

4240 of Appendix VII of Section XI in place of the 8 hours of annual hands-on training provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. In either case, training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

(xv) *Appendix VIII specimen set and qualification requirements.* The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition through the 2001 Edition. Licensees choosing to apply these provisions shall apply all of the following provisions under this paragraph except for those in § 50.55a(b)(2)(xv)(F) which are optional.

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(C) * * *

(1) A depth sizing requirement of 0.15 inch RMS must be used in lieu of the requirements in Subparagraphs 3.2(a) and 3.2(c), and a length sizing requirement of 0.75 inch RMS must be used in lieu of the requirement in Subparagraph 3.2(b).

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(J) [Reserved]

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(xvii) *Reconciliation of Quality Requirements.* When purchasing replacement items, in addition to the reconciliation provisions of IWA-4200, 1995 Addenda through 1998 Edition, the replacement items must be purchased, to the extent necessary, in accordance with the licensee's quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

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(xx) *System leakage tests.* When performing system leakage tests in accordance IWA-5213(a), 1997 through 2002 Addenda, a 10-minute hold time after attaining test pressure is required for Class 2 and Class 3 components that are not in use during normal operating conditions, and no hold time is required for the remaining Class 2 and Class 3 components provided that the system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

(xxii) *Surface Examination.* The use of the provision in IWA-2220, "Surface Examination," of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, that allow use of an ultrasonic examination method is prohibited.

(xxiii) *Evaluation of Thermally Cut Surfaces.* The use of the provisions for eliminating mechanical processing of

thermally cut surfaces in IWA-4461.4.2 of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxiv) *Incorporation of the Performance Demonstration Initiative and Addition of Ultrasonic Examination Criteria.* The use of Appendix VIII and the supplements to Appendix VIII and Article I-3000 of Section XI of the ASME BPV Code, 2002 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, is prohibited.

(xxv) *Mitigation of Defects by Modification.* The use of the provisions in IWA-4340, "Mitigation of Defects by Modification," Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxvi) *Pressure Testing Class 1, 2, and 3 Mechanical Joints.* The repair and replacement activity provisions in IWA-4540(c) of the 1998 Edition of Section XI for pressure testing Class 1, 2, and 3 mechanical joints must be applied when using the 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxvii) *Removal of Insulation.* When performing visual examinations in accordance with IWA-5242 of Section XI, 2003 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of the section, insulation must be removed from 17-4 PH or 410 stainless steel studs or bolts aged at a temperature below 1100 °F or having a Rockwell Method C hardness value above 30, and from A-286 stainless steel studs or bolts preloaded to 100,000 pounds per square inch or higher.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include the 1995 Edition through the 2003 Addenda subject to the following limitations and modifications:

(i) *Quality Assurance.* When applying editions and addenda of the OM Code, the requirements of NQA-1, "Quality Assurance Requirements for Nuclear Facilities," 1979 Addenda, are acceptable as permitted by ISTA 1.4 of the 1995 Edition through 1997 Addenda or ISTA-1500 of the 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, provided the licensee uses its 10 CFR Part 50, Appendix B, quality assurance program in conjunction with the OM Code requirements. Commitments contained in the licensee's quality assurance

program description that are more stringent than those contained in NQA-1 govern OM Code activities. If NQA-1 and the OM Code do not address the commitments contained in the licensee's Appendix B quality assurance program description, the commitments must be applied to OM Code activities.

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(iii) [Reserved]

(iv) *Appendix II.* Licensees applying Appendix II, "Check Valve Condition Monitoring Program," of the OM Code, 1995 Edition with the 1996 and 1997 Addenda, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(C) of this section. Licensees applying Appendix II, 1998 Edition through the 2002 Addenda, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(D) of this section.

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Footnotes to § 50.55a:

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¹⁰ Supplemental inservice inspection requirements for reactor vessel pressure heads have been imposed by Order EA-03-09 issued to licensees of pressurized water reactors. The NRC expects to develop revised supplemental inspection requirements, based in part upon a review of the initial implementation of the order, and will determine the need for incorporating the revised inspection requirements into 10 CFR 50.55a by rulemaking.

Dated at Rockville, Maryland this 14th day of September, 2004.

For the U.S. Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 04-21561 Filed 9-30-04; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AH53

Criminal History Check: Assessment of Application Fee

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect an administrative change in the method of calculating the agency's application fee for criminal history checks requested by licensees. The amendment establishes the application fee amount as the sum of the user fee charged by the Federal Bureau of Investigation (FBI) for performing

criminal history checks on fingerprint records and an NRC handling charge assessed to ensure full recovery of NRC's administrative costs related to fingerprint record processing. The resulting increase in the fee is quite small (\$3.00). The amendment also provides for the NRC to publish its current criminal history check fee on the NRC public Web site. The NRC will continue to notify licensees directly (by e-mail) whenever the application fee is adjusted.

