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[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AJ00

[NRC-2011-0161]

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its access authorization fees charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). The amended cost is due to an increase in the review time for each application for access authorization. The NRC's formula for calculating fees remains the same and is based on current Office of Personnel Management (OPM) billing rates for background investigations. The formula is designed to recover the full cost of processing a request for access authorization from an NRC licensee.

DATES: Submit comments by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this proposed rule, which the NRC possesses and is publicly available, by searching on

<http://www.regulations.gov> under Docket ID NRC-2011-0161. You may submit comments related to this proposed rule by the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0161. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

You may submit comments on the information collections by the methods described in the SUPPLEMENTARY INFORMATION section of this document, under the heading, "Paperwork Reduction Act Statement."

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Emily Robbins, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-492-3524, e-mail: Emily.Robbins@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2011-0161 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, which the NRC possesses and is publicly available, by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0161.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2011-0161 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment

submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Procedural Background

Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this *Federal Register*. The amendments make a routine adjustment to the access authorization fees and are of a minor and administrative nature. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on **[INSERT DATE 50 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. However, if the NRC receives significant adverse comments on the direct final rule by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC staff to make a change (other than editorial) to the rule.

For additional procedural information, see the direct final rule published in the Rules and Regulations section of this *Federal Register*.

List of Subjects

10 CFR Part 11

Hazardous materials - transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing the following amendments to Title 10 of the *Code of Federal Regulations* (10 CFR), Parts 11 and 25.

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

1. The authority citation for part 11 is revised to read as follows:

AUTHORITY: Atomic Energy Act sec. 161 (42 U.S.C. 2201); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 11.15(e) also issued under Independent Offices Appropriations Act sec. 501, (31 U.S.C. 9701); Omnibus Reconciliation Act of 1990 sec. 6101 (42 U.S.C. 2214).

FEDERAL REGISTER CITATION: October 10, 2003; 68 FR 58792, 58800.

2. In § 11.15:
 - i. Add paragraph (e) introductory text;
 - ii. Revise paragraphs (e)(1) and (e)(2);
 - iii. Redesignate paragraph (e)(3) as paragraph (e)(4); and
 - iv. Add a new paragraph (e)(3).

The revisions and addition read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e) The Office of Personnel Management (OPM) bills the NRC for the cost of each background investigation conducted in support of an application for special nuclear material access authorization (application). The combined cost of the OPM investigation and the NRC's application processing overhead (NRC processing fee) are recovered through a material access authorization fee imposed on applicants for special nuclear material access authorization.

(1) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC material access authorization fee. This fee must be determined using the following formula: the OPM investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC material access authorization fee. The NRC processing fee is determined by multiplying the OPM investigation billing rate on the day of NRC receipt of the application by 55.8 percent (i.e., OPM rate x 55.8 percent).

(2) Updated OPM investigation billing rates are published periodically in a Federal Investigations Notice (FIN) issued by the OPM's Federal Investigative Services. Copies of the current OPM investigation billing rates schedule can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by e-mail to Licensee_Access_Authorization_Fee@nrc.gov.

(3) The NRC's Material Access Authorization Program (MAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for MAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review the MAAP fees are adjusted to reflect the current cost for the program. Copies of the current NRC material access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by e-mail to: Licensee_Access_Authorization_Fee@nrc.gov. 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 the OPM's most recently published investigation billing rates schedule. Applicants shall calculate the access authorization fee according to the stated formula (i.e., OPM rate x 55.8 percent) and with reference to the following table:

The NRC Application Fee for an Access Authorization of Type * * *	Is the Sum of the Current OPM Investigation 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 Investigation 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 C)	55.8%
ii. NRC-R Based on Certification of Comparable Investigation ²	No fee assessed for most applications	
iii. NRC-R renewal ¹	NACLC - National Agency Check with Law and Credit (Standard Service, Code C)	55.8%
iv. NRC-U requiring single scope investigation	SSBI-Single Scope Background Investigation (Standard Service, Code C)	55.8%
v. NRC-U requiring single scope investigation (expedited processing)	SSBI - Single Scope Background Investigation (Priority Handling, Code A)	55.8%
vi. NRC-U based on certification of comparable investigation ²	No fee assessed for most applications	
vii. NRC-U renewal ²	SSBI-PR – Periodic Reinvestigation for SSBI (Standard Service, Code C)	55.8%

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.

