

# PUBLIC SUBMISSION

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**Docket:** NRC-2017-0026

Revision of Fee Schedules: Fee Recovery for FY 2018

**Comment On:** NRC-2017-0026-0001

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2018

**Document:** NRC-2017-0026-DRAFT-0005

Comment on FR Doc # 2018-01065

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## Submitter Information

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## General Comment

See attached file(s)

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## Attachments

Comments on FY 2018 proposed Fee rule(A)

19 Feb 2018

Attention: Secretary, US Nuclear Regulatory Commission (NRC)

Subject: Comments on Revision of Fee Schedules for FY 2018 (Docket ID: NRC-2017-0026)

I am writing to support the NRC's proposed rule revising the fee schedules for fee recovery for FY 2018.

However, there is one area of the proposed NRC's fee recovery regulations that is substantially inadequate. That area is for security-related fees, both specific fees and annual fees. These fees are not included in the NRC's annual updates of its fee schedules in 10 CFR Parts 170 and 171. The NRC's current regulations (which specify these security-related fees) are opaque and confusing; nor are they apparently reviewed annually. The NRC has recently spoken of "the importance of a predictable and transparent fee structure, including the need for it to be clear and understandable." For these security-related provisions, these current regulations completely fail the test of NRC's transparency, clarity, and understandability goals.

As examples of these inadequate fee regulations, I refer to 10 CFR 11.15(e) and 25.17(f). These two regulations specify the reimbursable fees for the NRC's Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). In both these regulations, the applicable fee is specified as: "This fee must be determined using the following formula: the OPM investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC material access authorization fee. The NRC processing fee is determined by multiplying the OPM investigation billing rate on the day of NRC receipt of the application by 55.8 percent (i.e., OPM rate  $\times$  55.8 percent)." "[The] updated OPM investigation billing rates are published periodically in a Federal Investigations Notice (FIN) issued by the OPM's Federal Investigative Services. Copies of the current OPM investigation billing rates schedule can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities Security, Office of Administration by email to: [Licensee\\_Access\\_Authorization\\_Fee.Resource@nrc.gov](mailto:Licensee_Access_Authorization_Fee.Resource@nrc.gov).

Moreover, this type of regulatory language is known as "incorporation by reference." That is, the OPM FIN document is a referenced standard; rather than specifying a specific dollar amount for such background investigations directly in the NRC's regulations. However, the Office of Federal Register regulations in 1 CFR 51.9 (on incorporation by reference) contain multiple requirements which do not appear to have been met by the NRC in the direct final rule FRN, effective final rule date FRN, and correction FRN (see 77 FR 26149; May 3, 2012, 77 FR 37553; June 3, 2012, and 77 FR 46257; August 3, 2012, respectively). Specifically, these FRNs do not appear to comply with the requirements of 1 CFR 51.9(a), (b), and (c).

No other information on the OPM "FIN" document was available on the NRC's public website or in public ADAMS; and the email address specified in these regulations in §§ 11.17 and 25.15 is not a working (i.e. valid) email address. Consequently, contrary to 1 CFR 51.9, the OPM fee information and the calculated NRC fee are not "readily obtained with maximum convenience to the user." Furthermore, the aggregate total fee is not clearly specified in dollars or total cost, as is used in Parts 170 and 171.

Accordingly, I am recommending that the NRC revise the FY 2018 fee schedule final rule to relocate and clearly specify any reimbursable security-related fee requirements to new provisions within Parts 170 and 171; and make other necessary conforming changes to

Parts 11, 25, and 73 (necessitated by these new provisions in Parts 170 and 171). These revisions should accomplish the following objectives and considerations:

