

Dated: June 1, 2001.

**Piet deWitt,**

*Acting Assistant Secretary of the Interior.*

For the reasons stated in the Preamble, and under the authorities cited below, subpart 3809, part 3800, Subchapter C, Chapter II, Subtitle B, Title 43 of the Code of Federal Regulations is amended as set forth below:

## **PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS**

### **Subpart 3809—Surface Management**

1. The authority citation for subpart 3809 continues to read as follows:

**Authority:** 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. Revise § 3809.505 to read as follows:

#### **§ 3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?**

For each plan of operations approved before January 20, 2001, for which you or your predecessor in interest posted a financial guarantee under the regulations in force before that date, you must post a financial guarantee according to the requirements of this subpart no later than November 20, 2001, at the local BLM office with jurisdiction over the lands involved. You do not need to post a new financial guarantee if your existing financial guarantee satisfies this subpart. If you are conducting operations under a plan of operations approved before January 20, 2001, but you have not provided a financial guarantee, you must post a financial guarantee under § 3809.551 by September 13, 2001.

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## **FEDERAL EMERGENCY MANAGEMENT AGENCY**

### **44 CFR Part 354**

**RIN 3067-AC87**

#### **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 on Nuclear Regulatory Commission (NRC) licensees

to recover the full amount of the funds that we obligate to provide services for offsite radiological emergency planning and preparedness beginning in Fiscal Year (FY) 2001.

**EFFECTIVE DATE:** This rule is effective July 16, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

Throughout the preamble and the rule, the terms "we", "our" and "us" refer to FEMA.

#### **Background: A Chronology**

- **1991.** On March 6, 1991, we 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 we published a new approach for the assessment and collection of fees from licensees for FY 1999 and beyond, part 353 remains in effect and will apply in any subsequent fiscal year for which the Congress does not authorize us to collect user fees for generic services.

- **1992.** Public Law 102-389, October 6, 1992, 106 Stat. 1571-1606, expanded reimbursable REP Program activities by authorizing us to charge licensees of commercial nuclear power plants fees to recover the full amount of the funds anticipated to be obligated for our REP Program for FY 1993.

- **1993.** On July 1, 1993, we published in the **Federal Register** (58 FR 35770-35775) an interim final rule, 44 CFR part 354, to establish and set forth the policies and administrative basis for assessing and collecting these fees. We reserved the option to reissue or amend part 354 for other fiscal years provided that the Congress enacted appropriate authority.

- Public Law 103-124, September 23, 1993, 107 Stat. 1297, directed us to continue assessing and collecting fees to recover the full amount of the funds anticipated to be obligated for our 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 final rule, 44 CFR part 354, we calculated the final hourly user fee rate for FEMA personnel during FY 1993 at \$122.88. On December 13, 1993, we published a notice to this effect in the **Federal Register** (58 FR 65274). The notice explained that we would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993 and taking into consideration the comments received on interim final rule 44 CFR part 354.

- **1994.** We continued the methodology established by the interim final rule 44 CFR part 354 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 final rule, we calculated the final hourly user fee rate for FEMA personnel during FY 1994 at \$120.79. On November 28, 1994, we published a notice to this effect in the **Federal Register** (59 FR 60792-60793).

- On July 27, 1994, we published a proposed rule in the **Federal Register**, 59 FR 38306-38309, 44 CFR part 354. Predicated on Congress passing authorizing legislation, this rule proposed to 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 by FEMA contractors whether or not those services directly supported NRC licensing requirements.

- **1995.** Under our appropriation for FY 1995, Public Law 103-327, September 28, 1994, 108 Stat. 2325, the Congress authorized us to assess and collect fees from Nuclear Regulatory Commission (NRC) licensees to recover approximately, but not less than, 100 percent of the amounts that we anticipated would be obligated for our Radiological Emergency Preparedness (REP) Program. This appropriations act further required us to publish 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 granted authority for these user fees to be assessed and collected for fiscal year 1995 services only. Although the public law was limited to FY 1995, we reserved the option to reissue or amend part 354 for other fiscal years provided that the Congress enacted appropriate authority.

