

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AH30

Assessment of Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to change the way the agency assesses access authorization fees. The NRC is replacing its set fee schedules for special nuclear material access authorization and national security information or restricted data access authorization with a formula for calculating fees based on current Office of Personnel Management (OPM) billing rates for personnel background investigations. The new formula is designed to recover the full cost of processing a request for access authorization from the licensee. The use of a fee assessment formula tied to current OPM billing rates will eliminate the need for the NRC to update its access authorization fee schedules through regular rulemakings.

EFFECTIVE DATE: November 5, 2003

ADDRESSES: Publicly available documents pertaining to this rulemaking may be accessed through the NRC's Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If ADAMS access is not available or difficulty is encountered in its use, contact

the NRC PDR Reference staff at 1-800-397-4209, (301) 415-4737, or through the PDR's e-mail address at pdr@nrc.gov.

Publicly available NRC documents related to this final rule can also be viewed on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O-1 F21. The PDR reproduction contractor will make copies of documents for a fee.

FOR FURTHER INFORMATION CONTACT: Patricia A. Smith, Security Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7739, e-mail pas5@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Certain individuals employed by licensees or contractors of the Nuclear Regulatory Commission (NRC) are assigned duties which require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235) or to restricted data or national security information. Individuals who require access to such material or information must obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates a full-field background investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC will determine whether permitting the individual access to special nuclear material, restricted data, or national security information would create a security risk.

The Office of Personnel Management (OPM) conducts the required access authorization background investigations for the NRC and sets the rates charged for these

investigations. The combined cost of the OPM background investigation and any related NRC processing activities are recovered from the licensee through an access authorization fee assessed by the NRC. It has been the NRC's practice to publish the fee schedule for special nuclear material access authorization in § 11.15(e)(1) and the corresponding fee schedule for restricted data and national security information access authorization in Appendix A to 10 CFR Part 25. Both schedules have been based on rates charged by OPM for conducting the required background investigations. In the past, the NRC has amended its fee schedules whenever OPM has notified Federal agencies of a change in the rates charged for conducting background investigations, with the NRC's adjusted fees becoming effective on the date the new NRC fee schedules were published in the Federal Register.

Discussion

The NRC's past practice of publishing adjusted fee schedules in response to OPM rate changes led to frequent NRC rulemakings to revise § 11.15(e)(1) and Appendix A to Part 25. Rulemaking is a resource-intensive and inefficient means of accomplishing purely administrative purposes such as, in this case, the maintenance of NRC fee schedules fully reflective of current OPM billing rates for routine agency-to-agency services. Moreover, past NRC rulemakings to update the access authorization fee schedules did not take into account the increasing in-house cost to the NRC of processing access authorization applications. This final rule amends § 11.15(e), § 25.17(f), and Appendix A to Part 25 to establish a formula for calculating NRC fees that is directly tied to published OPM billing rates. This amendment will ensure that the NRC's administrative costs are fully recovered through access authorization fees charged to licensees, while obviating the need for routine rulemakings to amend the fee schedules.

This final rule replaces the NRC's set schedule of access authorization fees with tables which allow licensees to calculate the NRC fee for any given application by reference to the current OPM billing schedule for personnel investigation services. Investigations Reimbursable Billing Rates for personnel background checks are published by OPM's Investigations Service in a Federal Investigation Notice (FIN). The current OPM billing rates were published as FIN 02-01 on November 1, 2001 and became effective on January 1, 2002. FIN 02-01 is available on OPM's Investigations Service web site at <http://www.opm.gov/extra/investigate/fins.htm>. NRC licensees can also obtain the current OPM investigations rate schedule from the Security Branch of the NRC's Division of Facilities and Security by contacting the individual named under the FOR FURTHER INFORMATION CONTACT heading.

The amendments define the NRC's access authorization fee for any given request as the sum of (1) the current OPM billing rate for the required investigation and (2) the NRC's in-house processing fee. As noted, the OPM billing rate is pulled directly from the current OPM fee schedule for investigations. The new tables in § 11.15(e)(2) and Appendix A to Part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed on OPM's fee schedule. The NRC's in-house processing fee is 11.6% of the relevant OPM rate. The in-house processing fee of 11.6% is based on a recent NRC audit of actual in-house costs incurred in processing licensee applications for access authorization. This fixed percentage of the OPM rate, when added to the base OPM investigations charge, yields the total access authorization fee assessed by the NRC $\{ \text{OPM rate} + [(\text{OPM rate} \times 11.6\%), \text{rounded to the nearest dollar}] = \text{NRC access authorization fee} \}$.

For example, a licensee seeking a special nuclear material "NRC-U" access authorization requiring a single scope background investigation is directed by the table in § 11.15(e)(2) to calculate the application fee based on the OPM billing rate for a "Code C" Single Scope Background Investigation (SSBI). According to the current OPM investigations

fee schedule (FIN 02-01), OPM charges \$2,725 for a “Code C” SSBI. The table instructs the licensee to calculate the NRC processing fee by multiplying \$2,725 by 11.6%, which equals \$316.10. The licensee then rounds the NRC processing fee to the nearest dollar, or \$316, and adds that amount to the OPM investigations fee of \$2,725 to determine the total assessed material access authorization fee: \$3041. The table below illustrates the calculation process:

Current OPM billing rate for SSBI-C	Plus NRC application processing fee				Equals total NRC access authorization fee for NRC-U application
	OPM rate	x	11.6%	= NRC fee (rounded to nearest \$)	
\$2,725	\$2,725	x	11.6%	= \$316.10 (rounded to \$316)	= \$3,041

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in Appendix A to Part 25 cross-references each type of “Q” or “L” access authorization to the corresponding OPM investigation type. The OPM billing rate for the type of investigation referenced is determined by consulting the current OPM schedule of billing rates. This rate is then plugged into the fee assessment formula {OPM rate + [(OPM rate x 11.6%), rounded to the nearest dollar] = NRC access authorization fee}, illustrated above, to calculate the correct NRC access authorization fee for the type of application submitted.

