearance, provided that a complete application has been submitted to the NRC for processing for that employee in accordance with §11.15 (a) or (b), or both.


§ 11.13 Special requirements for transportation.

(a) All individuals who, after 365 days following approval of the amended security plan submitted in accordance with §11.11(a), transport, arrange for transport, drive motor vehicles in road shipments of special nuclear material, pilot aircraft in air shipments of special nuclear material, act as monitors at transfer points, or escort road, rail, sea, or air shipments of special nuclear material subject to the appropriate physical protection requirements 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  10 CFR Ch. I (1–1–08 Edition)

www.nrc.gov/site-help/ e-submittals.html, by calling (301) 415–0439, by e-mail to EIE@nrc.gov, or by writing the Office of Information Services, U.S. Nuclear 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 non-public 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 clearance, and determining the investigative basis and level of clearance. Licensees may directly request the Federal agency that administered the security clearance 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 instructions (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 Re-investigation Program requirements. For these individuals, the submission to DOE of the SF–86 pursuant to DOE Re-investigation 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 Re-investigation 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 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 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 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 processing overhead are recovered from the licensee through a special nuclear material access authorization fee calculated with reference to current OPM personnel investigation billing rates (OPM rate + [(OPM rate × 31.7%), 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 Personnel Security Branch, Division of Facilities and Security, Office of Administration at (301-415-7739). 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 × 31.7%), rounded to the nearest dollar] = NRC access authorization fee) and with reference to the following table:

<table>
<thead>
<tr>
<th>The NRC application fee for an access authorization of type * * *</th>
<th>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 31.7% (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. NRC-R$^1$ ..................................................................................................................</td>
<td>NACLC—National Agency Check with Law and Credit (Standard Service, Code B). 31.7</td>
</tr>
<tr>
<td>ii. NRC-R$^1$ (expedited processing) .......................................................</td>
<td>NACLC—National Agency Check with Law and Credit (Expedite Handling, Code A). 31.7</td>
</tr>
</tbody>
</table>

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The NRC application fee for an access authorization of type * * *

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>iii. NRC–R based on certification of comparable investigation</td>
<td>No fee assessed for most applications.</td>
</tr>
<tr>
<td>v. NRC–U requiring single scope investigation</td>
<td>31.7</td>
</tr>
<tr>
<td>vi. NRC–U requiring single scope investigation (expedited processing)</td>
<td>31.7</td>
</tr>
<tr>
<td>vii. NRC–U based on certification of comparable investigation</td>
<td>31.7</td>
</tr>
<tr>
<td>viii. NRC–U renewal</td>
<td>LBI—Limited Background Investigation (120 Day Service, Code C).</td>
</tr>
</tbody>
</table>

*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 ** percent.**

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 before 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 before 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.

(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 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-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.


§ 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 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 granting access would be inimical to the common defense and security. The Director, Division of Facilities and Security, 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 material access authorization by action of the Hearing Examiner or a Personnel Security Review Panel, the following principle shall be applied by the Examiner and the Personnel Security Review Panel: Where there are sufficient grounds to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of this information supports a reasonable belief that granting access would be inimical to the common defense and security, this will be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.


VIOLATIONS

§ 11.30 Violations.  
(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—
(1) The Atomic Energy Act of 1954, as amended;
(2) Title II of the Energy Reorganization Act of 1974, as amended; or
(3) A regulation or order issued pursuant to those Acts.
(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:
(1) For violations of—

3The functions of the Hearing Examiner and the Personnel Security Review Panel are described in part 10 of this chapter.
§ 11.32 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all regulations in part 11 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 11 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.32.

[57 FR 55070, Nov. 24, 1992]

§ 11.32 Criminal penalties.

Subpart C—Procedures for Considering Applications

12.201 Contents of application.
12.203 Documentation of fees and expenses.
12.204 When an application may be filed.

Subpart C—Procedures for Considering Applications

12.301 Filing and service of documents.
12.302 Answer to application.
12.303 Reply.
12.304 Comments by other parties.
12.305 Settlement.
12.306 Further proceedings.
12.307 Decision.
12.308 Agency review.
12.309 Judicial review.
12.310 Payment of award.


Source: 59 FR 23121, May 5, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 12.101 Purpose.

The purpose of this part is to state the regulatory requirements for award of attorney fees to eligible individuals and entities in certain administrative proceedings before the Nuclear Regulatory Commission, in implementation of the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), which provides for the award of attorney fees and other expenses to parties to “adversary adjudications”, as defined in 5 U.S.C. 504(b)(1)(C). In general, an “adversary adjudication” is an adjudication that is required by statute to be determined on the record after opportunity for hearing before an agency of the United States and in which the position of the agency, or any component of the agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. However, some agency adjudications are expressly excluded from coverage by 5 U.S.C. 504 (e.g., an adjudication for the purpose of granting or renewing a license) even though they fall within this general definition, and certain appeals before an agency board of contract appeals and Program Fraud Civil Remedies Act hearings conducted under 31 U.S.C. ch. 38 are expressly covered.

An eligible party may receive an award in an adversary adjudication