

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check ☐ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Federal Register

Thursday
July 1, 1993

Part VI

Department of Education

34 CFR Part 378

**Projects for Initiating Recreational
Programs for Individuals With Disabilities;
Rule and Notice Inviting Applications**

DEPARTMENT OF EDUCATION

34 CFR Part 378

RIN 1820-AB23

Projects for Initiating Recreational Programs for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Projects for Initiating Recreational Programs for Individuals with Disabilities program in order to implement changes made by the Rehabilitation Act Amendments of 1992. The amended regulations add new application requirements, provide for increasing matching requirements during the period of grant assistance, expand the types and purpose of activities that may be carried out, require that grantees advise applicants for and recipients of project services of the availability of assistance under the State Client Assistance Program, and add reporting requirements as a condition for continuation funding.

EFFECTIVE DATE: These regulations take effect either August 16, 1993 or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Switzer Building, Washington, DC 20202-2650. Telephone: (202) 205-9796. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement changes in statutory provisions of the recreational discretionary grant program as authorized in title III, section 316 of the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (Pub. L. 102-569), enacted October 29, 1992.

The purpose of this program is to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration. To the maximum extent

possible, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

This program supports the National Educational Goals. Specifically, the program addresses Goal 5, which calls for every adult American to be literate and to possess the skills necessary to compete in a global economy, by providing improved vocational rehabilitation opportunities for an increased number of people with disabilities.

On May 13, 1993 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 28448). The major issues related to this program are discussed in the preamble to the NPRM.

As a result of public comments, three changes have been made in the final regulations. First, the provision requiring services to be offered in settings with peers who are not individuals with disabilities, if possible and appropriate, has been strengthened to require that services be provided in integrated settings to the maximum extent possible. Second, the number of points assigned to the selection criterion "Impact of the project" has been increased while the number of points assigned to the selection criterion "Evaluation plan" has been reduced. Third, the use of the term "special" in the title of the program and throughout the regulations has been omitted.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. Comments relating to the grant renewal authority under this program will be considered in the development of separate proposed regulations to be published at a later date and are not dealt with in these final regulations.

Title of Program (Part 378)

Comments: One commenter recommended that the Department remove the word "Special" from the title of this program. The commenter expressed the view that this term, when applied to services for people with disabilities, carries with it the

connotation that those services and activities are to be developed and delivered in a separate and segregated fashion, and thus conflicts with the basic intent of the Rehabilitation Act and the Americans with Disabilities Act (ADA).

Discussion: The Secretary agrees that the use of the term "Special" in this context is inappropriate and should be eliminated.

Changes: The term "Special" has been deleted from the title of this program and throughout 34 CFR part 378.

Settings With Peers (§ 378.1)

Comments: Two commenters suggested strengthening the provision requiring services to be offered in settings with peers who are not individuals with disabilities, if possible and appropriate. One commenter proposed that all projects be required to provide activities in integrated settings, i.e., provided in settings with individuals who are not disabled. The other commenter recommended that programs and activities be provided in integrated settings to the maximum extent possible.

Discussion: Section 316(a)(1) of the Act provides that recreational activities should be provided in settings with peers who are not individuals with disabilities whenever possible and appropriate. Thus, program regulations in § 378.1 cannot require without exception that all project activities be integrated. However, the Secretary agrees that language should be added to emphasize that all programs and activities should be carried out in a truly inclusive and integrated manner to the greatest extent possible.

Changes: Section 378.1 has been revised to include the phrase "to the maximum extent possible."

Who Is Eligible for an Award (§ 378.2)

Comments: One commenter recommended that this section be revised to indicate that organizations that provide vocational rehabilitation services to individuals with disabilities and organizations that provide recreational services to the general public are eligible to apply for these funds.

Discussion: Both types of organizations are eligible under this program as long as they are not profit-making. The statute limits grant eligibility to State and other public agencies and private nonprofit organizations.

Changes: None.

Employment Outcome

Comments: One commenter asked whether employment is an expected outcome under these projects.

Discussion: Employment is not an expected outcome under this program, but the recreational services provided are to enhance and facilitate skills leading to employment.

Changes: None.

