

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 354

RIN 3067-AC10

**Fee for Services To Support FEMA's
Offsite Radiological Emergency
Preparedness Program**

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule establishes the policies and administrative basis for FEMA to assess fees from the Nuclear Regulatory Commission's (NRC) licensees to recover the full amount of the appropriated funds obligated by FEMA to provide services for offsite radiological emergency planning and preparedness for FY (FY) 1995.

EFFECTIVE DATE: This rule is effective March 24, 1995.

FOR FURTHER INFORMATION CONTACT:

Anne Marie T. SuPrise, Chief, State and Local Regulatory Evaluation and Assessment Branch, Exercises Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4065.

SUPPLEMENTARY INFORMATION: On March 6, 1991, FEMA published in the **Federal Register** (56 FR 9452-9459) a final rule, 44 CFR part 353, that established a structure for assessing and collecting user fees from NRC licensees. Under 44 CFR part 353, Radiological Emergency Preparedness (REP) services provided by FEMA personnel and FEMA contractors were reimbursable only if these services were site-specific in nature and directly contributed to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended. Although FEMA is publishing a new approach for the assessment and collection of fees from licensees for FY 1995, part 353 remains in effect and will apply in any subsequent fiscal year for which FEMA is not authorized to collect user fees for generic services.

Public Law 102-389, October 6, 1992, 106 Stat. 1571-1619, expanded reimbursable REP Program activities by authorizing FEMA to charge licensees of commercial nuclear power plants fees to recover the full amount of the funds anticipated to be obligated for FEMA's REP Program for FY 1993. On July 1, 1993, FEMA published in the **Federal Register** (58 FR 35770-35775) an interim rule, 44 CFR part 354, to establish and set forth the policies and

administrative basis for assessing and collecting these fees. FEMA reserved the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority was enacted. Public Law 103-124, September 23, 1993, 107 Stat. 1297, directed FEMA to continue assessing and collecting fees to recover the full amount of the funds anticipated to be obligated for FEMA's REP Program for FY 1994. In addition, the Administration proposed to assess such fees for subsequent fiscal years.

Using the methodology established by the interim rule, 44 CFR part 354, the final hourly user fee rate for FEMA personnel during FY 1993 was calculated at \$122.88. On December 13, 1993, a notice to this effect was published in the **Federal Register** (58 FR 65274). The notice also explained that FEMA would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993, taking into consideration the comments received on interim rule 44 CFR part 354. The methodology established by the interim rule 44 CFR part 354 was continued in effect for FY 1994 by notice in the **Federal Register** (59 FR 26350) published May 19, 1994. Using the methodology established by the interim rule, the final hourly user fee rate for FEMA personnel during FY 1994 was calculated at \$120.79. On November 28, 1994, a notice to this effect was published in the **Federal Register** (59 FR 60792-60793).

On July 27, 1994, FEMA published a proposed rule, 44 CFR part 354, in the **Federal Register** (59 FR 38306). This proposed rule, predicated upon Congress passing the authorizing legislation, would establish fees for FY 1995 assessed at a flat rate based on fiscal year budgeted funds for REP Program services performed by FEMA personnel and FEMA contractors whether or not these services directly support NRC licensing requirements. Public comments on this proposed rule were solicited.

Under FEMA's appropriation for FY 1995, Public Law 103-327, September 28, 1994, 108 Stat 2323-2325, the Congress authorized FEMA to assess and collect fees from Nuclear Regulatory Commission (NRC) licensees to recover approximately, but not less than, 100 per centum of the amounts anticipated by FEMA to be obligated for its Radiological Emergency Preparedness (REP) Program. This appropriations act further required the Director of FEMA to promulgate, through rulemaking, a fair and equitable methodology for the assessment and collection of fees applicable to persons subject to FEMA's

radiological emergency preparedness regulations. Public Law 103-327 grants authority for these user fees to be assessed and collected for fiscal year 1995 services only. Although the final rule 44 CFR part 354 is restricted to FY 1995, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted.

