

PUBLIC SUBMISSION

As of: 1/25/22 10:02 AM Received: January 21, 2022 Status: Pending_Post Tracking No. kyo-rwhv-vhp3 Comments Due: January 27, 2022 Submission Type: Web

Docket: NRC-2020-0133
Amendment of Access Authorization Fees

Comment On: NRC-2020-0133-0001
Access Authorization Fees

Document: NRC-2020-0133-DRAFT-0001
Comment on FR Doc # 2021-28117

Submitter Information

Email: kme@nei.org
Organization: Nuclear Energy Institute

General Comment

Comments on Direct Final Rule "Access Authorization Fees" (86 Fed. Reg. 73,631; Dec. 28, 2021)
[Docket ID NRC-2020-0133]

Attachments

01-21-22_ NRC_ Comments on Proposed Rule on Access Authorization Fees

JANET SCHLUETER

Sr. Advisor

Fuel Cycle and Low-Level Waste

1201 F Street, NW, Suite 1100

Washington, DC 20004

P: 202.739.8098

jrs@nei.org

nei.org



NUCLEAR ENERGY INSTITUTE

January 21, 2022

Secretary

U.S. Nuclear Regulatory Commission

ATTN: Rulemaking and Adjudications Staff

Washington, DC 20555-0001

Submitted via Regulations.gov

Subject: Comments on Direct Final Rule "Access Authorization Fees" (86 Fed. Reg. 73,631; Dec. 28, 2021)
[Docket ID NRC-2020-0133]

Project Number: 689

Dear Rulemaking and Adjudications Staff:

The Nuclear Energy Institute (NEI)¹ is pleased to provide comments on the above-referenced direct final rule on behalf of its members. The direct final rule describes a significant change to the U.S. Nuclear Regulatory Commission's (NRC) fee for processing licensee materials and information access authorization requests. Specifically, the NRC proposes to increase its processing fee from 55.8% to 90.2% of the fee charged by the Defense Counterintelligence and Security Agency (DCSA) to conduct the background investigations supporting the NRC's access authorization decisions. This represents a nearly 62% increase in the NRC's application processing fee (assuming no change in the DCSA cost) and a 22% increase in the overall access authorization fee charged to licensees.

NEI believes that the direct final rule lacks transparency and that our comments raise issues that "require a substantive response in a notice-and-comment process" and raise issues "serious enough to warrant a substantive response to clarify or complete the record."² Thus, we request that these comments be considered "significant adverse comments," that this direct final rule be withdrawn, and that the NRC use a standard notice-and-comment rulemaking to address this issue. Further, we request that the NRC republish a proposed rule that contains additional information that will allow stakeholders to provide meaningful, informed comments, and extend the public comment period accordingly.

¹ The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

² In the preamble to the direct final rule, the NRC provides criteria for determining whether a comment on a direct final rule is significant and adverse. 86 Fed. Reg. 73,632 (Dec. 28, 2021).

The Direct Final Rule Lacks Transparency and Fails to Provide a Meaningful Opportunity for Public Comment

The direct final rule states that the agency is revising its fees based upon a September 2019 audit that evaluated NRC's actual in-house costs for processing licensee access authorization applications. That 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. . . ."³ The direct final rule goes on to briefly explain how the access authorization fee is calculated – *i.e.*, DCSA investigation billing rate + NRC application processing fee. The NRC application processing fee is, in turn, calculated as a percentage of the DCSA investigation billing rate – currently 55.8%, and increasing to 90.2% if the direct final rule goes into effect.

But the direct final rule does not provide any additional information on the 2019 audit, its findings, or why the NRC believes that changing its fee from 55.8% of the DCSA billing rate to 90.2%, as opposed to some other adjustment amount or method of assessing fees in this area, will address the audit findings.⁴ Other than a reference to an "increased number of complex applications," there is no explanation of why the cost of NRC's application processing activities are approaching the cost of the actual background investigations used to support NRC's access decisions. Some description of how applications are becoming more complex, what proportion of applications are now considered complex, and why that complexity warrants the proposed fee increase is necessary to solicit meaningful public comment. In its current form, the rule provides industry (and other stakeholders) no information upon which to evaluate and comment upon the appropriateness of the nearly 62% increase in NRC's application processing fee that is being proposed.

To remedy this situation, the NRC should consider making the September 2019 audit report referenced in the direct final rule publicly available. If that is not possible, the NRC should provide an explanation of why the audit cannot be publicly disclosed and provide an explanation of the audit methodology and results, as well as an explanation of how those results led to the NRC's conclusion that the proposed increase was necessary. That information should be provided in a republished proposed rule, with an appropriate period allotted for public comment.

The Proposed Implementation Schedule is Unreasonable

In addition to the lack of transparency discussed above, the NRC is proposing that this relatively large increase in access authorization fees take effect on March 14, 2022. Based on the supplementary information published with the rule, it appears that the NRC became aware of the need to increase the fee at least two (and possibly five) years prior to publishing the direct final rule.⁵ But NRC only noticed this potential fee increase in the Federal Register just days before the end of calendar year 2021 (*i.e.*, on December 28, 2021). Given this lack of notice, licensees have already finalized and are executing their

³ 86 Fed. Reg. 73,633.

⁴ For example, given that the NRC's application processing fee is now approaching the DCSA investigation billing rate, it is unclear why the NRC fee is tied to the DCSA rate at all. A flat NRC rate for recovering its processing costs should be considered.

⁵ The direct final rule indicates that the September 19, 2019, audit was the impetus for the fee change. 86 Fed. Reg. 73,633. It also indicates that the NRC became aware that costs were increasing in this area during a 2016 biennial review. *Id.*

calendar year 2022 operating budgets and those budgets do not account for this fee increase. Thus, we respectfully request that the NRC implement this fee increase in a manner that allows licensees to account for the additional costs as part of their normal budgeting processes (*i.e.*, phasing any fee increase in beginning in calendar year 2023).

Additional Comments

The direct final rule incorrectly states that “despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012.”⁶ For example, as demonstrated in the Q clearance data table below, while the NRC’s “mark-up” rate remained at 55.8%, the NRC access authorization fee has been steadily adjusted upward since 2012 due to increases in the DCSA investigation billing rates.

Date	Q clearance \$ NRC Fee	Markup Rate
1/2008	\$4,898	31.7%
4/2012	\$6,240	Increased to 55.8%
11/2013	\$6,168	55.8
11/2014	\$7,117	55.8
10/2015	\$8,083	55.8
10/2018	\$8,890	55.8
10/2020	\$8,514	55.8
10/2021	\$8,429	55.8
3/2022	\$10,290	Proposed to increase to 90.2%

Please contact me if you have any questions or require additional information.

Sincerely,



Janet R. Schlueter

- c: Vanessa Cox, Office of Nuclear Materials Safety and Safeguards, NRC
Emily Robbins, Office of Administration, NRC

⁶ 86 Fed. Reg. on page 73,686.