

U.S. Nuclear Regulatory Commission (NRC) Small Business Regulatory Enforcement Fairness Act Compliance

This report responds to Section 10 of Executive Order 13892, “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,” dated October 9, 2019, which requires each agency to submit a report demonstrating that its civil administrative enforcement activities, investigations, and other actions comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA), including Section 223 of that Act. Section 223 of the SBREFA requires the establishment of a program or policy that provides for waivers or reductions of civil penalties for violations of statutory or regulatory requirements by small entities. To comply with this, the NRC’s Enforcement Policy (Policy), which is publicly available at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>, provides for such waivers or reductions. Specifically, the Policy provides that:

- Smaller licensees generally pay smaller civil penalties because the agency’s graduated civil penalty structure takes into account differences in the size of the licensee, the licensee’s ability to pay, and the safety risk of the violation involved.
- The agency issues civil penalties only for significant violations, such as willful violations, particularly poor performance, overexposures, loss of radioactive material, and other substantial violations.
- The NRC normally waives civil penalties for licensees that identify their own violations and take prompt and comprehensive corrective actions.

Further, the Policy makes clear that the staff can consider financial hardship in determining the amount of the civil penalty. The NRC does not intend that the economic impact of a civil penalty be so severe that it puts a licensee out of business or adversely affects the licensee’s ability to conduct licensed activities safely. In such cases, the agency may waive or reduce civil penalties.

Implementation of this philosophy is illustrated by the maximum daily civil penalty the NRC will impose for different classes, or types, of licensees. For example, power reactors are subject to the maximum civil penalty allowed by the Atomic Energy Act of 1954, as amended, and as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Large firms engaged in the manufacturing or distribution of byproduct, source, or special nuclear material are subject to a base civil penalty of approximately one-fourth of the maximum. Small materials users, including most nonprofit institutions, mobile nuclear services, nuclear pharmacies, and physician offices, are subject to approximately one-sixteenth of the maximum base civil penalty.

Finally, to ensure that the staff has the ability to use discretion if necessary, the Policy allows the staff to mitigate a proposed civil penalty based on “the ability of the various classes of licensees to pay” such that the proposed civil penalty will not be “overly punitive rather than deterrent.” Section 2.5.6, “Small Business Regulatory Enforcement Fairness Act (SBREFA),” of the NRC’s Enforcement Manual, which is available at <https://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual>, provides additional implementation guidance for the NRC staff to use when a small business claims a financial hardship.

For the class, or type, of licensee that includes small business entities, the NRC has documented an average of approximately 215 violations per year over the last three years. Of those, the NRC evaluated an average of 34 per year as more significant and issued civil penalties in an average of seven of those more significant cases per year. The average civil penalty for this type of licensee was approximately \$16,000.

In addition to section 223, SBREFA also requires agencies to consider the impacts on small entities when issuing rules (for example, by amending the Regulatory Flexibility Act and establishing the Congressional Review Act). The NRC staff's documentation of compliance with these requirements is publicly available at:

- <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act.html>
- <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/sbrefac.html>
- <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/small-entities.html>

The NRC's annual SBREFA compliance status reports submitted to Congress are publicly available at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/sbrefac.html>.