Under final rule 44 CFR part 354, fiscal year budgeted funds for REP Program services performed by FEMA personnel and FEMA contractors will be recovered whether or not these services directly support NRC licensing requirements. Fees for FY 1995 will be assessed using a historically-based methodology in which two components, a site-specific, biennial exercise-related component and a flat fee component, are calculated for each site. Final rule 44 CFR part 354 specifies this historically-based approach to the methodology in lieu of the flat fee approach described in the proposed rule 44 CFR part 354 published in the **Federal Register** on July 27, 1994, based upon the numerous public comments received in response to the proposed flat fee methodology and supported by the results of a comparison of different user fee methodologies using actual data for FYs 1993 and 1994.

The historically-based methodology contains elements of the flat fee methodology and of the Nuclear Management and Resources Council (NUMARC), now Nuclear Energy Institute (NEI), methodology, which was described in the proposed rule 44 CFR part 354. The historically-based methodology responds to commenters who objected to the flat fee's lack of site-specific considerations and accountability by factoring in site-specific information relating to the majority of site-specific activities, i.e., plume pathway emergency planning zone (EPZ) biennial REP exercises. At the same time, the historically-based methodology preserves many of the benefits of a flat fee methodology, specifically: (1) The ability to provide each licensee with a bill early in the fiscal year, thus facilitating the licensee's planning and budgeting process by greatly increasing the predictability of the licensee's bill; (2) the ability of States and licensees to request needed technical assistance; (3) the earlier deposit of funds in the U.S. Treasury, thus benefiting the U.S. taxpayer; and (4) a reduction of the FEMA resources required to track administrative costs, thus making the accounting and billing process more efficient and cost-effective for the Government and freeing up scarce

FEMA resources for other REP Program activities. In addition, the historically-based methodology provides a compromise approach that ensures fairness and equitability in the billing.

Under section 354.4, Assessment of Fees, the determination of costs is divided into three categories: site-specific, biennial exercise-related FEMA personnel costs; site-specific, biennial exercise-related FEMA contractor costs; and remaining costs, i.e., the flat fee component.

FEMA's services primarily are provided in support of a Memorandum of Understanding (MOU) between the NRC and FEMA published on September 14, 1993 (58 FR 47996), and regulations issued by both FEMA (44 CFR parts 350, 351, and 352) and the NRC (10 CFR parts 50 and 52).

Radiological emergency response plans and exercises are evaluated using joint FEMA-NRC criteria, NUREG-0654/FEMA-REP-1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee may submit a licensee offsite plan to the NRC. Pursuant to the MOU, the NRC can request that FEMA review a licensee offsite plan and provide its assessments and findings on the adequacy of such plans and preparedness evaluated under Supplement 1.

All funds collected under this rule will revert to the United States Treasury to offset appropriated funds obligated by FEMA for its REP Program. The Department of the Treasury requested that the user fee rule provide for the use of electronic billing and payment mechanisms. FEMA worked with the Department of the Treasury to effect these procedures and now provides for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments. The Department of the Treasury recently revised publication I-TFM 6-8000 to require, under section 8025.30, all funds to be collected by electronic funds transfer when such collection would be cost-effective, practicable, and consistent with current statutory authority.

Discussion of Comments on Proposed Rule

In response to FEMA's request for public comments in connection with the **Federal Register** publication of the proposed final rule, 44 CFR part 354, FEMA received comments from 80 individuals representing 32 utilities, one Federal agency, one industry association, 33 members of Congress (some commenting via multi-signatory letters), two State Governors, eight State

emergency management agencies, two public service commissions and one private citizen.

Comment. A number of utilities, Members of Congress, and State representatives commented that a methodology, such as NUMARC's proposed methodology, with a site-specific element is more equitable than the flat fee and should be adopted.

Discussion. FEMA considered the comments received in support of the inclusion of site-specific charges in the user fees, balanced against the many benefits of a methodology that did not require the distinction between site-specific and generic REP-related activities. FEMA also used actual FYs 1993 and 1994 data to calculate and analyze the bills that would have resulted using the current methodology, the flat fee, the NUMARC proposed methodology, and the historically-based methodology. The results support the historically-based methodology as a fair and equitable method for determining user fees. FEMA concluded that, by changing the flat fee methodology to include a site-specific, plume pathway EPZ biennial exercise-related component, the methodology contained in the final rule would be fair and equitable and yet retain many of the benefits of the flat fee while still responding to the concerns of proponents of a methodology with a site-specific element.

Response. FEMA has changed the flat fee methodology to one that includes a site-specific component that factors in plume pathway EPZ biennial REP exercise-related activities.

