

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

[NRC-2020-0133]

RIN 3150-AK49

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to update the access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program and the Information Access Authority Program. The change in fees is due to an increase in the review time for each application for access authorization. This amendment is prompted by a recent audit of fees performed by an external certified public accounting and financial management services firm and ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees. The proposed rule also would make two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms.

DATES: Submit comments by January 27, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0133. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407;

email: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Emily Robbins, Office of Administration, telephone: 301-415-7000, email: Emily.Robbins@nrc.gov or Vanessa Cox, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-8342, email: Vanessa.Cox@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2020-0133 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0133.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR)

reference staff at 1-800-397-4209, at 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2020-0133 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on March 14, 2022. However, if the NRC receives significant adverse comments by January 27, 2022, then the NRC will

publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required under the following circumstances:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Certain individuals employed by NRC licensees or their contractors require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235), restricted data, or national security information. These individuals must obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates a background investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC determines whether permitting that individual to have access to special nuclear material, restricted data, or

national security information would create a security risk.

The Defense Counterintelligence and Security Agency (DCSA) conducts the access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the DCSA background investigation and any related NRC processing activities (NRC processing fee) is recovered from the licensee through an access authorization fee assessed by the NRC. It is the NRC's practice to publish the fee schedule for special nuclear material access authorization in § 11.15(e) of title 10 of the *Code of Federal Regulations* (10 CFR) and the corresponding fee schedule for restricted data and national security information access authorization in appendix A to 10 CFR part 25. Both schedules are based on rates charged by DCSA for conducting the access authorization background investigations (DCSA investigation billing rates).

Updated Access Authorization Fees

This proposed rule would amend 10 CFR parts 11, 25, and 95 along with appendix A to 10 CFR part 25. The NRC is proposing to revise the processing fee charged to licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP) from 55.8 percent of the DCSA investigation billing rates to 90.2 percent. A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization showed an increase in the NRC's review time for each application. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications; despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012.

In addition, requests for reciprocity would be charged a flat fee rate of \$95.00. Previously, the NRC did not charge a fee for reciprocity requests because certain applications from individuals with current Federal access authorizations were processed expeditiously and at a reduced cost. This flat fee would be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting this work. In cases where reciprocity is not acceptable and it is necessary to perform a background investigation, then the NRC would charge the appropriate fee

based on the DCSA investigation billing rate. This proposed rule would continue to allow licensees to calculate the NRC access authorization fee for any given application by referencing the current DCSA investigation billing rates schedule for background investigation services. Reimbursable billing rates for personnel background investigations are published by DCSA in a Federal Investigations Notice (FIN). The current DCSA investigation billing rates are published on the DCSA website and are available at https://www.dcsa.mil/mc/pv/gov_hr_security/billing_rates/. The NRC's licensees can also obtain the current DCSA investigation billing rates schedule by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at Licensee_Access_Authorization_Fee.Resource@nrc.gov.

The fee-calculation formula is designed to recover the NRC's actual in-house processing costs for each application received from a licensee. The NRC's access authorization fee for any given request is determined using the following formula: The DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC material access authorization fee. The provisions in this proposed rule would set the NRC processing fee; the fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.*, DCSA rate × 90.2 percent).

Public Law 115-439, the Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215), requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. As noted previously, the DCSA investigation billing rates are pulled directly from the current DCSA fee schedule for investigations. The tables in revised § 11.15(e)(3) and appendix A to 10 CFR part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in the DCSA's investigation billing rates schedule. For example, a licensee seeking a special nuclear material "NRC-U" access authorization requiring a Tier 5 (T5) investigation is directed by the table in § 11.15(e)(3) to calculate the NRC processing fee based on the DCSA investigation billing rates for a "standard" T5 investigation. According to the current DCSA investigation billing rates schedule (FIN 20-04, "FY 2021 and FY 2022 Investigations Reimbursable Billing Rates," dated June 30, 2020), the DCSA charges \$5,465 for a "standard" T5 investigation. The table

instructs the licensee to calculate the NRC's application processing fee by multiplying \$5,465 by 90.2 percent, which equals \$4,929.43. The licensee

then rounds the NRC's processing fee to the nearest dollar, or \$4,929, and adds that amount to the DCSA investigation billing rate of \$5,465 to determine the

total NRC access authorization fee: \$10,394.

The following table illustrates the calculation process:

Current DCSA investigation billing rate for standard T5	Plus NRC application processing fee					Equals total NRC access authorization fee for NRC-U application
	DCSA rate	×	NRC fee 90.2%	=	(rounded to nearest \$)	
\$5,465	\$5,465	×	90.2%	=	\$4,929.43 (rounded to \$4,929)	= \$10,394

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in appendix A to 10 CFR part 25 cross-references each type of "Q" or "L" access authorization to the corresponding DCSA investigation type. The DCSA investigation billing rate for the type of investigation referenced is determined by consulting the current DCSA investigation billing rates schedule. This rate is then used in the formula to calculate the correct NRC access authorization fee for the type of application submitted. Copies of the current NRC access authorization fees can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to Licensee_Access_Authorization_Fee.Resource@nrc.gov. Any change in the NRC's access authorization fees would be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

Administrative Changes

In Federal Investigations Notice Number 16-07, dated September 26, 2016 (<https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY16/fin-16-07.pdf>), the Office of Personnel Management (OPM) implemented the Federal Investigative Standards according to the phased Federal Investigative Standards Implementation Plan issued by the Suitability and Security Executive Agents. In accordance with the plan, the Access National Agency Check with Inquiries was renamed to Tier 3 (T3) and the National Agency Check with Law and Credit was renamed to Tier 3 reinvestigation (T3R). The T3 investigation is required for positions designated as non-critical sensitive and/or requiring eligibility for "L" or "R" access or access to Confidential or Secret information. The T3R is the reinvestigation product for the same positions. The Single Scope Background Investigation was renamed to Tier 5 (T5)

and the Single Scope Background Investigation-Periodic Reinvestigation was renamed to Tier 5R (T5R). The T5 investigation is required for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for "Q" or "U" access or access to Top Secret or Sensitive Compartmented Information. The T5R is the reinvestigation product required for the same positions. This proposed rule would revise the definitions in 10 CFR parts 11, 25, and 95 to include the new naming conventions for background investigations case types. The definitions for the NRC "R" and NRC "U" special nuclear material access authorizations would include the renamed investigation types Tier 3 and Tier 5, respectively. Also, the definitions for NRC "L" and NRC "Q" access authorizations would include the renamed investigation types Tier 3 and Tier 5, respectively.

In 2005, the OPM implemented the Electronic Questionnaires for Investigative Processing (e-QIP) system, which allows applicants to electronically enter, update, and release their personal investigative data over a secure internet connection to an employing agency for review and approval. The e-QIP system is a web-based automated system that facilitates the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness, and credentialing purposes. The NRC allows applicants to complete their security form, the Questionnaire for National Security Positions, Standard Form 86 (SF-86), electronically through the (e-QIP) system to minimize errors and expedite processing. This proposed rule would update 10 CFR parts 11 and 25 to clarify that the NRC uses the e-QIP system for applicants to provide their personal investigative data.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has

written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Paperwork Reduction Act

This proposed 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 (OMB), Approval Numbers 3150-0046 and 3150-0062.

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.

List of Subjects

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

Dated: December 21, 2021.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2021-28117 Filed 12-27-21; 8:45 am]

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