Selection Criterion—Impact of the Project and Evaluation Plan (§§ 378.20 (a) and (e))

Comments: One commenter recommended that the points allocated to "Impact of the project" be increased and those allocated to "Evaluation plan" be decreased. Both are equally weighted in the NPRM.

Discussion: The Secretary agrees that the selection criterion on "Impact of the project" should be given greater weight.

Changes: The points allocated to "Impact of the project" have been increased from 15 points to 20 points and the points allocated to "Evaluation plan" have been lowered from 15 points to 10 points.

Selection Criteria—Plan of Operation (§ 378.20(b))

Comments: One commenter recommended that one of the eight components in the selection criterion entitled "Plan of operation" in § 378.20(b) be given more points to ensure that projects that take place in settings with peers who are not individuals with disabilities will be given greater weight.

Discussion: The proposed selection criterion entitled "Plan of operation" addresses various aspects of an applicant's project, including the extent to which individual project activities are provided in integrated settings. This selection criterion has been allocated a total of 25 points out of a possible 100 points. The eight component elements of this criterion are not individually weighted. The Secretary believes the number of points allocated for the criterion as a whole is appropriate and does not need to be increased.

Changes: None.

Selection Criterion—Quality of Key Personnel (§ 378.20(c))

Comments: A commenter requested that this section be revised to require the project director and other key staff to meet existing professional licensure or certification requirements.

Discussion: While the Secretary agrees that project personnel should be highly qualified, requiring all key staff to meet existing licensure or recognized professional certification standards

would be very limiting and overly prescriptive. Moreover, the experience of the proposed project director, as well as other key personnel, will be reviewed by peer reviewers, and the adequacy of their experience and qualifications will be evaluated accordingly. The Secretary believes that it is up to the applicant to state the adequacy and relevance of the qualifications and experience of its key personnel.

Changes: None.

Individuals With Disabilities From Minority Backgrounds (§ 378.3(a)(4))

Comments: One commenter requested clarification of proposed § 378.3(a)(4), which requires each applicant in its application to describe the manner in which it will address the needs of individuals with disabilities from minority backgrounds. The commenter asked whether appropriate and documented outreach to encourage minority participation could constitute compliance, or whether actual provision of services to minority members is required.

Discussion: The requirements of this section could be met by the provision of outreach activities to encourage minority participation. Widespread and continuing outreach is now required. Each project must make substantial efforts to include minority members among the individuals it serves. The Secretary expects that in most instances this outreach will result in minority participation in the project.

Changes: None.

Type of Projects (§ 378.6)

Comments: A commenter suggested that this section be revised to include an express reference to public park and recreation agencies and that program support be limited to entities that are in the business of operating recreational programs.

Discussion: The Secretary agrees that recreational services providers are essential to this program. However, the Secretary can neither limit the eligible entities to recreational service providers only, nor limit the types of services provided to recreational services only. All public agencies and private nonprofit organizations are eligible to receive a grant under this program, whether or not their exclusive or primary activity is operating a recreational program.

Changes: None.

The ADA and Section 504 of the Act

Comments: One commenter expressed concern that these regulations make no mention of the applicability of regulations implementing section 504 of

the Act or titles II and III of the ADA to grant recipients.

Discussion: In 34 CFR 75.500, which applies to this program, each grantee under a discretionary grant program is required to comply with the Department's section 504 regulations in 34 CFR part 104. The provisions of titles II and III of the ADA apply by their own terms.

Changes: None.

Miscellaneous Comments

Comments: A couple of commenters requested that additional information be included in the application package. One commenter requested more specific information about where program findings are to be disseminated. The same commenter also requested that the application package include information about the Client Assistance Program (CAP) and the availability of CAP materials.

Discussion: The Secretary believes that § 378.3(a)(1) is sufficiently clear as to whom the Secretary expects project findings to be disseminated. Also, each applicant is evaluated on its plan for dissemination in § 378.20(g) and can be given up to 10 points under this criterion. The Secretary does not believe it is beneficial to restrict or prescribe to the applicant to whom the findings should be disseminated.

The application package contains a general statement regarding the requirement to provide information on the CAP and further states that, if anyone is in need of additional information about a specific CAP, they can call the Education Department number that is provided.

Changes: None.

Comments: A commenter requested that a definition of "individual with a severe disability" be included in the application package.

