



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 2, 2021

Isabella Casillas Guzman, Administrator
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

Dear Administrator Guzman:

In accordance with 13 CFR 121.903(a)(5), the Nuclear Regulatory Commission (NRC) has enclosed the draft final rule amending its small business size standards for your review and approval. These standards are used to qualify an NRC licensee as a “small entity” under the Regulatory Flexibility Act of 1980, as amended.

The NRC published its proposed size standards in the *Federal Register* for public comment on July 26, 2021 (86 FR 39980). The public comment period ended on August 25, 2021. No comments were received; therefore, the NRC intends to finalize its size standards as proposed. Please see the enclosed written justification for the intended size standards.

If members of your staff have any questions regarding the final NRC size standards, they may contact me at (301) 415-3280 or by e-mail at Cindy.Bladey@nrc.gov.

Sincerely,

Cindy K. Bladey, Chief
Regulatory Analysis and Rulemaking
Support Branch,
Division of Rulemaking, Environmental and
Financial Support,
Office of Nuclear Material Safety and Safeguards.

Enclosures:

1. Justification
2. Draft Final Rule

Justification for Intended Size Standards

The U.S. Nuclear Regulatory Commission's (NRC) 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," section 2.810, "NRC size standards." These standards were established on December 9, 1985, when implementing the requirements of the Regulatory Flexibility Act of 1980, as amended (RFA) (50 FR 50241). These standards do not apply to NRC's contracts for goods and services. The RFA required 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 has historically determined that the Small Business Administration's (SBA) size standards are not consistent with charging fees to the nuclear industry and the NRC's compliance with statutory requirements to collect fees. As a result, the NRC maintains specific size standards for the charging of annual license fees to the nuclear industry since the NRC classifies its small business licensees by their use of nuclear materials, which does not align with the NAICS codes because the NRC's materials categories cover a mix of industries. The criteria that certain licensees use to qualify as small entities for the purpose of reducing annual fees are contained in NRC's regulations in 10 CFR 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."

The NRC's current size standards under 10 CFR 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 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 10 CFR Part 171 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 10 CFR 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 10 CFR 171.16(c) to benefit the licensees that were very small entities. Pursuant to 10 CFR 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 10 CFR Part 2.810 and 10 CFR 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

10 CFR 2.810 (85 FR 6225; February 4, 2020). With the exception of inflation-related increases and adjustments to 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. As a result of adjustments for inflation, 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.

The NRC is amending 10 CFR 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 also is 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 10 CFR 2.810, the NRC also is amending 10 CFR 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.