



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555  
SEP 20 1989

MEMORANDUM FOR: James M. Taylor  
Acting Executive Director  
for Operations

FROM: Patricia G. Norry, Director  
Office of Administration

SUBJECT: AMENDMENT TO 10 CFR PARTS 11, 25, AND 95: REVISED  
FEE SCHEDULE AND IMPLEMENTATION OF THE SF 312, IN  
LIEU OF THE SF 189-A

Enclosed for your signature is a final rule to be published in the Federal Register that amends 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," 10 CFR Part 25, "Access Authorization for Licensee Personnel," and 10 CFR Part 95 "Security Facility Approval and Safeguarding of National Security."

Background: The Office of Personnel Management (OPM) conducts access authorization background investigations for the NRC and sets the rate it charges the NRC for these investigations. On October 1, 1989, OPM will increase the rate that they charge the NRC by approximately 8 percent. Since the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting background investigations, the fee schedules in NRC regulations are being amended to reflect OPM's rate increase. The amendments also inform licensees that they have the option, for an additional cost, to have their applications processed in an expedited manner.

As a result of legal challenge to portions of the SF 189-A, "Classified Information Nondisclosure Agreement," the Information Security Oversight Office has issued a final rule that implements the use of the SF 312, of the same title, in lieu of the SF 189-A. National Security Decision Directive 84 requires that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access. The SF 312 replaces the SF 189-A to fulfill that requirement.

Public Comments: Because these amendments deal with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b) (A). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with an adjustment in access authorization fees and implementation of the SF 312, in lieu of the SF 189-A.

SEP 20 1989

Notices: A notice to the Commission that the EDO has signed this rule is enclosed for inclusion in the next Daily Staff Notes (Enclosure C). The Congressional Committees will not be notified. The Office of Administration (ADM) will notify affected licensees and other interested persons of this rulemaking initiative.

Coordination: The Division of Freedom of Information and Publication Services, Office of Administration, concurs in these amendments. The Office of the General Counsel has no legal objection.

Original signed by

Patricia G. Norry

Patricia G. Norry, Director  
Office of Administration

Enclosures:

- A. Federal Register Notice of Final Rulemaking
- B. Regulatory Analysis
- C. Draft Daily Staff Notes Item

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Enclosure A

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

RIN: 3150-AD24

Access Authorization Fee Schedule  
for Licensee Personnel and  
Implementation of the SF 312

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations requiring NRC to publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations. The amendments also inform licensees that they have the option, for an additional cost, to have their applications processed in an expedited manner. The NRC is also amending its regulations to require each person to complete a Standard Form 312, "Classified Information Nondisclosure Agreement," when granted an NRC access authorization.

EFFECTIVE DATE: (Date of publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4124.

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SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1989, OPM plans to increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate it charges for background investigations by approximately 8 percent. NRC is passing this additional cost to licensees. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner. These changes comply with current regulations requiring NRC to publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations.

As a result of legal challenge to portions of the SF 189-A, "Classified Information Nondisclosure Agreement," the Information Security Oversight Office has issued a final rule that implements the use of the SF 312, of the same title, in lieu of the SF 189-A. National Security Decision Directive 84 requires that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access. The SF 312 replaces the SF 189-A to fulfill that requirement.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual

30-day delay in effective date because the amendments are of a minor and administrative nature dealing with an adjustment in access authorization fees and implementation of the SF 312, in lieu of the SF 189-A.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(a). Therefore, neither an environmental impact statement nor an environmental assessment have been prepared for this final rule.

#### Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046, 3150-0047, and 3150-0062.

#### Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 "L" Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4124.

#### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for

this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

#### List of Subjects

##### 10 CFR Part 11

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

##### 10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

##### 10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out 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 the Independent Office Appropriation Act of 1952 and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to CFR Parts 11, 25, 95.

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)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

\* \* \* \* \*

(e)(1) Each application for 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, according to the following schedule:

|     |   |                   |
|-----|---|-------------------|
| i   | NRC-U requiring full field investigation.....                                       | \$2,415           |
| ii  | NRC-U requiring full field investigation (expedited processing).....                | \$2,932           |
| iii | NRC-U based on certification of comparable full field background investigation..... | <sup>1</sup> \$0  |
| iv  | NRC-U or R renewal.....   | <sup>1</sup> \$15 |
| v   | NRC-R.....  | <sup>1</sup> \$15 |
| vi  | NRC-R based on certification of comparable investigation.....                       | <sup>2</sup> \$0  |

- 1 If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.
- 2 If the NRC determines, based on its review of available data that a National Agency Check Investigation is necessary, a fee of \$15.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.

\* \* \* \* \*

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. 12356, 47 FR 14874, April 6, 1982.

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

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§25.13, 25.17 (a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(f)), and §§25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§25.18 [Removed]

4. Section 25.18 is to be removed.

§25.23 [Amended]

5. In the second and fourth sentence of the introductory paragraph to §25.23, the references to SF 189-A are changed to read SF 312.