Comment. A number of the utilities and some public officials expressed their strong support of the flat fee methodology, reiterating the benefits cited in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. Many supporters also stated that site-specific oriented methodologies had resulted in disproportionately large fees to some utilities and that the flat fee remedied this inequity.

Discussion. FEMA considered comments submitted in support of the flat fee and concluded that the historically-based methodology contained in the final rule preserves many of the benefits cited by proponents of the flat fee while responding to the concerns expressed by commenters who opposed the flat fee.

Response. The final rule changes the methodology from a flat fee approach to a methodology that has a flat component and a historically-based, site-specific component reflecting plume pathway EPZ biennial exercise activities.

Comment. Several utilities commented that the user fee rule covers services whether or not they directly support NRC commercial nuclear power plant licensing requirements and stated that utilities should not be charged for services that fall outside the area of nuclear regulation, including Department of Defense (DOD) and Department of Energy (DOE) facilities, as well as other NRC licensed facilities.

Discussion. The FEMA/NRC Memorandum of Understanding allows the NRC to request FEMA REP Program support, as necessary, for NRC licensees other than those for commercial nuclear power plants. Since the potential exists for the NRC to request such REP Program support for other licensees, the rule is not limited to 10 CFR part 50 licensees. At this time, however, FEMA is assessing fees only for licensees of commercial nuclear power plants, since activities involving other licensees have been very limited or non-existent and are expected to remain so and the NRC has not requested FEMA assessment and findings on the adequacy of offsite planning and preparedness for these licensees. With respect to DOD and DOE facilities, 44 CFR part 354 applies only to NRC licensed facilities, not to DOE and DOD facilities.

Response. No change is necessary because current language in this rule is not limited to 10 CFR part 50 NRC commercial nuclear power plant licensees and is not intended to be so limited.

Comment. Several utilities and many Members of Congress and State officials commented that the flat fee is not fair and equitable since it does not reflect the actual costs incurred or expended on the beneficiary and because it increases some fees without an increase in service.

Discussion. The methodology specified in final rule 44 CFR part 354 contains a site-specific exercise component, which does reflect actual costs historically expended on the beneficiary. Since exercise activities constitute the majority of site-specific REP activities, if services in support of site-specific exercise activities were to increase or decrease, that change would be reflected in future user fees for that site.

Response. Changes made to the rule respond to the intent of the comment.

Comment. Many utilities, Members of Congress, and State officials commented that the flat fee is charged to all plants regardless of size, population density of the surrounding area, or number of governmental jurisdictions and that this places an unfair share of the cost of FEMA services on the customers of

utilities in less urban areas and areas with fewer governmental jurisdictions.

Discussion. The methodology specified in the final user fee rule includes a site-specific exercises component. Since site-specific exercises reflect differences in EPZ populations and number of jurisdictions, and since exercises represent the majority of site-specific REP Program activities, the methodology specified in final rule 44 CFR part 354 does account for these factors.

Response. The change from a flat fee methodology to a methodology that includes a site-specific exercise component responds to this comment.

Comment. One utility commented that sections 354.2(a) and 354.3(d)(1) refer to a "license to decommission" a commercial nuclear power plant. Since such an NRC license does not exist, references to this license should be deleted.

Discussion. FEMA agrees with this comment.

Response. References to a "license to decommission" have been deleted from sections 354.2(a) and 354.3(d)(1).

Comment. One utility commented that sections 354.2(b) and 354.3(d)(2) should be clarified to limit the regulation's applicability to only those possession-only licensees that have neither requested nor received an exemption from NRC 10 CFR 50.54(q) requirements concerning offsite radiological emergency response planning.

Discussion. It is appropriate to exclude possession-only licensees that have received an exemption from offsite radiological emergency response planning. However, it would be inappropriate to exclude possession-only licensees that have requested, but not yet received, this exemption.

Response. The phrase "with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements" has been added to sections 354.2(b) and 354.3(d)(2).

Comment. One utility commented that section 354.4(b), now section 354.4(e), should be revised to clarify the reference to FEMA closing out the "official docket," since there is no formal mechanism for officially closing out the FEMA docket for a plant. Suggested replacement language includes the phrase "Commencing from the date of receipt, user fees will no longer be assessed for that site."