- Under final rule 44 CFR part 354, 60 FR 15628-15634, published on March 24, 1995, we acted to recover fiscal year budgeted funds for REP

Program services performed by FEMA personnel and by FEMA contractors whether or not those services directly supported NRC licensing requirements. We assessed fees for FY 1995–FY 1998 using a historically-based methodology in which we calculated two components for each site: (1) A site-specific, biennial exercise-related component and (2) a flat fee component.

- Public Law 105–276, 112 Stat. 2502, established in the Treasury a Radiological Emergency Preparedness Fund, which will be available for offsite radiological emergency planning, preparedness, and response. This Act gives continuing authority to the Director of FEMA, beginning in fiscal year 1999 and thereafter, to publish fees to be assessed and collected, applicable to persons subject to our radiological emergency preparedness regulations. As in previous Acts, we must collect not less than 100 percent of the amounts needed for our radiological emergency preparedness program, and the methodology for assessment and collection of fees must be fair and equitable. We must deposit fees received in the Fund as offsetting collections, which became available on October 1, 1999, and remain available until expended.

- 1998. On December 15, 1998, we published the interim final rule with request for comments in the **Federal Register**, 63 FR 69001. The comment period was for 60 days following publication. We received no comments during the comment period. On the same day we published a notice that established the fiscal year 1999 hourly rate at \$33.01 for assessing and collecting fees from NRC licensees.

- 1999. Our Appropriations Act for FY 2000, Public Law 106–74, 113 Stat. 1087, again required us to collect user fees of not less than 100 per cent to be assessed and collected for fiscal year 2000 services only. Fees collected become available for authorized purposes on October 1, 2000.

- 2000. This final rule contains one minor revision to the December 13, 1998 interim final rule. Under the description of flat fee services, we have added two more services. We will recover future costs that we incur relating to activities involving the REP Program Implementation Oversight Working Group and training and transitioning to any new REP Program technical support contractor(s) as part of our REP Program User Fee.

*Historically-based methodology.* 44 CFR part 354 adopted this historically-based approach to the methodology in place of the flat fee approach described in the proposed rule. We adopted this

approach based on the numerous public comments that we received on our proposed flat fee methodology and on the results of our comparison of different user fee methodologies, which used actual data from fiscal years 1993 and 1994.

The historically-based methodology contains elements of the flat fee methodology and of the Nuclear Energy Institute (NEI) methodology. The 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.

The historically-based methodology also 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;

- (4) a reduction of our resources needed to track administrative costs, thus making the accounting and billing process more efficient and cost-effective for the Government and freeing up our scarce resources for other REP Program activities; and

- (5) the historically-based methodology ensures fairness and equity in billing licensees.

*Agreements and criteria for services that we provide.* We provide services primarily under a Memorandum of Understanding (MOU) between the NRC and FEMA, published on September 14, 1993 (58 FR 47996–48001) and under regulations issued by both FEMA (44 CFR parts 350, 351, and 352) and the NRC (10 CFR parts 50 and 52).

We evaluate radiological emergency response plans and exercises 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. Under the MOU, the NRC can request that we review a licensee offsite plan and provide its assessments and findings on the adequacy of such plans and preparedness evaluated under Supplement 1.

## Revisions Pertaining to This Rule

This final rule makes one principal change to 44 CFR part 354. We add several items to the list of services for which fees can be collected as part of the flat fee component of the REP user fee billings. These added services include: training and transition costs that we incur as a result of awarding any new REP Program technical support contract; and any other costs that we incur resulting from our REP Program Strategic Review implementation and oversight working group activities. In other respects the rule remains as published as an interim final rule in 1998.

## National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2).

## Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of proposed rulemaking, a regulatory flexibility analysis is required for both the proposed rule and the final rule if the rulemaking could “have a significant economic impact on a substantial number of small entities.” The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not “have a significant economic impact on a substantial number of small entities.”

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This final rule makes minor and technical amendments that our appropriations acts mandate. This rule does not contain any significant substantive changes from our present radiological emergency preparedness regulations and does not substantially change how we collect fees that NRC licensees owe to the United States for services that we perform. While preparing the existing regulations we adjusted the rule to include: (1) A site-specific, biennial exercise-related component and (2) a flat fee component. We base the site-specific, exercise-related component on the average

number of hours spent by our personnel in REP exercise-related activities since the beginning of our user fee program (1991) for each site, and multiply the average number of REP exercise-related hours for each site by the average hourly rate in effect for the fiscal year for a REP Program employee. That adjustment helps make the fees collected reflect more equitably the costs for our services than would a flat fee alone, which vary with each utility involved in the biennial exercises. The rule thus adjusts the economic impact of the fees to the relative capacities of the utilities to bear the direct and indirect costs of the regulation.