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PART 25--ACCESS AUTHORIZATION

3. The authority citation for part 25 is revised to read as follows:

AUTHORITY: Atomic Energy Act secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959-1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 3 CFR 2010 Comp., pp. 298-327; E.O. 12968, 3 CFR, 1995 Comp, p. 396;

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; Omnibus Reconciliation Act of 1990 sec. 6101 (42 U.S.C. 2214).

FEDERAL REGISTER CITATION: November 30, 2010; 75 FR 73935, 73941.

4. In § 25.17(f):

- i. Add paragraph (f) introductory text;
- ii. Revise paragraphs (f)(1) and (f)(2);
- iii. Redesignate paragraph (f)(3) as paragraph (f)(4); and
- iv. Add a new paragraph (f)(3).

The revisions and addition read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(f) The Office of Personnel Management (OPM) bills the NRC for the cost of each background investigation conducted in support of an application for access authorization (application). The combined cost of the OPM investigation and the NRC's application processing overhead (NRC processing fee) are recovered through an access authorization fee imposed on applicants for access authorization.

(1) Each application for access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC access authorization fee. This fee must be determined using the following formula: the OPM investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC access authorization fee. The NRC processing fee is determined by multiplying the OPM investigation billing rate on the day of NRC receipt of the application by 55.8 percent (i.e., OPM rate x 55.8 percent).

(2) Updated OPM investigation billing rates are published periodically in a Federal Investigations Notice (FIN) issued by the OPM's Federal Investigative Services. Copies of the current OPM investigation billing rates schedule can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by e-mail to Licensee_Access_Authorization_Fee@nrc.gov.

(3) The NRC's Information Access Authority Program (IAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for IAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review the IAAP fees are adjusted to reflect the current cost for the program. Copies of the current NRC access authorization fee

may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by e-mail to: Licensee_Access_Authorization_Fee@nrc.gov.

Any change in the NRC's access authorization fee will be applicable to each access authorization request received on or after the effective date of the OPM's most recently published investigation billing rates schedule.

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5. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25 - FEES FOR NRC ACCESS AUTHORIZATION

The NRC Application Fee for an Access Authorization of Type * * *	Is the Sum of the Current OPM Investigation 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 Investigation Billing Rate for the Type of Investigation Referenced Multiplied By * * *
Initial "L" access authorization ¹	ANACI - Access National Agency Check with Inquiries (Standard Service, Code C)	55.8%
Reinstatement of "L" access authorization ²	No fee assessed for most applications	
Renewal of "L" access authorization ¹	NACLC - Access National Agency Check with Law and Credit (Standard Service, Code C)	55.8%
Initial "Q" access authorization	SSBI - Single Scope Background Investigation (Standard Service, Code C)	55.8%

Initial "Q" access authorization (expedited processing)	SSBI - Single Scope Background Investigation (Priority Handling, Code A)	55.8%
Reinstatement of "Q" access authorization ²	No fee assessed for most applications	
Renewal of "Q" access authorization ¹	SSBI-PR – Periodic Reinvestigation for SSBI (Standard Service, Code C)	55.8%

¹ If the NRC determines, based on its review of available data, that a single scope investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.

² Full fee will only be charged if an investigation is required.

Dated at Rockville, Maryland, this 19th day of April, 2012.

For the Nuclear Regulatory Commission.

/RA/

R.W. Borchardt
Executive Director for Operations

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