



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 30, 2021

**PLEASE RESPOND BY:
October 15, 2021**

COMSECY-21-0014

MEMORANDUM TO: Chairman Hanson
Commissioner Baran
Commissioner Wright

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: ACCESS AUTHORIZATION FEES

Margaret M. Doane

Signed by Doane, Margaret
on 09/30/21

The purpose of this paper is to request Commission approval for the U.S. Nuclear Regulatory Commission (NRC) staff to draft a direct final rule to update the fees charged to NRC licensees for work performed to process access authorization requests from NRC licensees under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). 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 that determined that the NRC's fees were not sufficient to cover the agency's costs. The direct final rule also would make two administrative changes to (1) revise definitions to conform to new naming conventions for background investigation case types, and (2) clarify the electronic process for completing security forms.

Although the staff does not believe this rulemaking presents any significant issue of policy for the Commission, as discussed below, the contents of this rule are not explicitly mandated by statute. Therefore, consistent with Commission direction in SRM-COMSECY-17-0002, "Rulemakings Mandated by Statute or Implementing U.S. Government Policy on Export Licensing Controls," to submit "a short paper seeking Commission approval to proceed with a rulemaking on matters involving the exercise of minor levels of discretion," the NRC staff is submitting this paper for Commission approval prior to completing this rulemaking. The staff also is requesting that signature authority for this rulemaking be delegated to the Executive Director for Operations.

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DISCUSSION:

Access Authorization Fees

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 either initiates an investigation of the individual seeking access authorization or, if the individual has an active or pending access authorization from another Federal agency, the NRC may accept the authorization under reciprocity if it satisfies the applicable NRC regulatory criteria.

The Defense Counterintelligence and Security Agency (DCSA) conducts access authorization background investigations for the NRC. The NRC determines whether to permit an individual to have access to special nuclear material, restricted data, or national security information based on the results of the DCSA investigation. Costs of the DCSA investigation and NRC processing are recovered from the licensee through an access authorization fee assessed by the NRC. The access authorization fee is comprised of the cost of the DCSA investigation, which is the billing rate established by DCSA, and the NRC processing fee, which is a percentage of the DCSA billing rate. The NRC publishes 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, "Access Authorization."

The direct final rule would amend 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material," and Appendix A to 10 CFR Part 25. The rule would increase the NRC processing fee charged to licensees for work performed under the MAAP and the IAAP in 10 CFR 11.15(e) from 55.8 percent of the DCSA investigation billing rates to 90.2 percent. This increase is based on findings in a September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization (Agencywide Document Access and Management System Accession No. ML19059A424). The audit showed an increase in the NRC's review time for each application, and that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications. In 2012 the Federal Investigative Standards (FIS) were jointly issued by Security and Suitability Executive Agents. FIS is a critical security clearance reform initiative that established new federal investigative criteria to conduct background investigations to determine eligibility for logical and physical access, suitability for U.S. Government (USG) employment, eligibility for access to classified information or to hold a sensitive position, and fitness to perform work for or on behalf of the USG as a contractor employee. The revised federal investigative criteria required an expansion of investigative inquiries/sources and potentially disqualifying information was developed in a greater percentage of cases, thus resulting in longer turnaround times and increased efforts by staff. The audit also noted that despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its access authorization fees since 2012.

The direct final rule would also impose a flat fee of \$95.00 when the NRC accepts an access authorization from another agency under reciprocity. 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 is based on the level of effort that has recently been expended by the NRC to process reciprocity requests. In cases where reciprocity is not accepted and it is necessary to perform a background investigation, the NRC would charge the appropriate fee based on the DCSA investigation billing rate and the associated NRC processing fee.

Administrative Changes

The direct final rule would also include administrative changes to (1) revise definitions in 10 CFR Parts 11, 25, and 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data," to conform to new naming conventions for background investigation case types adopted by the Office of Personnel Management (OPM), and (2) clarify electronic processing requirements

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>), 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 investigation 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 direct final rule would revise the definitions in 10 CFR Parts 11, 25, and 95 to include the new naming conventions for background investigations case types.

In 2005, the OPM implemented the Electronic Questionnaires for Investigations 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 the security form, the Questionnaire for National Security Positions, Standard Form 86, electronically through the e-QIP system to minimize errors and expedite processing. This direct final 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.

Upon Commission approval, the NRC staff will update the fees in order to recover the full costs associated with processing access authorization requests from NRC licensees and make two additional administrative changes. The NRC staff will perform these updates via a direct final rule published concurrently with a companion proposed rule, signed by the Executive Director for Operations. Staff recommends this rulemaking process given the unlikelihood that the NRC will receive a significant adverse comment challenging the underlying premise of the rule or causing the staff to reconsider its necessity.

The Office of the General Counsel has reviewed this paper and has no legal objection.

SECY, please track.

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