

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

[NRC-2014-0264]

RIN 3150-AJ51

Receipts-Based NRC Size Standards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its small business size standards, which are used to qualify an NRC licensee as a “small entity” under the Regulatory Flexibility Act of 1980, as amended. The purpose of these size standards is for reducing annual NRC license fees for small entities. These standards do not apply to the NRC’s contracts for goods and services. The NRC is increasing the upper and lower tiers for its receipts-based small entity size standards for small businesses and small not-for-profit organizations. This change allows NRC standards to remain consistent with the inflation adjustments made by the Small Business Administration size standard for nonmanufacturing concerns. In addition, in accordance with the Small Business Runway Extension Act of 2018, the NRC is changing the calculation of annual average receipts for the receipts-based NRC size standard for small businesses that provide a service or small businesses not engaged in manufacturing from a 3-year averaging period to a 5-year averaging period.

DATES: This final rule is effective on March 21, 2022.

ADDRESSES: Please refer to Docket ID **NRC-2014-0264** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2014-0264**. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

For the convenience of the reader, the ADAMS accession numbers and instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section of this document.

FOR FURTHER INFORMATION CONTACT: Jo Jacobs, Office of the Chief Financial Officer, telephone: 301-415-8388; email: Jo.Jacobs@nrc.gov; or Billy Blaney, Office of the Chief Financial Officer, telephone: 301-415-5092; email: William.Blaney@nrc.gov.

Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

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I. Background

The NRC's current size standards are provided under part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), "Agency Rules of Practice and Procedure," in § 2.810, "NRC size standards." These standards were established on December 9, 1985 (50 FR 50241), when the NRC implemented the requirements of the Regulatory Flexibility Act of 1980, as amended (RFA). The RFA requires agencies to consider the impact of rulemaking on small entities and, consistent with applicable statutes, study alternatives to minimize these impacts on applicable businesses, organizations, and government jurisdictions. The NRC's regulations in § 2.810 and 10 CFR part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and

Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” contain the criteria, in § 171.16(a) and (c), “Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC,” that certain licensees use to qualify as small entities for the purpose of reducing annual license fees. The NRC’s current size standards under § 2.810 are based on the Small Business Administration’s (SBA) receipts-based size standards for small businesses and small not-for-profit organizations, employee-based size standards for business concerns that are manufacturing and for small educational institutions that are not State or publicly supported entities, and population-based size standards for small governmental jurisdictions.

In establishing the fiscal year (FY) 1991 fee rule, the NRC determined that the annual fees would have a significant impact on a substantial number of small materials licensees. As a result, the NRC established a small entity fee tier in § 171.16(c), which resulted in a subsidy program whereby small entities would pay a reduced annual fee (56 FR 31507; July 10, 1991). In FY 1992, the NRC established a second tier in § 171.16(c) to benefit the licensees that were very small entities. Pursuant to § 171.16(c), if a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay a reduced annual fee. As part of the certification process, a licensee that meets the NRC’s size standards for a small entity must complete NRC Form 526, “Certification of Small Entity Status for the Purposes of Annual Fees,” certifying that it meets the NRC’s size standards for a small entity.

The last revisions to the receipts-based size standards in §§ 2.810 and 171.16(c) to adjust for inflation were published in the *Federal Register* on July 3, 2012 (77 FR 39385), and in the FY 2013 final fee rule published in the *Federal Register* on July 1, 2013 (78 FR 39479), respectively. More recently, in FY 2020, the NRC surveyed

its materials licensees to help determine whether to change the size standards in § 2.810 (85 FR 6225; February 4, 2020). With the exception of inflation-related increases and adjusting the methodology for calculating average gross-receipts to be consistent with the Small Business Runway Extension Act of 2018 (Runway Act) and SBA regulations, the survey results did not suggest that the NRC should change its small entity size standards.

The Runway Act amended section 3(a)(2)(C)(ii)(II) of the Small Business Act (15 U.S.C. 632(a)(2)(C)(ii)(II)), to modify the requirements for the small business size standards prescribed by an agency without separate statutory authority to issue size standards. Subsequently, on December 5, 2019, the SBA published a final rule modifying its method for calculating average annual receipts used to prescribe size standards for small businesses (84 FR 66561). As a result of adjustments for inflation described more fully in the “Discussion” section of this document, the NRC must revise its receipts-based size standards from a 3-year averaging period to a 5-year averaging period to comply with the Runway Act.

In order to amend § 2.810, the NRC must follow the procedures of the Small Business Act, and SBA’s implementing regulations in 13 CFR 121.903, “How may an agency use size standards for its programs that are different than those established by SBA?” because the NRC does not have separate statutory authority to issue size standards. Accordingly, the NRC has sent this final rule to SBA for review and has received the approval of the SBA Administrator.