Discussion. The reference to a FEMA official docket has been deleted. The substitute language suggested by the commenter is acceptable, with the exception of the phrase "from the date

of receipt." Since the user fees for a particular fiscal year will not be prorated to cover just a portion of that year, the assessment of user fees for the discontinued plant would cease at the end of the fiscal year in which the plant was exempted by the NRC.

Response. The following language was added to section 354.4(e): "Upon receipt of a copy from the NRC of the NRC-approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness is no longer required at a particular commercial nuclear power plant site, FEMA will discontinue REP Program services. Commencing at the beginning of the next fiscal year, a user fee will no longer be assessed for that site."

Comment. One utility commented that FEMA should consider future changes to the regulation that would reduce or remove generic costs associated with REP Program activities (such as program administration, policy and guidance development, research, etc.) from the fee base, since these costs are associated with the broader societal benefits of the REP Program and benefit the State and local governments as well as the licensees.

Discussion. These generic activities are carried out specifically to support the offsite activities of the NRC's licensing requirements that govern the commercial nuclear power plants. Therefore, despite a possible broader benefit, it is appropriate for the nuclear power plant utilities to be charged for REP Program generic activities.

Response. No change.

Comment. One utility commented that requiring utilities to pay the user fee in the month of December (beginning after FY 1995) places an undue hardship on most utilities. It recommended that bills be sent out in December with payment allowed in December or January.

Discussion. Inasmuch as possible, FEMA intends to send out the user fee bills in December of the applicable fiscal year for payment in either December or January, in order to provide more payment flexibility to the licensees.

Response. FEMA will, to the extent possible, send out the user fee bills in December of the applicable fiscal year.

Comment. Several utilities commented that the flat fee places an unfair burden on those utilities that have invested in and worked closely with State and local offsite radiological emergency response organizations to establish highly effective programs that require minimal FEMA interaction to monitor and assess.

Discussion. The proposed flat fee methodology has been changed to the historically-based methodology that factors in a site-specific, plume pathway EPZ biennial exercise component. This methodology does recognize State and local organizations' efficiencies in REP planning and preparedness insofar as many of these efficiencies are reflected in site-specific, plume pathway EPZ biennial exercise activities.

Response. The change from a flat fee methodology to a methodology that includes a site-specific, plume pathway EPZ biennial exercise component responds to this comment.

Comment. A number of utilities, Members of Congress, State representatives, and the industry organization commented that the recovery of budgeted funds prior to expenditure and the use of a methodology that does not take site-specific activities into consideration fails to provide accountability and the desire to maximize the efficient use of resources, e.g., evaluators.

Discussion. The addition of the site-specific exercise component allows for exercise costs, including costs for exercise evaluators, to be factored in based on historical costs. FEMA's desire to maximize the efficient use of REP Program resources is based primarily on the necessity of protecting the health and safety of FEMA's ultimate customers, i.e., the State and local governments and the people they represent, not upon accountability to the licensees.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to this comment.

Comment. Two utilities and a private citizen commented that it is unfair and inequitable for FEMA to recover any of the REP budget from commercial nuclear utilities; these costs should be paid from tax revenues.

Discussion. The requirement to recover the REP Program budget costs from the program's beneficiaries is not a FEMA requirement, but rather a Congressional mandate. The rule implements Title V of the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, which authorizes FEMA to recover to the fullest extent possible costs attributable to services to identifiable recipients. FEMA's appropriation acts for FYs 1993, 1994, and 1995 direct FEMA to publish the specific methodology to be employed to recover these costs.

Response. No change.

Comment. Two utilities commented that as plants are decommissioned, the flat fee would continually increase for

the remaining sites with operational REP activities.

Discussion. The final rule does not contain the flat fee methodology but, instead, provides a historically-based methodology that includes charges site-specific for plume pathway EPZ biennial REP exercises. However, the historically-based methodology does contain a flat component reflecting activities not related to plume pathway EPZ biennial exercises. As plants are decommissioned, this component will increase, although not to the same extent as it would have under the flat fee. It should be noted that, regardless of the number of plants, the activities carried out under the flat component must still be maintained at the same level. This would also have been the case had the NUMARC methodology been adopted. Notwithstanding the above, allowance is made in the methodology for periodic adjustments to the fees as necessary.

Response. No change, other than the change to a historically-based methodology.