For the reasons stated I certify that the Regulatory Flexibility Act does not apply to this final rule. We have prepared no regulatory flexibility analysis under that Act.

#### **Paperwork Reduction Act**

The Office of Management & Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 3067-0201. The information in this final rule does not change any of the information collection requirements currently approved by OMB.

#### **Executive Order 12866, Regulatory Planning and Review**

We have prepared and reviewed this final rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) 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;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule addresses the statutorily required need to reimburse the United States for services that we provide to the nuclear power industry for offsite radiological emergency planning and preparedness in communities near nuclear power plants. Our annual appropriations acts require the rule. The rule relates to fees paid by 45 NRC licensees at 64 sites for the services provided by our Agency for emergency management planning and exercises. Collections under the program total less than \$15,000,000 per year. In its final form the rule responds to comments received from businesses of differing sizes within the regulated industry and makes adjustments to the methods for determining the fees that ensure fairness and equity in billing licensees.

This rule will not adversely affect the availability of funding to small entities, it will not have significant secondary or incidental effects on a substantial number of small entities, and it will not create any additional burden on small entities, particularly State, local and tribal governments.

For the reasons stated I certify that this proposed rule is not a significant regulatory action within the meaning of § 2(f) of Executive Order 12866 of September 30, 1993, 58 FR 51735. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

#### **Executive Order 13132, Federalism**

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under the provisions of under Executive Order 13132, Federalism, dated August 4, 1999. We find that the statutory imposition of fees and the regulatory implementation of the statutory requirements that the nuclear power industry reimburse FEMA for offsite radiological emergency planning and preparedness in communities near nuclear power plants involves no substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, we have concluded that this rule involves no policies that have federalism implications under Executive Order 13132, and we have not prepared a federalism assessment. The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

#### **Congressional Review of Agency Rulemaking**

We have sent the final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. This final rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt from the requirements of the Regulatory Flexibility Act, as certified previously, and complies with the Paperwork Reduction Act.

#### **List of Subjects in 44 CFR Part 354**

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

Accordingly, revise 44 CFR part 354 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 of this regulation.
- 354.3 Definitions.
- 354.4 Assessment of fees.
- 354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.
- 354.6 Billing and payment of fees.
- 354.7 Failure to pay.

**Authority:** Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; 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; Pub. L. 105-276, 112 Stat. 2502; EO 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; EO

12657, 53 FR 47513, 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 that we anticipate to obligate for our Radiological Emergency Preparedness (REP) Program as authorized under Title III, Public Law 105–276, 112 Stat. 2461, 2502. Public Law 105–276 established in the Treasury a Radiological Emergency Preparedness Fund, to be available under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.), and under Executive Order 12657 (3 CFR, 1988 Comp., p. 611), for offsite radiological emergency planning, preparedness, and response. Beginning in fiscal year 1999 and thereafter, the Director of FEMA must publish fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The methodology for assessment and collection of fees must be fair and equitable and must reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Our assessment of fees include our costs for use of agency resources for classes of regulated persons and our administrative costs to collect the fees. Licensees deposit fees by electronic transfer into the Radiological Emergency Preparedness Fund in the U.S. Treasury as offsetting collections.

#### § 354.2 Scope of this regulation.

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.

The following definitions of terms and concepts apply to this part:

*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.

*EPZ* means emergency planning zone.

*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.

*FEMA* means the Federal Emergency Management Agency.

*Fiscal Year* means the Federal fiscal year, which begins on the first day of October and ends on the thirtieth day of September.

*NRC* means the U. S. Nuclear Regulatory Commission.

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

*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.

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

*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 Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

*REP* means Radiological Emergency Preparedness, as in FEMA's REP Program.

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

*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.

*Technical assistance* means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including 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.

*We, our, us*, means and refers to FEMA.

