

§ 26.63

10 CFR Ch. I (1-1-11 Edition)

§ 26.63 Suitable inquiry.

(a) In order to grant authorization, licensees and other entities shall ensure that a suitable inquiry has been conducted, on a best effort basis, to verify the individual's self-disclosed information and determine whether any potentially disqualifying FFD information is available, except if all of the following conditions are met:

(1) The individual previously held authorization under this part;

(2) The licensee or other entity has verified that the individual's last period of authorization was terminated favorably; and

(3) The individual has been subject to a behavioral observation program that includes arrest reporting, which meets the requirements of this part, throughout the period of interruption.

(b) To meet the suitable inquiry requirement, licensees and other entities may rely on the information that other licensees and entities who are subject to this subpart have gathered for previous periods of authorization. Licensees and other entities may also rely on those licensees' and entities' determinations of fitness that were conducted under § 26.189, as well as their reviews and resolutions of potentially disqualifying FFD information, for previous periods of authorization.

(c) The licensee or other entity shall ensure that the suitable inquiry has been conducted, on a best effort basis, by questioning former employers, and the employer by whom the individual claims to have been employed on the day before he or she completes the employment history, if an employment history is required under § 26.61.

(1) For the claimed employment period, the suitable inquiry must ascertain the reason for termination, eligibility for rehire, and other information that could reflect on the individual's fitness to be granted authorization.

(2) If the claimed employment was military service, the licensee or other entity who is conducting the suitable inquiry shall request a characterization of service, reason for separation, and any disciplinary actions related to potentially disqualifying FFD information. If the individual's last duty station cannot provide this information, the licensee or other entity may accept

a hand-carried copy of the DD 214 presented by the individual which on face value appears to be legitimate. The licensee or other entity may also accept a copy of a DD 214 provided by the custodian of military records.

(3) If a company, previous employer, or educational institution to whom the licensee or other entity has directed a request for information refuses to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee or other entity shall document this refusal, inability, or unwillingness in the licensee's or other entity's record of the investigation, and obtain a confirmation of employment or educational enrollment and attendance from at least one alternate source, with suitable inquiry questions answered to the best of the alternate source's ability. This alternate source may not have been previously used by the licensee or other entity to obtain information about the individual's character. If the licensee or other entity uses an alternate source because employer information is not forthcoming within 3 business days of the request, the licensee or other entity need not delay granting authorization to wait for any employer response, but shall evaluate and document the response if it is received.

(d) When any licensee or other entity in § 26.3(a) through (d) is legitimately seeking the information required for an authorization decision under this subpart and has obtained a signed release from the subject individual authorizing the disclosure of information, any licensee or other entity who is subject to this part shall disclose whether the subject individual's authorization was denied or terminated unfavorably as a result of a violation of an FFD policy and shall make available the information on which the denial or unfavorable termination of authorization was based, including, but not limited to, drug or alcohol test results, treatment and followup testing requirements or other results from a determination of fitness, and any other information that is relevant to an authorization decision.

(e) In conducting a suitable inquiry, a licensee or other entity may obtain

information and documents by electronic means, including, but not limited to, telephone, facsimile, or e-mail. The licensee or other entity shall make a record of the contents of the telephone call and shall retain that record, and any documents or electronic files obtained electronically, under §§26.711 and 26.713(a), (b), and (c), as applicable.

(f) For individuals about whom no potentially disqualifying FFD information is known (or about whom potentially disqualifying FFD information is known, but it has been resolved by a licensee or other entity who is subject to this subpart) at the time at which the suitable inquiry is initiated, the licensee or other entity shall ensure that a suitable inquiry has been conducted as follows:

(1) Initial authorization. The period of the suitable inquiry must be the past 3 years or since the individual's eighteenth birthday, whichever is shorter. For the 1-year period immediately preceding the date on which the individual applies for authorization, the licensee or other entity shall ensure that the suitable inquiry has been conducted with every employer, regardless of the length of employment. For the remaining 2-year period, the licensee or other entity shall ensure that the suitable inquiry has been conducted with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(2) Authorization update. The period of the suitable inquiry must be the period since authorization was terminated. For the 1-year period immediately preceding the date on which the individual applies for authorization, the licensee or other entity shall ensure that the suitable inquiry has been conducted with every employer, regardless of the length of employment. For the remaining period since authorization was terminated, the licensee or other entity shall ensure that the suitable inquiry has been conducted with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(3) Authorization reinstatement after an interruption of more than 30 days. The period of the suitable inquiry must be the period since authorization was terminated. The licensee or other entity shall ensure that the suitable inquiry has been conducted with the employer by whom the individual claims to have been employed the longest within the calendar month, if the individual claims employment during the given calendar month.

§ 26.65 Pre-access drug and alcohol testing.

(a) *Purpose.* This section contains pre-access testing requirements for granting authorization to an individual who either has never held authorization or whose last period of authorization was terminated favorably and about whom no potentially disqualifying FFD information has been discovered or disclosed that was not previously reviewed and resolved by a licensee or other entity under the requirements of this subpart.

(b) *Accepting tests conducted within the past 30 days.* If an individual has negative results from drug and alcohol tests that were conducted under the requirements of this part before the individual applied for authorization from the licensee or other entity, and the specimens for such testing were collected within the 30-day period preceding the day on which the licensee or other entity grants authorization to the individual, the licensee or other entity may rely on the results of those drug and alcohol tests to meet the requirements for pre-access testing in this section.

(c) *Initial authorization and authorization update.* Before granting authorization to an individual who has never held authorization or whose authorization has been interrupted for a period of more than 365 days, the licensee or other entity shall verify that the results of pre-access drug and alcohol tests, which must be performed within the 30-day period preceding the day the licensee or other entity grants authorization to the individual, are negative. The licensee or other entity need not conduct pre-access testing if—

(1) The individual previously held authorization under this part and has