Discussion: The appropriate definition of this term is included in technical changes to the general vocational rehabilitation services projects regulations in 34 CFR part 369, which is made applicable to this program in § 378.5.

Changes: None.

Comments: A commenter wanted clarification of whether in-kind contributions can be used to meet the program match requirement.

Discussion: In-kind contributions can be used to meet the program matching requirement. Section 378.4(a) makes applicable departmental grants regulations in 34 CFR parts 74 and 80. These regulations, which apply respectively to nonprofit organizations and State and local governments, expressly permit the value of in-kind

contributions to be used as match in §§ 74.52(b) and 80.24(a)(2).

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 378

Education, Grant programs—recreation, Recreation, Disability or individuals with disabilities, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.128J, Projects for Initiating Recreational Programs for Individuals with Disabilities.)

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 378 to read as follows:

PART 378—PROJECTS FOR INITIATING RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

378.1 What is the Projects for Initiating Recreational Programs for Individuals with Disabilities program?

378.2 Who is eligible for an award?

378.3 What are the application requirements?

378.4 What regulations apply?

378.5 What definitions apply?

378.6 What types of projects may the Secretary fund?

Subpart B—How Does the Secretary Make an Award?

378.20 What selection criteria does the Secretary use?

Subpart C—What Conditions Must Be Met after an Award?

378.30 What is the duration of grants?

378.31 What are the matching requirements?

378.32 What are the additional requirements for grantees?

Authority: 29 U.S.C. 711(c) and 777(f), unless otherwise noted.

Subpart A—General

§ 378.1 What is the Projects for Initiating Recreational Programs for Individuals with Disabilities program?

This program is designed to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration. To the maximum extent possible, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for an award?

States and other public agencies and private nonprofit organizations are eligible to receive a grant under this program.

(Authority: Secs. 12(e) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What are the application requirements?

Each grant application must include—

(a) A description of—

(1) The manner in which the findings and results of the project will be disseminated to the interested public, especially to State and private rehabilitation agencies and organizations, to university-based leisure and recreation programs, to community recreation providers, and to related professional associations. The methods of dissemination may include, but are not limited to, videos, presentations, manuals, and newsletters;

(2) If applicable, the extent to which any service program for which the applicant has received funding previously under this part has been continued or will be continued after Federal funding ends;

(3) The means by which the service program proposed in the application will be continued after Federal funding ends; and

(4) The manner in which the applicant will address the needs of individuals with disabilities from minority backgrounds.

(b) An assurance that each project, to the greatest extent possible, will use existing resources and facilities to carry

out the recreational activities provided by the project.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: Secs. 21(b)(5) and 316(a)(4) of the Act; 29 U.S.C. 718b and 777(f))

§ 378.4 What regulations apply?

The following regulations apply to the Projects for Initiating Recreational Programs for Individuals with Disabilities program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 378.

(c) The regulations in 34 CFR part 369.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

§ 378.5 What definitions apply?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec 12(c) of the Act; 29 U.S.C. 777(c))

§ 378.6 What types of projects may the Secretary fund?

(a) This program supports projects that initiate programs of recreational services and related experiences for individuals with disabilities.

(b) Activities carried out under this program may include, but are not limited to, arts, music, handicrafts, homemaking, camping, dance, 4-H activities, scouting, physical education and sports, vocational skills development, leisure education, leisure networking, leisure resource development, and related recreational activities designed—

- (1) To aid in employment; and
- (2) To maximize mobility, socialization, independence and community integration.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

Subpart B—How Does the Secretary Make an Award?

§ 378.20 What selection criteria does the Secretary use?

(a) *Impact of the project* (20 points).

(1) The Secretary reviews each application to determine the extent to which the proposed project provides individuals with disabilities with recreational activities and related experiences that will enhance their employment, mobility, socialization, independence, and community integration skills.

(2) The Secretary looks for information that shows—

- (i) The number of individuals with disabilities expected to be served;
- (ii) The types of individuals with disabilities expected to be served;
- (iii) The types of recreational activities expected to be available; and
- (iv) How the proposed recreational activities and related experiences will improve the employment, mobility, socialization, independence, and community integration skills of the individuals with disabilities to be served.