Comment. One utility commented that FEMA should be required to provide greater detail on the nature of costs categorized as generic and questioned why the ratio of generic to site-specific is so high.

Discussion. Under the historically-based methodology, generic activities are billed under the flat, or non-biennial exercise-related component. Generic costs cover a number of important REP Program activities, including policy and guidance development, research, public education, staff training, and general program administration, which must be maintained for and have equal benefit to all licensees.

Response. No change.

Comment. One utility commented that it will not be served by FEMA's one-time adjustment to the billing cycle since the utility's fiscal year runs from October 1 to September 30. The billing option should be more flexible.

Discussion. This utility's situation is unique, since it is a governmental entity and operates on the Government's fiscal year schedule. Due to the structure of the interim rule methodology, the FY 1994 final bills could not be calculated before the end of FY 1994, and, thus, this utility will experience a one-time situation where one-half of its FY 1994 bill and its entire FY 1995 bill will be due during the Government's FY 1995. Since the FY 1995 bills will be sent out in April 1995, a one-time adjustment to the billing cycle will not be necessary in order to allow the other utilities to pay their bill in their FY 1995, i.e., calendar year 1995.

Response. No change.

Comment. One utility agreed that generic costs incurred by FEMA can and should be divided equally among the NRC licensees on a per site basis. However, the utility commented, because site-specific costs vary widely by utility and in accordance with the nature of any given plant exercise, the fees cannot be accurately predicted and there is no demonstrated need to collect them in advance.

Discussion. Since the flat fee methodology has been changed to a methodology that includes a site-specific exercise component based upon historical exercise-related costs, the site-specific component is known at the beginning of the fiscal year. The remaining component is the sum of the site-specific components subtracted from the total REP budget; thus the entire user fee for each site can be known at the beginning of the fiscal year.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to this comment.

Comment. One utility commented that with regard to earlier deposit of funds in the U.S. Treasury, FEMA can adopt regulations that require NRC licensees to prepay REP fees based on historical site-specific costs and shared generic costs.

Discussion. The final rule does contain a site-specific component based upon historical biennial exercise-related costs and the remaining costs are shared equally among the licensees.

Response. The change from a flat fee methodology to a methodology that includes a historically-based, site-specific exercise component responds to this comment.

Comment. One utility commented that if FEMA wants to adopt a leveled fee structure over the two-year cycles, the following method may be used: Allow low-cost operations to pay one flat fee each year while high-cost operations would be required to pay a much higher flat fee each year. In alternating years, FEMA would undercollect based on services provided and in other years FEMA would overcollect from the same licensees, based on actual services rendered.

Discussion. The methodology contained in the final rule includes a historically-based, site-specific, exercise-related component that will result in a relatively level fee structure over the two-year cycles.

Response. The change from a flat fee methodology to a methodology that includes a site-specific component responds to the intent of this comment.

Comment. Several utilities commented that the ability, under the flat fee, of the States and licensees to request technical assistance without the concern of additional fee assessment is not a strong advantage since it could lead to organizations constantly requesting technical assistance when it is not needed.

Discussion. The historically-based methodology will still permit the States and licensees to request needed technical assistance without penalty. However, requests for technical assistance will not increase the total REP Program budget and, therefore, will not adversely affect States and licensees with a lesser need for technical assistance.

Response. No change.

Comment. Two utilities commented that if FEMA's administrative costs for accounting and billing purposes are reduced, FEMA should delete these costs and positions from the budget, rather than reallocating the resources since utilities are reducing their staffs and FEMA should do so too.

Discussion. The FEMA REP staff funded by the S&E portion of FEMA's REP budget has already been reduced. The remaining staff members are needed to ensure that all of FEMA's REP Program responsibilities are adequately addressed and that public health and safety is ensured.

Response. No change.

Comment. The industry association commented that a site that has received an early site permit (ESP) should not be included in the fee base because, unlike sites with plants, it does not require ongoing FEMA services but, rather, a one-time review by FEMA. The ESP holder may "bank" the site for possible future use; thus, the plant may be built in the future or may never be built.

Discussion. In the future there may be sites that have applied for and/or received ESPs. The precise extent to which such plants will require REP Program services is not known at this time, so this language must remain in the final rule in order to address any possible contingencies.

Response. No change.