#### § 354.4 Assessment of fees.

(a)(1) We assess user fees from licensees using a methodology that includes charges for REP Program services provided by both our personnel and our contractors. Beginning in FY 1995, we established a four-year cycle from FY 1995–1998 with predetermined user fee assessments that were collected each year of the cycle. The following six-year cycle will run from FY 1999 through FY 2004. The fee for each site consists of two distinct components:

(i) 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. We determine this component by reviewing average biennial exercise-related activities/hours that we use in exercises conducted since the inception of our REP user fee program in 1991. We completed an analysis of REP Program activities/hours used during the FY 1991–1995 cycle at the end of that four-year cycle. We will make adjustments to the site-specific user fees for the next proposed FY 1999–2004 six-year cycle.

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

(2) We will assess fees only for REP Program services provided by our personnel and by our contractors, and we will not assess fees for those services

that other Federal agencies involved in the FRPCC or the RAC's provide.

(b) *Determination of site-specific, biennial exercise-related component for our personnel.* We will determine an average biennial exercise-related cost for our personnel for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average number of hours spent by our personnel in REP exercise-related activities for each site. We will determine the average number of hours using an analysis of site-specific exercise activity spent since the beginning of our user fee program (1991). We determine the actual user fee assessment for this component by multiplying the average number of REP exercise-related hours that we determine and annualize for each site by the average hourly rate in effect for the fiscal year for a REP Program employee. We will revise the hourly rate annually to reflect actual budget and cost of living factors, but the number of annualized, site-specific exercise hours will remain constant for user fee calculations and assessments throughout the six-year cycle. We will continue to track and monitor exercise activity during the six-year cycle, FY 1999–2004. We will make appropriate adjustments to this component to calculate user fee assessments for later six-year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* We have determined an average biennial exercise-related cost for REP contractors for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average costs of contract personnel in REP site-specific exercise-related activities since the beginning of our user fee program (1991). We will continue to track and monitor activity during the initial six-year cycle, FY 1999–2004, and we will make appropriate adjustments to this component for calculation of user fee assessments during subsequent six-year cycles.

(d) *Determination of flat fee component.* For each year of the six-year cycle, we recover the remainder of REP Program budgeted funds as a flat fee component. Specifically, we determine the flat fee component by subtracting the total of our personnel and contractor site-specific, biennial exercise-related components, as outlined in paragraphs (a) and (b) of this section, from the total REP budget for that fiscal year. We then divide the resulting amount equally

among the total number of licensed commercial nuclear power plant sites (defined under 354.2) to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of charges.* When we receive a copy from the NRC of their approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness are no longer required at a particular commercial nuclear power plant site, we will discontinue REP Program services at that site. We will no longer assess a user fee for that site from the beginning of the next fiscal year.

#### **§ 354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.**

Site-specific and other REP Program services provided by FEMA and FEMA contractors for which FEMA will assess fees on licensees include the following:

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

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

(3) Provide pre-plume pathway EPZ biennial exercise logistics.

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

(5) Prepare, review and finalize plume pathway EPZ biennial exercise reports, give notice and conduct 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) Evaluate State and local offsite radiological emergency plans and preparedness.

(2) Schedule other than plume pathway EPZ biennial exercises.

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

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

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

(6) Prepare, review and finalize other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

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

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

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

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

(11) Review 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. You may obtain copies of the NUREG-0654 from the Superintendent of Documents, U.S. Government Printing Office.

(12) Participate in NRC adjudication 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) Congressionally-initiated reviews and evaluations.

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

(17) Respond to actual radiological emergencies.

(18) Develop regulations, guidance, planning standards and policy.

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

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

(21) Implement and coordinate REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

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

(23) Any other costs that we incur resulting from our REP Program Strategic Review implementation and oversight working group activities.

(24) Costs associated with a transition phase should we decide to advertise and award a contract for technical support to the REP Program. Transition phase activities may include training new contractor personnel in the REP Exercise Evaluation and Planning courses, and on-the-job training for new evaluators at a select number of REP exercises.

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

(26) Disaster-initiated reviews and evaluations.