(b) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

- (1) The quality of the design of the project;
- (2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program to initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration;

(ii) Are attainable within the project period given the project's budget and other resources;

(iii) Are objective and measurable for purposes of evaluation; and

(iv) Include specific objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to

achieve each objective and intended outcome during the period of Federal funding;

(5) The extent to which the applicant's plan identifies the numbers of eligible clients by type of disability and the numbers of clients with severe disabilities available to participate in the project;

(6) The extent to which the applicant plans to conduct outreach activities to recruit participants;

(7) The extent to which the applicant's plan ensures that individuals who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(8) The extent to which project activities are provided in settings with peers who are not individuals with disabilities.

(c) *Quality of key personnel* (10 points). The Secretary reviews each application to determine the quality of the key personnel proposed for the project, including—

(1) The relevant experience and training of the project director;

(2) The relevant experience and training of each of the other key personnel to be used on the project;

(3) The amount of time that each key person will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

- (i) Persons with disabilities;
- (ii) The elderly;
- (iii) Women; and
- (iv) Members of racial or ethnic minority groups.

(d) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine whether—

(1) The budget for the project is adequate to support the project activities and the Federal matching requirements;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The application contains sufficient information on how the project will meet its matching requirement and increase its share of project costs during the project period, including an identification of the sources and amounts of matching funds.

(e) *Evaluation plan* (10 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(f) *Adequacy of resources* (5 points). The Secretary reviews each application for information to determine that the applicant plans to devote adequate resources to the project, including—

(1) The facilities that the applicant plans to use;

(2) The equipment and supplies that the applicant plans to use; and

(3) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(g) *Plan for dissemination of findings and results of the project* (10 points). The Secretary reviews each application to determine the quality of its plan to disseminate the findings and results of the project to the interested public to facilitate replication in other locations.

(h) *Plan for sustaining the program after the project period* (10 points). The Secretary reviews each application to determine the quality of its plan to sustain the project after the termination of Federal grant support.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: Secs. 12(c), 306(h), and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

Subpart C—What Conditions Must Be Met After an Award?

§ 378.30 What is the duration of grants?

Grants under this program shall be for a maximum period of three years unless renewed in accordance with the criteria in section 316(a)(2) of the Act.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.31 What are the matching requirements?

The Federal share of the costs of activities under this program is 100 percent for the first year of the grant, 75 percent for the second year, and 50 percent for the third year.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.32 What are the additional requirements for grantees?

(a) Recreational projects funded under this program must maintain, at a minimum, the same level of services over a three-year project period.

(b) Each grantee under this program shall prepare and submit annually to the Secretary a report on the results of its grant activities, including any other information the Secretary may require, as part of its application for continuation assistance.

(c) Each grantee shall advise applicants for and recipients of services under its project or, as appropriate, the parents, family members, guardians, advocates, or authorized representatives of these individuals, of the availability

and purposes of the State Client Assistance Program, including information on seeking assistance from that program.

(Approved by the Office of Management and Budget under control number 1820-0018.)

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

[FR Doc. 93-15644 Filed 6-30-93; 8:45 am]

BILLING CODE 400-01-P

[CFDA No.: 84.128J]

Projects for Initiating Recreational Programs for Individuals With Disabilities; Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To initiate programs to provide individuals with disabilities with recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration.

Eligible Applicants: States and other public agencies and private nonprofit agencies and organizations.

Deadline for Transmittal of Applications: August 2, 1993.

Deadline for Intergovernmental Review: October 1, 1993.

Applications Available: July 2, 1993.

Available Funds: \$2,570,103.

Estimated Range of Awards: \$85,000-\$110,000.

Estimated Average Size of Awards: \$92,000.

Estimated Number of Awards: 27.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 378.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 378.20.

For Applications: Telephone (202) 205-9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Tony Cavataio, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202-2740.

Telephone: (202) 205-8206. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 29 U.S.C. 711(c) and 777(f).

William L. Smith,

Acting Assistant Secretary Office of Special Education and Rehabilitative Services.

[FR Doc. 93-15643 Filed 6-30-93; 8:45 am]

BILLING CODE 4000-01-P

Federal Register

**Thursday
July 1, 1993**

Part VII

Federal Emergency Management Agency

44 CFR Part 354

**Fees for Services to Support FEMA's
Offsite Radiological Emergency
Preparedness Program; Interim Rule**

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: Interim rule and request for
comments.

