



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

January 20, 2022

Cindy K. Bladey, Chief
Regulatory Analysis and Rulemaking Support Branch
Division of Rulemaking, Environmental and Financial Support
Office of Nuclear Material Safety and Safeguards
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Bladey:

This is in response to your recent letter regarding a Nuclear Regulatory Commission (NRC) request for the U.S. Small Business Administration's (SBA) approval to adopt a final rule involving alternative size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act and for purposes of paying a reduced annual fee.

The NRC's changes would amend 10 CFR §§ 2.810 and 171.16(c) to increase the higher tier receipts-based small entity size standard from \$7.0 million to \$8 million and increase the lower tier receipts-based size standard from \$485,000 to \$555,000 for purposes of determining eligibility for paying reduced NRC license fees for small entities. These changes are to remain consistent with inflation adjustments made by SBA to its monetary-based size standards in August 2019 (84 FR 34261 (July 18, 2019)). In accordance with the Small Business Runway Extension Act of 2018 (SBREA) (Pub. L. No. 115-324) and SBA's final rule implementing the requirements of the SBREA (84 FR 66561 (December 5, 2019)), the NRC is also amending the calculation of average annual receipts from a three-year averaging period to a five-year averaging period.

On March 24, 1995, the SBA's Administrator approved the NRC's request for a special size standard to determine whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act and for purposes of paying a reduced fee. Specifically, the SBA's Administrator approved the NRC's definition of a small business to include a for-profit concern that provides a service and is not engaged in manufacturing, with average gross receipts of \$5 million or less over its last three completed fiscal years. At that time, the NRC adopted a two-tiered size standard of \$350,000 and \$5 million. The NRC's current regulations indicate that those levels are \$485,000 and \$7 million now. In a proposed rule published in the *Federal Register* on July 26, 2021 (86 FR 39980), the NRC proposed to adopt \$8 million as the higher tier size standard and \$555,000 as the lower tier size standard. The public comment period for the proposed rule ended on August 25, 2021, with no comments received concerning the proposed size standards. Thus, the NRC believes that its proposed size standards are appropriate and intends to finalize them without change.

Federal agencies promulgating regulations relating to small businesses use SBA's size standards, unless they are authorized by law to establish their own or use different size standards.

Cindy K. Bladey
Page 2

However, if an agency determines that SBA's size standards are not suitable for its programs, it may establish a more appropriate size standard for such programs in accordance with SBA's regulations at 13 C.F.R. §§ 121.901-903. In a letter dated May 11, 2021, the NRC requested consultation with SBA on its proposed changes and presented arguments for using a standardized, receipts-based size standard for its regulatory purposes. The NRC contended that SBA's size standards are not consistent with charging fees to the nuclear industry and its compliance with statutory requirements to collect fees. SBA reviewed the proposed changes and responded to the consultation request in a letter dated June 23, 2021, noting that the proposed changes appeared reasonable. In the letter, SBA also requested that before adopting the proposed changes in a final rule, that the NRC provide to SBA a copy of any relevant comments received during the comment period, a written justification for the need for alternative size standards, and a copy of the final rule prior to its publication.

Pursuant to SBA's regulations at 13 CFR §§ 121.901-903 and the requests outlined in SBA's June 2021 response letter, the NRC has provided SBA with a copy of the draft final rule and a written justification for the intended size standards along with its request for SBA to approve the above alternative size standards. SBA reviewed the draft final rule and determined that it is substantively the same as the proposed rule submitted to SBA during the consultation process. SBA determines that the NRC's intended size standards are appropriate and approves them for adoption in the NRC's final rule, as requested.

We remain committed to working with you to help American small businesses in the nuclear industry. If we can be of additional assistance, please do not hesitate to contact Khem Sharma, Ph.D., in the Office of Size Standards at (202) 205-7189 or at sizestandards@sba.gov.

Sincerely,



Isabella Casillas Guzman
Administrator