II. Discussion

The NRC is amending § 2.810 to increase the receipts-based small entity size standard from \$7.0 million to \$8.0 million for small businesses and small, not-for-profit

organizations. These amendments are to remain consistent with inflation adjustments made by the SBA to its size standard for nonmanufacturing concerns. Most recently, the SBA adjusted this standard for inflation on July 18, 2019 (84 FR 34261). In addition, the NRC is also amending the average gross-receipts calculation process to change from a 3-year averaging period to a 5-year averaging period, as required by SBA regulations and in response to the Runway Act.

Further, and analogous to the inflation adjustment in § 2.810, the NRC is amending § 171.16(c) to increase the upper-tier receipts-based small entity size standard from \$7.0 million to \$8.0 million for small businesses and small, not-for-profit organizations. Likewise, the NRC is increasing the lower-tier receipts-based size standard from \$485,000 to \$555,000, based upon the percent change in the upper tier.

III. Public Comments

The NRC published a proposed rule on July 26, 2021 (86 FR 39980), and requested public comment on its proposed revisions to 10 CFR parts 2 and 171. The comment period on the proposed rule closed on August 25, 2021. The NRC did not receive any public comments on the proposed rule.

IV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission certifies that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This final rule is administrative in that this final rule will revise the criteria in 10 CFR parts 2 and 171 that the NRC uses to determine which of its licensees qualify as small entities for the purposes of compliance with the RFA.

The amendments to the size standards conform to the SBA's revised standard and is expected to result in an increase in the number of NRC licensees that qualify as small entities.

V. Regulatory Analysis

The RFA requires agencies to consider the impact of rulemaking on small entities and, consistent with applicable statutes, study alternatives to minimize the impacts on applicable businesses, organizations, and government jurisdictions. In previous rulemakings to amend its size standards, the NRC has adjusted the criteria that the NRC uses to determine which of its licensees qualify as small entities for the purposes of compliance with the RFA.

For the NRC's size standards, rulemaking is required to amend the methodology for calculating average gross-receipts and the upper and lower tier receipts-based size standards to reflect adjustments for inflation. The NRC has not revised the receipts-based size standards in §§ 2.810 and 171.16(c) since 2012 and 2013, respectively; therefore, this final rule includes adjustments for inflation. This final rule amends §§ 2.810 and 171.16(c) to increase the NRC's upper-tier receipts-based size standard from \$7.0 million to \$8.0 million for small businesses and small not-for-profit organizations, in order to remain consistent with the adjustments for inflation made to the SBA's size standard for nonmanufacturing. In addition, this final rule amends § 171.16(c) to increase the lower-tier receipts-based size standard from \$485,000 to \$555,000, consistent with the percentage change in the upper-tier. Furthermore, for consistency with the Runway Act and SBA regulations, the NRC is amending its methodology for calculating the average gross-receipts from a 3-year averaging period to a 5-year averaging period.

The NRC estimates that the final rule provides the following benefits and costs:

Benefits

- This action will result in continued compliance with the RFA, since the final rule will reduce the impact of annual fees on small entities by increasing the receipts-based size standards in § 2.810 and the tiers in § 171.16(c) that licensees use to qualify as small entities.
- While it is not certain how many licensees would qualify as small entities under the receipts-based size standards that are being adjusted, the staff estimates that 95 additional licensees (a 12-percent increase) will potentially qualify as small entities and be eligible to pay a reduced annual fee.
- The licensees can have increased regulatory confidence that the NRC has amended the agency's receipts-based size standards to be consistent with the SBA's practices, and, as stated in SECY-20-0111, "Rulemaking Plan to Amend the Receipts-Based NRC Size Standards (NRC-2014-0264)," (ADAMS Accession No. ML20268B327), that the NRC will review the current size standards and determine whether proposed amendments are needed every 5 years or sooner based on the SBA's adjustments.

Costs

- The cost impact of changing the average gross-receipts from a 3-year averaging period to a 5-year averaging period is not known, as the average gross-receipts have been based on a 3-year averaging period since the NRC established its size standards in 1985. Every licensee will likely need to expend some effort to evaluate its gross-receipts and may need to provide additional information if questions arise during the staff's certification review. Modifying to a 5-year averaging period of gross-receipts may result in a negative impact in that some

licensees that are close to the upper limit of their size standard could lose their small entity status, while others may newly qualify as small entities. Despite this cost, because the NRC is amending the receipts-based size standards to adjust for inflation, the NRC also is amending the average gross-receipts from a 3-year averaging period to a 5-year averaging period pursuant to the Runway Act.

- The expected increase in additional licensees qualifying as small entities could possibly increase the NRC's net budget authority as a result of additional licensees qualifying as small entities.