SUMMARY: This interim rule establishes the policy and administrative basis for FEMA to assess fees from licensees of commercial nuclear power plants. The purpose of this interim rule is to outline the policies and procedures for recovering the full amount of the costs incurred by FEMA to provide services for offsite planning and emergency preparedness for fiscal year (FY) 1993. Fees received under the interim rule are expected to offset Federal appropriations obligated for FEMA's Radiological Emergency Preparedness (REP) program. FEMA has requested a waiver from the U.S. Department of Treasury's cash management provisions of directive I TFM 6-8000, Section 8025.10 related to the 5-day time frame for billing for services rendered and the 30-day time frame for remission of payments by licensees.

DATES: This interim rule is effective July 1, 1993.

Comments from the public on this interim rule are encouraged and invited on or before August 16, 1993.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472; (fax)(202) 646-4536.

FOR FURTHER INFORMATION CONTACT: Vern Wingert, Chief, Policy Development Branch, Radiological Preparedness Division, Office of Technological Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (tel.)(202) 646-2872.

SUPPLEMENTARY INFORMATION: This interim rule is published under the authority of Public Law 102-389, October 6, 1992, 106 stat. 1571-1619, which provides:

"The Director of the Federal Emergency Management Agency shall promulgate through rulemaking a schedule of fees applicable to persons subject to the Federal Emergency Management Agency's Radiological Emergency Preparedness regulations.

The aggregate charges assessed pursuant to this section during fiscal year 1993 shall approximate, but not be less than, 100 per centum of the amounts anticipated by the Federal Emergency Management Agency to be obligated for its Radiological Emergency Preparedness program. * * *

On March 6, 1991, FEMA published in the *Federal Register* (56 FR 9452-9459) the final rule, 44 CFR part 353, that established a structure for assessing user fees to the Nuclear Regulatory Commission's (NRC) licensees for site-specific services provided by FEMA that directly contribute to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended.

Under 44 CFR part 354, fees will be assessed based on costs incurred or obligated for both site-specific and generic services performed by FEMA staff and FEMA contractors. Licensees with multiple sites will receive consolidated bills.

A comparison of the fee structures under parts 353 and 354 follows with a highlighting of similarities and differences:

(1) **Authority.** The authority upon which part 353 was constituted and implemented is the Independent Offices Appropriations Act of 1952. This authority is not limited to any specific fiscal year. The authority for part 354 is Public Law 102-389 and is restricted to Fiscal Year (FY) 1993. While this interim rule is restricted by Public Law 102-389 to FY 1993, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted.

(2) **Scope.** FEMA must assess NRC licensees for 100% of the FY 1993 costs of the REP Program under part 354. Under 44 CFR part 353, FEMA could only assess licensees for costs attributable to site-specific services that directly related to the fulfillment of NRC licensing requirements such as exercise evaluation. Based on the administration of part 353, fees assessed for such services were expected to recover approximately 40% to 60% of the annual REP Program budget.

(3) **Assessment methodology.** The method used for assessing fees under part 353 was based on time spent on applicable services multiplied by the established fiscal year hourly rate for FEMA personnel and on actual costs for applicable services provided by FEMA-contractor personnel. Costs for generic services were not recovered. The

method proposed under part 354 is based on recovery of both site-specific and generic costs incurred or obligated by FEMA personnel and by FEMA contractors.

(a) **Site-specific services.** While site-specific services billable under part 353 included only those services that directly related to NRC licensing requirements, site-specific services billable under part 354 include all such services whether or not they directly support NRC licensing requirements.

(b) **Generic services.** While licensees were not billed for the costs of generic services under part 353, they are under part 354.

While this interim rule is restricted by Public Law 102-389 to fiscal year (FY) 1993, FEMA reserves the option of reissuing or amending part 354 for other fiscal years provided that appropriate authority is enacted. The Administration has proposed in the FY 1994 budget to continue collecting fees for FY 1994 and subsequent fiscal years.

While FEMA is employing a new approach for the assessment and collection of fees from licensees for FY 1993, 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.