EFFECTIVE DATE: October 1, 2004.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed on public computers in the NRC's 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. Selected documents can be viewed and downloaded electronically via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to PDR@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Patricia A. Smith, Security Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7739, e-mail pas5@nrc.gov.

SUPPLEMENTARY INFORMATION: NRC licensees authorized to operate nuclear power reactors under 10 CFR part 50 must ensure that any individual granted access to Safeguards Information or unescorted access to the nuclear power facility has passed a criminal history check performed by the FBI. 10 CFR part 73, which implements Section 149 of the Atomic Energy Act of 1954, as amended, requires licensees to submit a fingerprint record for any such individual to the NRC, which forwards that record to the FBI for analysis. Based on criminal history information received from the FBI, the licensee must determine whether to grant or to deny the individual unescorted access to the

facility or access to Safeguards Information.

10 CFR 73.57(d) details how licensees are to submit fingerprint records and requires that each application for a criminal history check be accompanied by payment of the application fee. Section 149 of the Atomic Energy Act requires that the costs of these NRC record checks shall be paid by the licensee or licensee applicant. In the past, the application fee was equal to the amount charged NRC by the FBI for checking fingerprint records submitted on behalf of licensees. This FBI user fee, currently \$24.00, includes a \$2.00 handling fee retained by the NRC to offset administrative costs associated with the processing of licensee submissions. However, a recent audit of the NRC's criminal history check program found that the actual cost to the NRC of processing each fingerprint check application is more than twice the \$2.00 agency handling charge included in the FBI user fee. As a result, the NRC has not been recovering the full cost of the criminal history program from those licensees using the service.

In order to recover full program costs from licensee users, the NRC is increasing the amount of the criminal history check application fee by \$3.00, to \$27.00 per fingerprint record submitted. The higher amount will close the gap between the current handling charge and the NRC's actual administrative costs related to processing of licensee applications. This final rule amends § 73.57(d)(3) to specify that the application fee for criminal history checks is the sum of the FBI user fee and the supplemental NRC processing charge required to fully cover internal administrative costs connected with the program.

The dollar amount of the application fee was removed from § 73.57(d)(3) by a final rule published on January 6, 1994 (59 FR 661). This was done to allow the NRC to adjust the application fee as necessary to ensure cost recovery without undertaking a burdensome rulemaking to effect a minor fee change. The 1994 final rule also provided that the NRC would publish notice of any future cost adjustments in the **Federal Register**. This final rule changes the procedure for notifying NRC licensees of fee adjustments. The amendment requires the NRC to post the amount of the current application fee on the Criminal History Program web page, accessible from the NRC's Electronic Submittals page at <http://www.nrc.gov/site-help/eie.html>. The NRC will continue its current practice of directly informing affected licensees of any fee

changes. Licensees will be notified of future fee adjustments via e-mail.

Administrative Procedure Act

The NRC finds for good cause that the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). Congress has mandated that the NRC recover its full administrative costs in implementing Section 149 of the Atomic Energy Act of 1954, as amended, and the fee increase established here is quite small. Therefore, notice and public comment would be unnecessary and contrary to the public interest. The final rule is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. This final rule changes the way in which the NRC's fingerprint check application fee is assessed, enabling the agency to recover the full administrative cost of the criminal history program from licensee users. The rule also establishes a new mechanism for informing licensees of any future fee adjustments. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

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) because the rule is of a minor or non-policy nature. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule. Because of the nature of the rule, this action does not raise environmental justice concerns.

Paperwork Reduction Act Statement

This final 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 under approval number 3150-0002.

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.

Regulatory Analysis

A regulatory analysis has not been prepared for this rulemaking. This final rule makes an administrative change in the method of calculating the NRC's application fee for criminal history checks requested by licensees. The amendment is required to ensure that the NRC recovers the full cost of the criminal history program from licensees using the service. Because this rule implements the Section 149 requirement that the cost of the criminal history check be paid by the licensee or applicant, a regulatory analysis is unnecessary.

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 this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 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 in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set forth 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 part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204,

88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. In § 73.57, paragraph (d)(3) is revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

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(d) * * *

(3) (i) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security, at (301) 415-7404). Combined payment for multiple applications is acceptable.

(ii) The application fee is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a nuclear power plant licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission publishes the amount of the fingerprint check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/eie.html> and select the link for the Criminal History Program.) The Commission will directly notify licensees who are subject to this regulation of any fee changes.

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Dated at Rockville, Maryland, this 20th day of September, 2004.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE212, Special Condition 23-151-SC]

Special Conditions; ARINC, Inc.; Raytheon Models 200, 300, and B300; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to ARINC, Inc.; 1632 S. Murray Boulevard; Colorado Springs, CO 80916 for a Supplemental Type Certificate for the Raytheon Model King Air 200, 300 and B300 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of a Digital Air Data Computer on the copilot side. The Digital Air Data Computer will be either an IS&S ADDU (Air Data Display Unit) or a Thommen AD32 Air Data Display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 20, 2004. Comments must be received on or before November 1, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE212, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE212. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4127.