Comment. The industry association commented that Combined Operating License (COL) holders should not be included in the base until such time as they require FEMA services, i.e., some years into the construction process. Also, the association recommended that the rule specifically exclude COLs for advanced plants built on current plant sites for which emergency preparedness plans already exist.

Discussion. In the future there may be sites that have applied for and/or

received COLs. The precise extent to which such plants will require REP Program services is not known at this time, so this language must remain in the final rule in order to address any possible contingencies.

Response. No change.

Comment. Several utilities commented that, regardless of the fee collection methodology, FEMA should be required to continually evaluate the high cost of contractor labor and eliminate its use whenever possible, particularly in Medical Services drills. State and local emergency management personnel should be considered for use as exercise evaluators, especially if they hold the proper credentials.

Discussion. FEMA does evaluate the use of contractor labor in an effort to allocate the use of its contractors as efficiently as possible. However, contractor support services are critical to the successful implementation of the REP Program primarily because of the cyclical demands for qualified REP exercise evaluators. It would not be cost effective to hire FEMA employees in order to respond to cyclical, fluctuating demands. Also, with the current emphasis on the reduction of Federal employees, it is unlikely that FEMA would be authorized the additional staff necessary to replace contractor support. FEMA has explored the possibility of the use of State and local emergency management personnel as exercise evaluators; however, FEMA's General Counsel has determined that, since a REP exercise is a regulatory exercise used for credit for obtaining and maintaining a license, State and local personnel cannot be used as evaluators.

Response. No change.

Comment. Two utilities commenting in opposition to the flat fee stated that the funding mechanism should not be primarily intended to levelize budget expenses over the two-year exercise cycle, thereby increasing the predictability of a licensee's bill.

Discussion. Many licensees consider the predictability of their user fee bills to be extremely useful for planning and budgeting purposes and would argue that the levelizing of budget expenses over the two-year exercise cycle and a resulting increase in the predictability of the licensees' bills should be a goal of the user fee methodology. The historically-based methodology accommodates these licensees' need for levelizing and predictability of bills while addressing some of the other drawbacks of a flat fee expressed by its opponents.

Response. The change to a historically-based methodology with a site-specific exercise component

preserves the predictability of the licensees' bill amounts while responding to the concerns of opponents of the flat fee.

Comment. One utility commented that the rule states that fees for FEMA personnel and contractors will be assessed as part of the REP budget whether or not the personnel services support NRC licensed plants. In this situation, a FEMA REP staffer or contractor could be sent to respond to a natural disaster and the REP Program budget would be charged.

Discussion. REP Program contractors would not be funded to respond to a natural disaster. FEMA did conduct a study that compared the amount of time that FEMA REP Program staff spent on non-REP activities with the amount of time spent by FEMA non-REP Program staff on REP Program activities. The results indicated that there was a "wash," i.e., the amount of time involved was approximately the same.

Response. No change.

Regulatory Flexibility Act. The Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule does not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended, 57 FR 62520, December 31, 1992, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

National Environmental Policy Act. The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, Environmental Considerations, that this final rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866, Regulatory Planning and Review. This final rule is not a significant regulatory action under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The final rule does not create a serious inconsistency or interference with an action taken or planned by another agency. It does not

materially alter the impact of entitlements, grants, or loan programs, nor would it raise novel legal or policy issues. To the greatest extent possible the final rule adheres to the regulatory principles set forth in Executive Order 12866. This final rule has not been reviewed by the Office of Management and Budget under the procedures of Executive Order 12866.

Paperwork Reduction Act. This final rule does not contain collection of information requirements and is not subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Executive Order 12612, Federalism. A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, address noted above.

List of Subjects in 44 CFR Part 354

Disaster assistance, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, and Technical assistance.

Accordingly, 44 CFR part 354 is revised to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.

354.1 Purpose.

354.2 Scope.

354.3 Definitions.

354.4 Assessment of fees.

354.5 Description of services.

354.6 Billing and payment of fees.

354.7 Failure to pay.

Authority: Sec. 109, Pub. L. 96-295, 94 Stat. 780; Sec. 2901, Pub. L. 98-369, 98 Stat. 494; Title III, Pub. L. 103-327, 108 Stat. 2323-2325; EO 12148, 3 CFR, 1979 Comp., p. 412 (50 U.S.C. App. 2251 note); EO 12657, 3 CFR, 1988 Comp., p. 611.

§ 354.1 Purpose.