Section-by-Section Analysis

Section 11.15(e)

The revised paragraph § 11.15(e)(1) describes the relationship between OPM and NRC and provides the formula used in calculating the material access authorization fee. This paragraph also explains how to access the OPM billing schedule and specifies that changes to

the access authorization fees become effective on the effective date of OPM's most recently published billing schedule.

The revised § 11.15(e)(2) directs licensees to remit the appropriate access authorization fee with each application submitted, in accordance with the table presented in that paragraph. The table cross-references each type of NRC material access authorization request to a type of investigation in the current OPM fee schedule, and directs licensees to calculate the application fee according to the stated formula {OPM rate + [(OPM rate x 11.6%), rounded to the nearest dollar] = NRC access authorization fee}.

New paragraph § 11.15(e)(3) indicates that applications for individuals that have a current access authorization from another Federal agency may be processed expeditiously at no cost to the licensee.

Section 25.17(f)

The revised paragraph § 25.17(f)(1) describes the relationship between OPM and NRC and provides the formula used in calculating national security information and restricted data access authorization fees. This paragraph also explains how to access the OPM billing schedule and specifies that changes to national security information and restricted data access authorization fees become effective on the effective date of OPM's most recently published billing schedule.

The revised § 25.17(f)(2) directs licensees to remit the appropriate national security information or restricted data access authorization fee with each application submitted. Applicants are instructed to calculate the appropriate fee by using the stated formula {OPM rate + [(OPM rate x 11.6%), rounded to the nearest dollar] = NRC access authorization fee} with reference to the table in Appendix A to Part 25.

New paragraph § 25.17(f)(3) indicates that applications for individuals that have a current access authorization from another Federal agency may be processed expeditiously at no cost to the licensee.

Appendix A to Part 25

The revised table in Appendix A cross-references each type of NRC “Q” or “L” access authorization request to a type of investigation in the current OPM fee schedule, and directs licensees to calculate the application fee according to the stated formula.

Administrative Procedure Act

Because this final rule deals solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). The final rule is effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. This final rule replaces the NRC’s published access authorization fee schedules with a formula for calculating access authorization fees based on current Office of Personnel Management billing rates for personnel background investigations. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule. Because of its procedural nature, this action does not raise environmental justice concerns.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this rulemaking. This final rule establishes a formula for calculating access authorization fees which ensures that the NRC recovers the full cost of application processing from licensees submitting access authorization requests. The formula provides a more efficient and effective mechanism for updating NRC access authorization fees in response to changes in the underlying OPM rate schedule for required personnel background investigations. These amendments are administrative in nature and will neither impose new nor relax existing safety requirements and, thus, do not call for the

sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR-0058.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

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 adopting the following amendments to 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 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(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 material access authorization fee calculated with reference to current OPM personnel investigation billing rates {OPM rate + [(OPM rate x 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 x 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%

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.

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...
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%

(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.

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PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 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. 12958, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

4. In § 25.17, paragraph (f) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(f)(1) The Office of Personnel Management (OPM) bills NRC for the cost of each background investigation conducted in support of an application for access authorization. The combined cost of the OPM investigation and NRC's application processing overhead are recovered from the licensee through an authorization fee calculated with reference to current OPM personnel investigation billing rates {OPM rate + [(OPM rate x 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) Applications for access authorization or access authorization renewal processing that are submitted to the NRC for processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q" and "L" access authorization, or renewal request. Applicants shall calculate the access authorization fee according to the stated formula {OPM rate + [(OPM rate x 11.6%), rounded to the nearest dollar] = NRC access authorization fee} and with reference to the table in Appendix A to this part.

(3) Certain applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, since the Commission, at its discretion,

may decide to accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

5. Appendix A to Part 25 is revised 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 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...
Initial "L" access authorization ¹	ANACI – Access National Agency Check with Inquiries (Standard Service, Code B)	11.6%
Initial "L" access authorization ¹ (expedited processing)	ANACI – Access National Agency Check with Inquiries (Expedite Handling, Code A)	11.6%
Reinstatement of "L" access authorization ²	ANACI – Access National Agency Check with Inquiries (Standard Service, Code B)	11.6%
Extension or Transfer of "L" access authorization ²	ANACI – Access National Agency Check with Inquiries (Standard Service, Code B)	11.6%
Renewal of "L" access authorization ¹	ANACI – Access National Agency Check with Inquiries (Standard Service, Code B)	11.6%
Initial "Q" access authorization	SSBI – Single Scope Background Investigation (120 Day Service, Code C)	11.6%

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 the investigation.

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

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...
Initial "Q" access authorization (expedited processing)	SSBI – Single Scope Background Investigation (35 Day Service, Code A)	11.6%
Reinstatement of "Q" access authorization ²	SSBI – Single Scope Background Investigation (120 Day Service, Code C)	11.6%
Reinstatement of "Q" access authorization ² (expedited processing)	SSBI – Single Scope Background Investigation (35 Day Service, Code A)	11.6%
Extension or Transfer of "Q" ²	SSBI – Single Scope Background Investigation (120 Day Service, Code C)	11.6%
Extension or Transfer of "Q" ² (expedited processing)	SSBI – Single Scope Background Investigation (35 Day Service, Code A)	11.6%
Renewal of "Q" access authorization ²	LBI – Limited Background Investigation (120 Day Service, Code C)	11.6%

Dated at Rockville, Maryland, this 27th day of October, 2003.

For the Nuclear Regulatory Commission.

/RA/

William D. Travers,
Executive Director for Operations.