

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150 - AH53

Criminal History Check: Assessment of Application Fee

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect an administrative change in the method of calculating the agency's application fee for criminal history checks requested by licensees. The amendment establishes the application fee amount as the sum of the user fee charged by the Federal Bureau of Investigation (FBI) for performing criminal history checks on fingerprint records and an NRC handling charge assessed to ensure full recovery of NRC's administrative costs related to fingerprint record processing. The resulting increase in the fee is quite small (\$3.00). The amendment also provides for the NRC to publish its current criminal history check fee on the NRC public web site. The NRC will continue to notify licensees directly (by email) whenever the application fee is adjusted.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Publicly available documents related to this rulemaking may be viewed on public computers in the NRC's 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. Selected documents can be viewed and downloaded electronically via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by email to PDR@nrc.gov.

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: NRC licensees authorized to operate nuclear power reactors under 10 CFR Part 50 must ensure that any individual granted access to Safeguards Information or unescorted access to the nuclear power facility has passed a criminal history check performed by the FBI. 10 CFR Part 73, which implements Section 149 of the Atomic Energy Act of 1954, as amended, requires licensees to submit a fingerprint record for any such individual to the NRC, which forwards that record to the FBI for analysis. Based on criminal history information received from the FBI, the licensee must determine whether to grant or to deny the individual unescorted access to the facility or access to Safeguards Information.

10 CFR 73.57(d) details how licensees are to submit fingerprint records and requires that each application for a criminal history check be accompanied by payment of the application fee. Section 149 of the Atomic Energy Act requires that the costs of these NRC record checks shall be paid by the licensee or licensee applicant. In the past, the application fee was equal to the amount charged NRC by the FBI for checking fingerprint records submitted on behalf of licensees. This FBI user fee, currently \$24.00, includes a \$2.00 handling fee retained by the NRC to offset administrative costs associated with the processing of licensee submissions. However, a recent audit of the NRC's criminal history check program found that the actual cost to the NRC of processing each fingerprint check application is more than twice the \$2.00 agency handling charge included in the FBI user fee. As a result, the NRC has not been recovering the full cost of the criminal history program from those licensees using the service.

In order to recover full program costs from licensee users, the NRC is increasing the amount of the criminal history check application fee by \$3.00, to \$27.00 per fingerprint record submitted. The higher amount will close the gap between the current handling charge and the NRC's actual administrative costs related to processing of licensee applications. This final rule amends § 73.57(d)(3) to specify that the application fee for criminal history checks is the sum of the FBI user fee and the supplemental NRC processing charge required to fully cover internal administrative costs connected with the program.

The dollar amount of the application fee was removed from §73.57(d)(3) by a final rule published on January 6, 1994 (59 FR 661). This was done to allow the NRC to adjust the application fee as necessary to ensure cost recovery without undertaking a burdensome rulemaking to effect a minor fee change. The 1994 final rule also provided that the NRC would publish notice of any future cost adjustments in the Federal Register. This final rule changes

the procedure for notifying NRC licensees of fee adjustments. The amendment requires the NRC to post the amount of the current application fee on the Criminal History Program web page, accessible from the NRC's Electronic Submittals page at <http://www.nrc.gov/site-help/eie.html>. The NRC will continue its current practice of directly informing affected licensees of any fee changes. Licensees will be notified of future fee adjustments via email.

Administrative Procedure Act

The NRC finds for good cause that the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). Congress has mandated that the NRC recover its full administrative costs in implementing Section 149 of the Atomic Energy Act of 1954, as amended, and the fee increase established here is quite small. Therefore, notice and public comment would be unnecessary and contrary to the public interest. 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 amendment is 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 changes the way in which the NRC's fingerprint check application fee is assessed, enabling the agency to recover the full administrative cost of the criminal history program from licensee users. The rule also establishes a new mechanism for

informing licensees of any future fee adjustments. 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 exclusion 10 CFR 51.22(c) because the rule is of a minor or non-policy nature. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule. Because of the nature of the rule, 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 under approval number 3150-0002.

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 makes an administrative change in the method of calculating the NRC's application fee for criminal history checks requested by licensees. The amendment is required to ensure that the NRC recovers the full cost of the criminal history program from licensees using the service. Because this rule implements the Section 149 requirement that the cost of the criminal history check be paid by the licensee or applicant, a regulatory analysis is unnecessary.

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 this amendment does 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 in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, 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 Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In §73.57, paragraph (d)(3) is revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

* * * * *

(d) * * *

(3) (i) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security, at (301) 415-7404). Combined payment for multiple applications is acceptable.

(ii) The application fee is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a nuclear power plant licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission publishes the amount of the fingerprint check application fee on the NRC public web site. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/eie.html> and select the link for the Criminal History Program.) The Commission will directly notify licensees who are subject to this regulation of any fee changes.

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Dated at Rockville, Maryland, this 20th day of September, 2004.

For the Nuclear Regulatory Commission.

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Martin J. Virgilio
Acting Executive Director for Operations.