6. Appendix A is revised to read as follows:

APPENDIX A - FEES FOR NRC ACCESS AUTHORIZATION

| <u>Category</u>  | <u>Fee</u>           |
|--|----------------------|
| Initial "L" Access Authorization.....                                    | <sup>1</sup> \$15    |
| Reinstatement of "L" Access Authorization.....                           | <sup>1</sup> \$15    |
| Extension or Transfer of "L" Access Authorization.....                   | <sup>1</sup> \$15    |
| Initial "Q" Access Authorization.....                                    | \$2,415              |
| Initial "Q" Access Authorization (expedited processing).....             | \$2,932              |
| Reinstatement of "Q" Access Authorization.....                           | <sup>2</sup> \$2,415 |
| Reinstatement of "Q" Access Authorization (expedited<br>processing)..... | <sup>2</sup> \$2,932 |
| Extension or Transfer of "Q".....  | <sup>2</sup> \$2,415 |
| Extension or Transfer of "Q" (expedited processing).....                 | <sup>2</sup> \$2,932 |

1 If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.

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

PART 95 - SECURITY FACILITY APPROVAL AND SAFEGUARDING OF  
NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

7. The authority citation for Part 95 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. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§95.13, 95.15/a), 95.25, 95.27, 95.29/b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201/i)).

§ 95.33 [Amended]

B. In the third sentence in § 95.33, the reference to SF 189-A is changed to read SF 312.

Dated at Rockville, Maryland this \_\_\_\_\_ day \_\_\_\_\_, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor, Acting Executive Director  
for Operations.

Approval for Publication

The Commission delegated to the EDO (10 CFR 1.31(a)(3)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551(4)) subject to the limitations in NRC Manual Chapter 0103, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

The enclosed rule, entitled "Access Authorization Fee Schedule for Licensee Personnel and Implementation of the SF 312," will amend Parts 11, 25, and 95 by increasing the fee NRC charges its licensees for background investigations that are used to determine eligibility for a special nuclear material access authorization or personnel security clearance for access to Restricted Data or National Security Information, and require each person to complete a "Classified Information Nondisclosure Agreement" (SF 312), in lieu of the SF 189-A when granted an NRC access authorization.

This final rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, 9 or Subpart C concerning matters of the policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

\_\_\_\_\_  
Date

\_\_\_\_\_  
James M. Taylor  
Acting Executive Director  
for Operations

## REGULATORY ANALYSIS

1. Statement of Problem

Effective October 1, 1989, the Office of Personnel Management (OPM) will increase the rate they charge NRC to conduct access authorization background investigations. Since the fee that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the background investigation rate charged by OPM, the NRC regulations containing the fee schedule, 10 CFR Parts 11 and 25, must be amended to reflect the rate increase. Otherwise, NRC would be subsidizing licensee applications for material access authorization and personnel security clearances.

Additionally, as a result of legal challenge to portions of the SF 189-A, "Classified Information Nondisclosure Agreement," the Information Security Oversight Office (ISOO) has issued a final rule that implements the use of the SF 312, of the same title, in lieu of the SF 189-A. National Security Decision Directive 84 requires that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access.

2. Objective

The objective of this regulatory initiative is to inform licensees and other nongovernmental bodies of OPM's rate increase to NRC for the conduct of background investigations, and to implement the SF 312, in lieu of the SF 189-A.

3. Alternatives

There is no reasonable alternative to the revision of these regulations that would achieve the desired result.

4. Consequences

There are approximately 29 affected entities licensed by the NRC. Each licensee who uses, processes, stores, transmits, or delivers to a carrier for transport, formula quantities of special nuclear material must have their personnel granted material access authorizations under Part 11 by NRC. In addition each licensee who needs access to National Security Information or Restricted Data to conduct official NRC business must have a personnel security clearance granted to them under Part 25 by NRC. Each application for special nuclear material access authorization or a personnel security clearance must be accompanied by the licensee's remittance payable to NRC.

Since OPM has raised the rates they charge for background investigations, NRC is passing the additional cost on to the licensees. The additional cost to the licensees will not have an impact on other NRC programs or requirements at these facilities.

Additionally, individuals authorized access to classified information under 10 CFR Part 25, "Access Authorization for Licensee Personnel," will be required to sign the SF 312 as a condition of access in lieu of the SF 189-A.

5. Decision Rationale

The only available method of imposing this legitimate requirement on selected licensees is to revise 10 CFR Parts 11, 25, and 95.

Other avenues would lack the requisite formality and legality necessary to require all affected NRC licensees to adhere to the changes in fees required for background investigations and the requirement that all persons authorized access to classified information must sign a nondisclosure agreement as a condition of access.

6. Implementation

The Division of Security intends to publish the Final Rule amending 10 CFR Parts 11, 25, and 95 by September 30, 1989.

DAILY STAFF NOTES  
OFFICE OF ADMINISTRATION

Final Rule Signed by EDO

On \_\_\_\_\_, the Executive Director for Operations approved a final rule that amends 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," 10 CFR Part 25, "Access Authorization for Licensee Personnel" and 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data." The amendments will reflect the OPM rate increase for background investigations conducted for NRC licensees and other nongovernmental bodies and the requirement that all persons authorized access to classified information must sign a nondisclosure agreement (SF 312) as a condition of access.

This notice informs the Commission that, in accordance with the rulemaking authority delegated to the EDO, The EDO has signed this final rule and proposes to forward it on \_\_\_\_\_ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.