

JUL - 7 1989

MEMORANDUM FOR: Victor Stello, Jr.  
Executive Director for Operations

FROM: Patricia G. Norry, Director  
Office of Administration

SUBJECT: RECOMMENDATION FOR PROMULGATING RULE: REVISED FEE  
SCHEDULE (PARTS 11 and 25) AND IMPLEMENTATION OF THE  
SF-312, IN LIEU OF THE SF-189-A (PARTS 25 AND 95)

In response to the February 13, 1984, memorandum "Control of NRC Rulemakings by Offices Reporting to the EDO," I have enclosed pertinent information which supports my recommendation for the initiation of a rule amendment.

The Office of Personnel Management (OPM) has advised NRC that they will increase, effective October 1, 1989, the amount they charge NRC for conducting access authorization background investigations by approximately 8 percent (exact amount unavailable at this time). Since the fees that NRC charges licensees for special nuclear material access authorizations and personnel security clearances are dependent on the background investigation rates charged by OPM, the fee schedules in the NRC regulations must be amended to reflect the OPM rate increase. Otherwise, NRC would be subsidizing licensee applications for special nuclear material access authorizations and personnel security clearances.

The current regulations, 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," and 10 CFR Part 25, "Access Authorization for Licensee Personnel," will be amended to reflect the revised fee schedules. By the time the rule change is prepared we will have exact fee information from OPM and will include that in the change.

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 all persons authorized access to classified information to sign a nondisclosure agreement as a condition of access. The SF-312 replaces the SF-189-A to fulfill that requirement.

The current regulations, 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," will be amended to reflect the use of the SF-312.

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If you have any questions, or need further information, please contact  
Raymond J. Brady, Director, Division of Security, on X24100.

Original signed by /  
Patricia G. Norry /

Patricia G. Norry, Director  
Office of Administration

Enclosures:

1. Regulatory Agenda Entry
2. Results of Preliminary Office Review of Rulemaking
3. Preliminary Regulatory Analysis

**DISTRIBUTION:**

MC: None

- P. G. Norry, D/ADM
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EDO R/F

SCF: LRD 3.00.05, LRD 3.00.07, LRD 3.00.09, LRD 3.00.17  
 LRD 7.00.01, PER 1.00.09

FSOSB R/F

D/SEC R/F

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DATE	: 7/6/89	: 7/6/89	: 7/7/89	:	:	:	:

REGULATORY AGENDA ENTRY

TITLE:

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

CFR CITATION:

10 CFR 11; 10 CFR 25; 10 CFR 95

ABSTRACT:

The final rule changes the rate charged to licensees by the NRC for conducting access authorization background investigations.

The final rule implements the use of the Standard Form 312, "Classified Information Nondisclosure Agreement," in lieu of the SF-189-A (of the same title) to fulfill the National Security Decision Directive 84 requirement that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access.

TIMETABLE:

Final Action for Division Review (August 1, 1989)  
Office Concurrence on final action completed (August 18, 1989)  
Final Action to EDO (September 1, 1989)  
Final Action Published (September 30, 1989)

LEGAL AUTHORITY:

42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 2273; 42 U.S.C. 5841;  
E. O. 10865; E. O. 12356

EFFECTS ON SMALL BUSINESS AND OTHER ENTITIES: No

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Results of Preliminary Office Review of Rulemaking Entitled "Access Authorization Fee Schedule for Licensee Personnel and Implementation of SF-312"

Issue to be Addressed

The Office of Administration (ADM) seeks approval to amend 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," to reflect the Office of Personnel Management's (OPM's) rate increase to NRC for access authorization background investigations for licensees, and to implement the use of the SF-312, "Classified Information Nondisclosure Agreement," in lieu of the SF-189-A, of the same title.

Need for Addressing the Issue

The OPM has advised NRC that they will increase the rate they charge NRC to conduct access authorization background investigations effective October 1, 1989. Since the fee that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the background investigation rates 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 authorizations 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 all persons authorized access to classified information to sign a non-disclosure agreement as a condition of access.

Alternatives to Rulemaking

ADM sees no alternative to amending these rules that would be more effective and use fewer NRC resources.

How Issues Will be Addressed by Rulemaking

This final rule will amend 10 CFR Parts 11, 25, and 95 to reflect the OPM rate increase to licensees for background investigations and the requirement that all persons authorized access to classified information must sign a nondisclosure agreement as a condition of access.

How the Public, Industry, and NRC Will Be Affected

A negligible affect is predicted for the general public since this rulemaking activity applies only to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR Part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR Part 25). Approximately 29 NRC licensees and other interests will be affected. ADM views these amendments as a necessity.

## PRELIMINARY 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 all persons authorized access to classified information to 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 from the 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 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 fee schedules 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.