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the amounts anticipated by FEMA to be obligated for its Radiological Emergency Preparedness (REP) Program as authorized under Title III, Public Law 103-327, 108 Stat. 2323-2325. As stipulated by Public Law 103-327, the methodology for assessment and collection of fees shall be fair and equitable, and shall reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Such fees will be assessed in

a manner that reflects the use of agency resources for classes of regulated persons and the administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the general fund of the Treasury as offsetting receipts. Assessment and collection of such fees are only authorized during fiscal year (FY) 1995.

§ 354.2 Scope.

The regulation in this part applies to all persons or licensees who have applied for or have received from the NRC:

- (a) A license to construct or operate a commercial nuclear power plant;
- (b) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;
- (c) An early site permit for a commercial nuclear power plant;
- (d) A combined construction permit and operating license for a commercial nuclear power plant; or
- (e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

§ 354.3 Definitions.

As used in this part, the following terms and concepts are defined:

- (a) *FEMA* means the Federal Emergency Management Agency.
- (b) *NRC* means the U. S. Nuclear Regulatory Commission.
- (c) *Technical assistance* means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including but not limited to, provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning, preparedness and response, such as alert and notification and emergency public information.
- (d) *Persons or Licensee* means the utility or organization that has applied for or has received from the NRC:
 - (1) A license to construct or operate a commercial nuclear power plant;
 - (2) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;
 - (3) An early site permit for a commercial nuclear power plant;
 - (4) A combined construction permit and operating license for a commercial nuclear power plant; or

(5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.

(e) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

(f) *REP* means Radiological Emergency Preparedness as in FEMA's REP Program.

(g) *Fiscal Year* means the Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(h) *Federal Radiological Preparedness Coordinating Committee (FRPCC)* means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

(i) *Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(j) *Site-specific services* mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

(k) *EPZ* means emergency planning zone.

(l) *Plume pathway EPZ* means for planning purposes, the area within approximately a 10-mile radius of a nuclear plant site.

(m) *Biennial exercise* means the joint licensee/State and local government exercise, evaluated by FEMA, conducted around a commercial nuclear power plant site once every two years in conformance with 44 CFR part 350.

(n) *Obligate or obligation* means a legal reservation of appropriated funds for expenditure.

§ 354.4 Assessment of fees.

Assessment of user fees from licensees is based on a methodology that includes charges for REP Program services provided by both FEMA personnel and FEMA contractors. Beginning with FY 1995, a four year cycle is established with predetermined user fee assessments which will be collected each year of the cycle. The assessments will initially be at the level indicated in the FY 1995 bills and, as described in paragraphs (b) and (d) of this section, for the remainder of the four year cycle, as authorized. The initial four year cycle will run from FY 1995–1998. The following four year cycle will run from FY 1999–2003. Fees will be assessed only for REP Program services provided by FEMA personnel and by FEMA contractors and not for those services provided by other Federal agencies involved in the FRPCC or the RACs.

(a) *Description of fee components.*

The fee for each site consists of two distinct components:

(1) A site-specific, biennial exercise-related component to recover the portion of the REP program budget associated only with plume pathway emergency planning zone (EPZ) biennial exercise-related activities.

(2) A flat fee component that is the same for each site and recovers the remaining portion of the REP Program budgeted funding which does not include biennial exercise-related activities.

(b) *Determination of site-specific, biennial exercise-related component for FEMA personnel.* An average biennial exercise-related cost for FEMA personnel has been determined for each commercial nuclear power plant site in the REP Program. This cost, which has been annualized (dividing the average biennial exercise-related cost by two), is based on the average number of hours expended by FEMA personnel in REP exercise-related activities for each site. The average number of hours has been determined based on an analysis of site-specific exercise activity expended since the inception of FEMA's user fee program (1991). The actual user fee assessment for this component is determined by multiplying the average number of REP exercise-related hours, which has been determined and annualized for each site, by the average hourly rate for a REP Program employee in effect for the fiscal year. In FY 1995, the hourly rate has been determined to be \$29.34 by the Chief Financial Officer of FEMA. The hourly rate will be revised annually to reflect actual budget and cost of living factors, but the number of site-specific exercise hours,

as annualized, will remain constant for user fee calculations and assessments throughout the four year cycle, e.g., FY 1995–1998. Exercise activity will continue to be tracked and monitored during the initial and subsequent four year cycles. Appropriate adjustments will be made to this component for calculation of user fee assessments during subsequent four year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* An average biennial exercise-related cost for REP contractors has been determined for each commercial nuclear power plant site in the REP Program. This cost, which has been annualized (dividing the average biennial exercise-related cost by two), is based on the average costs of contract personnel in REP site-specific exercise-related activities since the inception of FEMA's user fee program (1991). Exercise activity will continue to be tracked and monitored during the initial and subsequent four year cycles. Appropriate adjustments will be made to this component for calculation of user fee assessments during subsequent four year cycles.