The results of the regulatory analysis are cost-justified because the final rule would result in an estimated 95 additional licensees (a 12-percent increase) who would qualify as small entities and be eligible to pay a reduced annual fee and the identified cost impacts are expected to be small and would not be passed onto other NRC's applicants and licensees. The NRC did not identify any other alternatives to amend the receipts-based size standards under § 2.810, which are consistent with the adjustments made by the SBA. In addition, the NRC did not identify any alternatives to rulemaking to amend the upper and lower tiers under § 171.16(c) to reflect adjustments for inflation.

VI. Backfitting and Issue Finality

The NRC has determined that the backfit rule, §§ 50.109, 70.76, 72.62, and 76.76 and the issue finality provisions in 10 CFR part 52 do not apply to this final rule and that an analysis is not required because these amendments do not require the modification of, or addition to, 1) systems, structures, components, or the design of a facility; 2) the design approval or manufacturing license for a facility; or 3) the procedures or organization required to design, construct, or operate a facility.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC wrote this document to be consistent with the Plain Writing Act, as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885).

VIII. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

IX. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and, therefore, is not subject to the requirements of the Act.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the action does not constitute the establishment of a standard that contains generally applicable requirements.

XII. Availability of Guidance

The NRC publishes a fee guidance document for small entities annually in conjunction with the NRC's annual rule to revise its fee schedules. The "Small Entity Compliance Guide" is designed to assist businesses, organizations, educational institutions, and governmental jurisdictions in determining whether they qualify as small entities by providing the qualifying factors that make up the NRC's definition of "small entity," and the current small entity fees. The NRC will update the compliance guide each year when issuing the final fee rule and to align with the fee schedule of that year. As part of a future fee rule, the NRC will update the Small Entity Compliance Guide to reflect to changes in §§ 2.810 and 171.16(c). The FY 2021 Small Entity Compliance

Guide is available as indicated in the “Availability of Documents,” section of this document.

XIII. Availability of Documents

Documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	ADAMS ACCESSION NO. / WEB LINK / FEDERAL REGISTER CITATION
Public Law (Pub. L.) 115–324, “Small Business Runway Extension Act of 2018”	https://www.congress.gov/115/plaws/publ324/PLAW-115publ324.pdf
NRC Size Standard for Making Determinations Required by the Regulatory Flexibility Act of 1980 (December 9, 1985)	50 FR 50241
Revision of Fee Schedules; 100 Percent Fee Recovery (July 10, 1991)	56 FR 31507
NRC Form 526, “Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171”	https://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf
Receipts-Based, Small Business Size Standard; Direct Final Rule (July 3, 2012)	77 FR 39385
Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013 (July 1, 2013)	78 FR 39479
Survey of NRC’s Materials Licensees	85 FR 6225
Small Business Size Standards: Calculation of Annual Average Receipts; Final Rule (December 5, 2019)	84 FR 66561
Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation	84 FR 34261
Receipts-Based NRC Size Standards; Proposed Rule (July 26, 2021)	86 FR 39980
SECY-20-0111, “Rulemaking Plan to Amend the Receipts-Based NRC Size Standards (NRC-2014-0264)	ML20268B327
FY 2021 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide	ML21105A750

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Environmental protection, Freedom of information, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out 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 amending 10 CFR parts 2 and 171 as follows:

PART 2 – AGENCY RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under 28 U.S.C. 2461 note.

2. In § 2.810, revise paragraphs (a)(1) and (b) to read as follows:

§ 2.810 NRC Size Standards.

* * * * *

(a) * * *

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$8.0 million or less over its last 5 completed fiscal years; or

* * * * *

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$8.0 million or less.

* * * * *

PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

3. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 44 U.S.C. 3504 note.

4. In § 171.16, revise paragraph (c) to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section, in addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in table 1 to this paragraph (c). Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due

and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

Table 1 to Paragraph (c)

NRC Small Entity Classification	Maximum Annual Fee Per Licensed Category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over the last 5 completed fiscal years):	
\$555,000 to \$8 million	\$4,900
Less than \$555,000	\$1,000
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$555,000 to \$8 million	\$4,900
Less than \$555,000	\$1,000
Manufacturing Entities that Have An Average of 500 Employees or Fewer:	
35 to 500 employees	\$4,900
Fewer than 35 employees	\$1,000
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 49,999	\$4,900
Fewer than 20,000	\$1,000
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer	
35 to 500 employees	\$4,900
Fewer than 35 employees	\$1,000

* * * * *

January 27, 2022

For the Nuclear Regulatory Commission.

/RA/

Cherish K. Johnson,
Chief Financial Officer.

SUBJECT: RECEIPTS-BASED NRC SIZE STANDARDS, FINAL RULE, 10 CFR PARTS 2 AND 171; [NRC-2014-0264] – RIN 3150-AJ51, dated January 27, 2022

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