

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 171

[NRC-2012-0062]

RIN 3150-AJ14

Receipts-Based, Small Business Size Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending the size standard that it uses to qualify an NRC licensee as a “small entity” under the Regulatory Flexibility Act of 1980, as amended. The NRC is increasing its receipts-based, small business size standard from \$6.5 million to \$7 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 nonmanufacturing industries. The SBA adjusted this standard on July 18, 2008 (73 FR 41237), to account for inflation.

DATES: The direct final rule will become effective on **[INSERT DATE 50 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, unless significant adverse comments on the amendment are received by **[INSERT DATE 30 DAYS FROM 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 If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*.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 FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** will

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

ADDRESSES: Please refer to Docket ID NRC-2012-0062 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and are publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0062.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly-available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then 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 e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Theresa Barczy, Regulations Specialist, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, telephone: 301-492-3666, e-mail: Theresa.Barczy@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Procedural Background
- II. Discussion
- III. Section-by-Section Analysis
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis
- X. Congressional Review Act
- XI. Plain Writing

I. Procedural Background

The NRC is using the direct final rule procedure because it considers this action noncontroversial and routine. This direct final rule is updating the NRC's size standard to reflect that of the SBA. The amendments in this rule will become effective on **[INSERT DATE 50 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, unless significant adverse comments are received by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. 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. If the rule is withdrawn, timely notice will be published in the *Federal Register*.

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.

II. Discussion

The NRC established its size standards on December 9, 1985 (50 FR 50241). On November 6, 1991 (56 FR 56671), the NRC conformed its format for size standards to mirror the definitions of small entities in the Regulatory Flexibility Act of 1980, as amended. On April 11, 1995 (60 FR 18344), the NRC again adjusted its receipts-based, small business size standard in a final rule published in the *Federal Register*. In a direct final rule published in the *Federal Register* on August 10, 2007 (72 FR 44951), the NRC adjusted its receipts-based small business size standard in order to conform to the SBA size standard for nonmanufacturing industries.

The NRC is amending Title 10 of the *Code of Federal Regulations* (10 CFR) part 2, “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,” and 10 CFR part 171, “Annual Fees for Reactor Licenses and Fuel Cycle License and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” to reflect its receipts-based, small business size standard increasing from \$6.5 million to \$7.0 million. This adjustment is to conform to the SBA receipts-based, small business size standard, the most commonly used SBA standard for the non-manufacturing industries. The SBA adjusted this standard for inflation on January 23, 2002 (67 FR 3041), on December 6, 2005 (70 FR 72577), and again on July 18, 2008 (73 FR 41237). The NRC is not revising any of its other size standards at this time. The NRC informed the Chief, Office of Size Standards, SBA, of these amendments.¹ This rule change will result in reduced annual fees being imposed on licensees under the Fiscal Year 2012 fee rule for those licensees with receipts between \$6.5 million and \$7.0 million.

III. Section-by-Section Analysis

Sections 2.810(a)(1) and (b)

Section 2.810 establishes the size standards for determining whether a licensee qualifies as a small entity in the NRC’s regulatory programs. The NRC is increasing its receipts-based, small business size standard from \$6.5 million to \$7.0 million. Therefore, paragraphs (a)(1) and (b) are amended by revising “\$6.5” to read “\$7.0.”

Section 171.16(c)

Section 171.16 establishes the annual fees that will be paid by the following: materials licensees, holders of certificates of compliance, holders of sealed source and device

¹ The NRC’s letter to the Chief, Office of Size Standards, SBA, is in ADAMS under Accession No. ML120810390.

registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC. The NRC is increasing its receipts-based, small business size standard from \$6.5 million to \$7.0 million. Therefore, the chart within the introductory text of paragraph (c) is amended by revising “\$6.5” to read “7.0.”

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using a standard is inconsistent with applicable law or otherwise impractical. This direct final rule is updating the NRC’s receipts-based, small business size standard to reflect that of the SBA. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

V. 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)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

VI. Paperwork Reduction Act Statement

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

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget (OMB) control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule. This direct final rule amends the criteria that the NRC uses to determine which of its licensees qualify as small entities for the purpose of compliance with the Regulatory Flexibility Act of 1980, as amended. The amended size standard conforms 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 for annual fee assessments and other purposes. These amendments are administrative in nature and will neither impose new safety requirements nor relax existing ones and therefore do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the US NRC," September 2004 (ADAMS Accession No. ML042820192).

VIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule amending 10 CFR parts 2 and 171 does not have a significant economic impact on a substantial number of small entities. The direct final rule is administrative in that it amends the criteria that the NRC uses to determine which of its licensees qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act of 1980, as

amended. The amended size standard conforms 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.

IX. Backfit Analysis

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

X. Congressional Review Act

In accordance with the Congressional Review Act of 1996, 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.

XI. 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 has written 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 31883).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors,

Penalties, 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 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 is revised to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); FOIA 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-

2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, as amended by section 3100(s), Pub. L. 104-134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600-2.606 also issued under sec. 102 (42 U.S.C. 4332). 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; AEA sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

§ 2.810 [Amended]

2. In § 2.810, paragraphs (a)(1) and (b) are amended by removing “\$6.5” and adding in its place “\$7.0”.

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 is revised to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99-272, as amended by sec. 5601, Pub. L. 100-203, as amended by sec. 3201, Pub. L. 101-239, as

amended by sec. 6101, Pub. L. 101-508, as amended by sec. 2903a, Pub. L. 102-486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109-103 (42 U.S.C. 2214); Atomic Energy Act secs. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109-58 (42 U.S.C. 2014, 2021, 2021b, 2111).

4. In § 171.16, paragraph (c) is revised 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 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, then the licensee may pay a reduced annual fee as shown in the following table. Failure to file 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:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$450,000 to \$7.0 million	\$2,300
Less than \$450,000	500
Small not-for-profit organizations (Annual gross receipts):	
\$450,000 to \$7.0 million	2,300
Less than \$450,000	500
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	2,300
Fewer than 35 employees	500
Small governmental jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Fewer than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 employees or fewer:	
35 to 500 employees	2,300
Fewer than 35 employees	500

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Dated at Rockville, Maryland, this 20th day of June, 2012.

For the Nuclear Regulatory Commission.

/RA/

R.W. Borchardt
Executive Director
for Operations