

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

RIN 3150-A115

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct Final Rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the size standards it uses to qualify an NRC licensee as a small entity under the Regulatory Flexibility Act and making the same change to its annual fee rule. NRC is increasing the receipts-based small business size standard from \$5 million to \$6.5 million to conform to the standard set by the Small Business Administration (SBA). This size standard reflects the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard on January 23, 2002 (67 FR 3041) and on December 6, 2005 (70 FR 72577) to account for inflation.

DATES: The direct final rule will become effective on [Insert date 75 days after publication], unless significant adverse comments on the amendment are received by [Insert date 30 days after date of publication in the Federal Register]. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the Federal Register. Comments received after [Insert date 30 days after date of publication in the Federal Register] will be

considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number [RIN 3150-A115] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information, such as name, address, phone, e-mail address, etc. will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email CAG@nrc.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be examined and copied for

a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to PDR@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7163, email mtl@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The NRC established its size standards on December 9, 1985 (50 FR 50241). On November 6, 1991 (56 FR 56671), NRC conformed its format for size standards to mirror the definitions of small entities in the Regulatory Flexibility Act. NRC last adjusted its receipts-based size standard levels in a final rule published in the Federal Register on April 11, 1995 (60 FR 18344).

The NRC is increasing its receipts-based small business size standard from \$5.0 million to \$6.5 million. This adjustment is to conform to the SBA receipts-based business size standard, the most commonly used SBA size standard for the nonmanufacturing industries. SBA adjusted this standard for inflation on January 23, 2002 (67 FR 3041) and again on December 6, 2005 (70 FR 72577). The NRC is not revising any of its other size standards at this time. The NRC has coordinated these size standards with the Assistant Director for Size Standards, SBA. This rule change will result in reduced annual fees being imposed on licensees under the FY 2007 fee rule for those licensees with receipts between \$5.0 million and \$6.5 million.

Procedural Background

This rulemaking has the simple aim of updating NRC's size standards to reflect those of the SBA. Because the NRC believes that this action should not cause controversy, the NRC is using the direct final rule process for this rule. The amendment in this rule will become effective on [Insert date 75 days after publication], shortly after the August 6, 2007 effective date of NRC's final license, inspection, and annual fee rule for FY 2007 (72 FR 31401; 6/6/2007). However, if the NRC receives significant adverse comments on this direct final rule by [Insert date 30 days after publication in Federal Register], the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this Federal Register, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the

rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

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 using such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is modifying its size standards. This action does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading ADDRESSES above.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the regulation.

Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule is administrative in that it amends the criteria the NRC uses for determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are expected to result in an increase in the number of NRC licensees that qualify as small entities for annual fee assessments and other purposes.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule is administrative in that it amends the criteria the NRC uses in determining which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards conform to SBA's revised standards and are expected to result in an increase in the number of NRC licensees that qualify as small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment 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 adopting the following amendments to 10 CFR Parts 2 and 171.

PART 2 - - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

AUTHORITY: Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332).

Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.810, paragraph (a)(1) is amended 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 \$6.5 million or less over its last 3 completed fiscal years; or

* * * * *

§ 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.

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

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841);sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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

* * * * *

(c) A licensee who is required to pay an annual fee under this section 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 the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

| | | Maximum annual fee per licensed category |
|---|----------------------------|--|
| Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts): | | |
| | \$350,000 to \$6.5 million | \$2,300 |
| | Less than \$350,000 | 500 |
| Manufacturing entities that have an average of 500 employees or less: | | |
| | 35 to 500 employees | 2,300 |
| | Less than 35 employees | 500 |
| Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population): | | |
| | 20,000 to 50,000 | 2,300 |
| | Less than 20,000 | 500 |
| Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less: | | |
| | 35 to 500 employees | 2,300 |
| | Less than 35 employees | 500 |

* * * * *

27th July

Dated at Rockville, Maryland, this _____ day of _____, 2007.

For the Nuclear Regulatory Commission.

/RA/

Luis A. Reyes,

Executive Director for Operations.

| | Maximum annual fee per licensed category |
|---|--|
| Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts): | |
| \$350,000 to \$6.5 million | \$2,300 |
| Less than \$350,000 | 500 |
| Manufacturing entities that have an average of 500 employees or less: | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |
| Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population): | |
| 20,000 to 50,000 | 2,300 |
| Less than 20,000 | 500 |
| Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less: | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |

* * * * *

27th July

Dated at Rockville, Maryland, this _____ day of _____, 2007.

For the Nuclear Regulatory Commission.

/RA/

Luis A. Reyes,

Executive Director for Operations.

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