(d) *Determination of flat fee component.* For each year of the four year cycle, the remainder of REP Program budgeted funds is recovered as a flat fee component. Specifically, the flat fee component is determined by subtracting the total of the FEMA personnel and contractor site-specific, biennial exercise-related components, as outlined in paragraphs (b) and (c) of this section, from the total REP budget for that fiscal year. The resulting amount is equally divided among the total number of licensed commercial nuclear power plant sites as defined under § 354.2, Scope, to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of Charges.* Upon receipt of a copy from the NRC of the NRC-approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness is no longer required at a particular commercial nuclear power plant site, FEMA will discontinue REP Program services. Commencing at the beginning of the next fiscal year, a user fee will no longer be assessed for that site.

§ 354.5 Description of services.

Site-specific and other REP Program services provided by FEMA and FEMA contractors for which licensees would

be assessed fees include, but are not limited to, the following:

(a) *Site-specific, plume pathway EPZ biennial exercise-related component services.* (1) Scheduling of plume pathway EPZ biennial exercises.

(2) Review of plume pathway EPZ biennial exercise objectives and scenarios.

(3) Pre-plume pathway EPZ biennial exercise logistics.

(4) Conduct of plume pathway EPZ biennial exercises, evaluations, and post exercise briefings.

(5) Preparing, reviewing and finalizing plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(6) Activities related to Medical Services and other drills conducted in support of a biennial, plume pathway exercise.

(b) *Flat fee component services.* (1) Evaluation of State and local offsite radiological emergency plans and preparedness.

(2) Scheduling of other than plume pathway EPZ biennial exercises.

(3) Development of other than plume pathway EPZ biennial exercise objectives and scenarios.

(4) Pre-other than plume pathway EPZ biennial exercise logistics.

(5) Conduct of other than plume pathway EPZ biennial exercises and evaluations.

(6) Preparing, reviewing and finalizing other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(7) Preparation of findings and determinations on the adequacy or approval of plans and preparedness.

(8) Conduct of the formal 44 CFR part 350 review process.

(9) Providing technical assistance to States and local governments.

(10) Review of licensee submissions pursuant to 44 CFR part 352.

(11) Review of NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and NUREG-0654/FEMA-REP-1, Revision 1, Supplement 1. Copies of the NUREG-0654 may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

(12) Participation in NRC adjudicatory proceedings and any other site-specific legal forums.

(13) Alert and notification system reviews.

(14) Responses to petitions filed under 10 CFR 2.206.

(15) Disaster-initiated reviews and evaluations.

(16) Congressionally-initiated reviews and evaluations.

(17) Responses to licensee's challenges to FEMA's administration of the fee program.

(18) Response to actual radiological emergencies.

(19) Development of regulations, guidance, planning standards and policy.

(20) Coordination with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(21) Coordination of REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(22) Implementation and coordination of REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(23) Participation of REP personnel as lecturers or to perform other functions at EMI, conferences and workshops.

(24) Services associated with the assessment of fees, billing, and administration of this part.

§ 354.6 Billing and payment of fees.

FEMA will forward bills to licensees based on the assessment methodology set forth in § 354.4 to recover the full amount of the funds budgeted by FEMA to provide REP Program services. Licensees with multiple sites will receive consolidated bills. FEMA will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If minor adjustments are necessary due to FEMA exceeding its original budget for the fiscal year, the adjustment will appear in the bill for the subsequent fiscal year.

§ 354.7 Failure to pay.

In any case where FEMA believes that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11, subpart C, to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 et seq.).

Dated: March 16, 1995.

James L. Witt,

Director.

[FR Doc. 95-6998 Filed 3-23-95; 8:45 am]

BILLING CODE 6718-20-P