#### **§ 354.6 Billing and payment of fees.**

(a) *Electronic billing and payment.* We will deposit all funds collected under

this part to the Radiological Emergency Preparedness Fund as offsetting collections, which will be available for our REP Program. The Department of the Treasury revisions to section 8025.30 of publication I-TFM 6-8000 require Federal agencies to collect funds by electronic funds transfer when such collection is cost-effective, practicable, and consistent with current statutory authority. Working with the Department of the Treasury we now provide for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments.

(b) We will send bills that are based on the assessment methodology set out in § 354.4 to licensees to recover the full amount of the funds that we budget to provide REP Program services. Licensees that have more than one site will receive consolidated bills. We will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If we exceed our original budget for the fiscal year and need to make minor adjustments, the adjustment will appear in the bill for the next fiscal year.

#### § 354.7 Failure to pay.

Where a licensee fails to pay a prescribed fee required under this part, we will implement procedures under 44 CFR part 11, subpart C, to collect the fees under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

Dated: June 8, 2001.

**Joe M. Allbaugh,**  
Director.

[FR Doc. 01-15054 Filed 6-14-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 97-192; FCC 00-408]

#### Effective Date Established for Procedures for Reviewing Requests for Relief From State and Local Regulations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Federal Communications Commission ("the Commission") announces that the rule adopted in the *RF Procedures Order* of November 17, 2000 (*RF Procedures Order*), regarding its review of requests for relief from impermissible State and local regulation of personal wireless

service facilities based on the environmental effects of radiofrequency (RF) emissions has been approved by the Office of Management and Budget (OMB).

**DATES:** The amendment to § 1.1206(a) published at 66 FR 3499, January 16, 2001, is effective June 15, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Evan Baranoff at (202) 418-7142 of the Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** On November 17, 2000, the Commission adopted the *RF Procedures Order* in 47 CFR Part 1, in WT Docket No. 97-192, FCC 00-408 (66 FR 3499) to address the issues raised in the Commission's Notice of Proposed Rulemaking (62 FR 48034) regarding the review of requests for relief from impermissible State and local regulation of personal wireless service facilities based on the environmental effects of radiofrequency (RF) emissions. In the *RF Procedures Order*, the Commission provided that such requests under section 332(c)(7)(B)(v) of the Communications Act of 1934, as amended,<sup>1</sup> shall be filed as petitions for declaratory ruling, and also established certain required and recommended procedures regarding the service of pleadings and comment periods in such proceedings.

2. The rule change to Note 1 to § 1.1206(a), which was published on January 16, 2001 (66 FR 3499), received OMB approval on June 1, 2001, pursuant to OMB Control No. 3060-0977. The *RF Procedures Order* amended Note 1 to § 1.1206(a) of the Commission's rules so that the expanded service requirements set forth in that note apply to petitions filed pursuant to section 332(c)(7)(B)(v) (i.e., petitions for relief from impermissible State and local regulation of personal wireless service facilities on the basis of RF emissions). Thus, petitioners seeking relief under Section 332(c)(7)(B)(v) must serve a copy of such petitions on those State and local governments that are the subject of the petitions, as well as on those State and local governments. Accordingly, this rule change will become effective June 15, 2001. This notice constitutes publication of the effective date of this rule change.

3. The Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036,

<sup>1</sup> 47 U.S.C. 332(c)(7)(B)(v).

(202) 857-3800. The Public Notice is also available via the internet at: [http://www.fcc.gov/Bureaus/Wireless/News\\_Releases/2001/index.html](http://www.fcc.gov/Bureaus/Wireless/News_Releases/2001/index.html) in da01-1368.doc and da01-1368.txt formats.

#### List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications, Permit-but-disclose proceedings.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 98-76; FCC 01-160]

#### Rules To Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants in part the petitions for partial reconsideration filed by Tandy Corporation and Uniden of America, Inc. We affirm our decision to require manufacturers to make scanning receivers more difficult to modify by making the circuitry inaccessible; relax the warning label requirements for certain devices; and clarify the compliance measurement rules.

**DATE:** Effective July 16, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Rodney Conway, Office of Engineering and Technology, (202) 418-2904.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 98-76, FCC 01-160, adopted May 10, 2001, and released May 22, 2001. The full text of this Commission decision is available on the Commission's Internet site at <http://www.fcc.gov>. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036. Comments may be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html> or by e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov).