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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:

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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