

May 15, 1998

The Honorable Al Gore  
President of the United  
States Senate  
Washington, DC 20510

Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that amends Title 10, Code of Federal Regulations, Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," and Title 10, Code of Federal Regulations, Part 25, "Access Authorization for Licensee Personnel." The final rule revises 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.

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule, which is being transmitted to the Federal Register for publication. Also enclosed is a copy of the Regulatory Analysis for this final rule. This final rule is scheduled to become effective upon publication in the Federal Register.

Sincerely,

*151*  
Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosures: Final Rule  
Regulatory Analysis

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AF90

Access Authorization Fee Schedule  
for Licensee Personnel

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 that provide that the NRC will publish fee adjustments upon notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations.

EFFECTIVE DATE: (Upon publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Beth Bradshaw, Division of Facilities and Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6540, or by Internet electronic mail at MBB1@NRC.GOV.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rates charged for these investigations. Effective

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October 1, 1997, OPM changed the rates it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for special nuclear material access authorizations and personnel security clearances are determined by the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect the OPM rate changes. The NRC is passing these rate changes to NRC licensees. These revisions comply with current regulations that provide that NRC will publish fee adjustments upon notification of any changes in the rates charged the NRC by OPM for conducting the investigations. See 10 CFR 11.15(e)(2)(1997) and 10 CFR 25.17(e)(1997).

Because these are amendments dealing 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)(1997). The amendments are 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 dealing with rate changes to the NRC fee schedules.

#### 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)(1)(1997). Therefore, neither an environmental impact statement nor an environmental assessment has 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 1995 (44 U.S.C. 3501 et seq. (1997)). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

### Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

### Regulatory Analysis

The NRC 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 Beth Bradshaw, Division of Facilities and Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-6540.

## 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 50.109 (1997).

## Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 et seq. (1997) and 15 U.S.C. 657 (1997), 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 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 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)(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 .....  | \$3,275           |
| ii. NRC-U requiring full field investigation (expedited<br>processing) .....                 | \$3,800           |
| iii. NRC-U based on certification of comparable full field<br>background investigation ..... | <sup>1</sup> \$0  |
| iv. NRC-U or R renewal .....   | <sup>1</sup> \$80 |
| v. NRC-R .....   | <sup>1</sup> \$80 |
| vi. NRC-R based on certification of comparable<br>investigation .....                        | <sup>2</sup> \$0  |

<sup>1</sup> If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$3,275 will be assessed prior to the conduct of the investigation.

<sup>2</sup> If the NRC determines, based on its review of available data, that a National Agency Check and Credit investigation is necessary, a fee of \$80.00 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 \$3,275 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. 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. Appendix A to Part 25 is revised to read as follows:

### APPENDIX A TO PART 25 - FEES FOR NRC ACCESS AUTHORIZATION

| Category  | Fee               |
|---|-------------------|
| Initial "L" Access Authorization .....                  | <sup>1</sup> \$80 |
| Reinstatement of "L" Access Authorization .....         | <sup>1</sup> \$80 |
| Extension or Transfer of "L" Access Authorization ..... | <sup>1</sup> \$80 |
| Initial "Q" Access Authorization .....                  | \$3,275           |



Initial "Q" Access Authorization (expedited  
processing) ..... \$3,800

Reinstatement of "Q" Access Authorization ..... <sup>2</sup>\$3,275

Reinstatement of "Q" Access Authorization (expedited  
processing) ..... <sup>2</sup>\$3,800

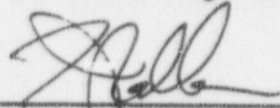
Extension or Transfer of "Q" ..... <sup>2</sup>\$3,275

Extension or Transfer of "Q" (expedited processing) ..... <sup>2</sup>\$3,800

- 1 If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$3,275 will be assessed prior to the conduct of the investigation.
- 2 Full fee will only be charged if investigation is required.

Dated at Rockville, Maryland, this 13<sup>th</sup> day Feb, 1998.

For the Nuclear Regulatory Commission.



L. Joseph Callan,  
Executive Director for Operations.

## REGULATORY ANALYSIS

### 1. Statement of Problem

Effective October 1, 1997, the Office of Personnel Management (OPM) changed the rates it charges NRC to conduct access authorization background investigations. Because the fee that NRC charges its licensees for special nuclear material access authorizations and personnel security clearances is 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 changes. Otherwise, NRC would be subsidizing licensee applications for special nuclear material access authorization and personnel security clearances.

### 2. Objective

The objective of this regulatory initiative is to inform licensees and other nongovernmental bodies of OPM's rate changes for the conduct of background investigations.

### 3. Alternatives

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

### 4. Consequences

There are approximately 20 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 special nuclear 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. Each application for special nuclear material access authorization or a personnel security clearance must be accompanied by the licensee's remittance payable to NRC.

Because OPM is changing the rates they charge for background investigations, NRC is passing the rate changes on to the licensees. The changes in cost to the licensees will not have an impact on either NRC programs or requirements at these facilities.

### 5. Decision Rationale

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

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.

6. Implementation

The Division of Facilities and Security intends to publish the final rule amending 10 CFR Parts 11 and 25 by March 1998.