1. The NRC should add a new section to Part 170, as § 170.35, “Schedule of fees for security-related activities.” The schedule in new § 170.35 should include the following provisions:
  - a. The fee and supporting information from the table in § 11.15(e)(3) for MAAP background investigations. The specific dollar value fees specified in the schedule should be the integrated OPM plus NRC costs. [Note: the NRC should include in the preamble of the final rule a discussion of such OPM and NRC cost inputs used to calculate the fee dollar values.]
  - b. The fee and supporting information from the table in Appendix A to Part 25 for IAAP background investigations. The specific dollar value fees specified in the schedule should be the integrated OPM plus NRC costs.
  - c. The fee and supporting information from § 73.57(d)(3)(ii) referenced for the submission of fingerprints for criminal history records checks conducted under Sections 147 and 149 of the AEA, for unescorted access to a nuclear power reactor facility, a non-power reactor facility, or access to Safeguards Information. The specific dollar value fee specified in the schedule should be the integrated FBI plus NRC costs.
  - d. The fee and supporting information from EA-13-092 for the submission of fingerprints and identifying information for firearms background checks conducted under Section 161A of the AEA. The specific dollar value fee specified in the schedule should be the integrated FBI plus NRC costs.
  - e. The “full cost” fee for any “NSA Type 1 encryption equipment” that the NRC will obtain from the National Security Agency (NSA) and issue to authorized licensees for the secure communication of classified information or of Safeguards Information. [Note: as private entities, NRC licensees may not obtain NSA Type 1 encryption equipment directly from NSA, but must be issued such equipment thru the NRC (i.e., the NRC is the sponsoring agency). Consequently, this fee is a combination of the NSA procurement costs and NRC installation costs. This encryption equipment may be used for secure transmission of classified information (telephonic and internet protocol) from authorized Section 53 of the AEA licensees – where the NRC is the Cognizant Security Agency; Safeguards Information from authorized Section 103 and 104 of the AEA licensees, who also satisfy the provisions of Section 31.c(1) of the AEA, and the communication from the NRC or other government agencies to Section 103 or 104 licensees of imminent threat information (e.g., inbound aircraft threats) using hardware-based authentication and non-repudiation capabilities. Such hardware-based authentication and non-repudiation capabilities would permit licensees to quickly and effectively implement RG 1.214, “Response Strategies for Potential Aircraft Threats.”
2. The NRC should add a new section to Part 171, as § 171.21, “Annual fees: Security-related activities.” The schedule in new § 171.21 should include the following provisions:
  - a. The calculated annual cost for “cryptographic key management and COMSEC services” for licensees issued NSA Type 1 encryption equipment by the NRC and where the NRC staff or its contractors provides such services. [Note: See discussion in Item 1.e above on fees associated with the issuance of NSA Type 1 encryption equipment to NRC licensees. This annual fee covers support costs. Procurement and installation costs are covered in new § 170.35.]
  - b. No other annualized security-related costs are recommended.

3. The NRC should revise § 11.15(e) to remove any discussion of the MAAP fees calculation process and instead cross-reference readers to new § 170.35 on fees.
4. The NRC should revise § 25.17(f) to remove any discussion of the IAAP fees calculation process and instead cross-reference readers to new § 170.35 on fees.
5. The NRC should remove Appendix A to Part 25, since it is no longer necessary.
6. The NRC should revise § 73.57(d) to cross-reference readers to new § 170.35 regarding the fee for fingerprint submissions for criminal history checks.
7. The NRC should expand the scope of the final rule to also include Parts 11, 25, and 73 as these conforming changes are necessary to implement these comments without requiring further notice and opportunity for public comment. Since the fact of the NRC's imposition of a fee (under these regulations) is already specified for most of these issues or current annual costs are now being clearly delineated, the NRC may relocate such information and proceed directly to a final rule, without further notice and opportunity for comment.

With the implementation of my comments, the NRC, as necessitated by changes to the OPM or FBI fees, can effectively and efficiently revise any security-related fees.

Finally, implementation of these recommended changes will resolve the "incorporation by reference" deficiencies in the NRC's 2012 rulemaking.

Sincerely,

W.B. Smith  
Indianapolis, IN