Services provided by FEMA in support of preparedness for commercial nuclear power plant emergencies are provided in support of a Memorandum of Understanding (MOU) between NRC and FEMA (50 FR 15485, April 18, 1985) and regulations issued by both FEMA (44 CFR parts 350, 351 and 352) and NRC (10 CFR parts 50 and 52). The referenced NRC-FEMA MOU is included as Appendix A to part 354.

Emergency response plans and exercises are evaluated under 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 can submit a utility plan to the NRC. FEMA, as requested by the NRC through the MOU, also will make assessments and provide findings on utility-developed plans and exercises, evaluated under Supplement 1.

Under § 354.4, Assessment of Fees, of the interim rule, the determination of costs is divided into three groups: FEMA Personnel; FEMA Contract Personnel; and Other FEMA Contract Services. FEMA estimates that the hourly rate for FEMA Personnel will be in the range of \$110 to \$130, based on salaries and expenses of an estimated \$5,872,000, including travel, divided by the actual number of site-specific hours reported for FY 1993. FEMA will

¹ See § 354.3 for definition of "Persons or Licensee."

recover an estimated \$4,300,000 for its Contract Personnel in FY 1993, and an estimated \$300,000 for Other Contract Services.

The annual billing provision and the 45-day time frame for payment of FEMA's bills are incorporated in this interim rule contingent upon the granting of a waiver from the U.S. Department of Treasury. If the Department of the Treasury does not grant a waiver, FEMA, if practicable, will execute an estimated billing procedure, and will modify this interim rule accordingly.

Regulatory Flexibility Act

The Director certifies that this interim 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 will 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 rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Regulatory Analysis

This interim rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of \$100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory analysis is required.

Paperwork Reduction Act

This 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, 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 is amended by adding part 354 to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT THE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.

- 354.1 Purpose.
- 354.2 Scope.
- 354.3 Definitions.
- 354.4 Assessment of fees
- 354.5 Costs for FEMA and FEMA-contract services.
- 354.6 Description of site-specific and generic services.
- 354.7 Billing and payment of fees.
- 354.8 Failure to pay.

Appendix A to Part 354—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

Authority: Sec. 109, Pub. L. 96-295, 94 Stat. 780; Sec. 2901, Pub. L. 98-369, 98 Stat. 494; Title III, Pub. L. 102-389, 106 Stat. 1571; 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 sets out policies and procedures for assessment of fees to licensees of commercial nuclear power plants for recovery of at least 100% of the cost of services provided by the Federal Emergency Management Agency (FEMA) through the Radiological Emergency Preparedness (REP) Program, as authorized under title III, Public Law 102-389, 106 Stat. 1571. The schedule of fees shall be fair and equitable, and shall reflect the full amount of direct and indirect costs incurred through the provision of regulatory 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 1993.

§ 354.2 Scope.

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

- (a) A license from the Nuclear Regulatory Commission (NRC) to construct, operate or decommission a commercial nuclear power plant;
- (b) A possession-only license;
- (c) An early site permit;
- (d) A combined construction permit and operating license; or
- (e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological 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 Nuclear Regulatory Commission.

(c) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures, provision of advice and recommendations for specific aspects of preparedness 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:

- (1) A license from the NRC to operate or decommission a commercial nuclear power plant;
- (2) A possession-only license;
- (3) An early site permit;
- (4) A combined construction permit and operating license; or
- (5) Any other NRC licensee that is now or may become subject to requirements for offsite radiological 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, United States 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 costs* mean the costs of all offsite radiological emergency planning and preparedness services provided by FEMA and by FEMA contractors concerning the broad geographical area surrounding the locations at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be, constructed.

(k) *Obligate or obligation* refers to a legal reservation of appropriated funds for expenditure.

§ 354.4 Assessment of fees.

Assessments of fees for licensees shall be based on the following methodology that includes both site-specific and generic activities provided by FEMA and through its contractors. Fees will be assessed only for services provided by FEMA and by FEMA contractors and not for the services provided by other Federal agencies involved in the FRPCC or the RACs.

(a) *Determination of costs for FEMA personnel.* The costs for FEMA personnel will be determined by multiplying the number of site-specific hours reported by the FY 1993 hourly rate. The hourly rate will be calculated by dividing the total obligations for salaries and expenses, including travel, by the actual number of site-specific hours reported for FY 1993. Because total obligations for salaries and expenses will serve as the fixed base in this methodology, the generic costs associated with FEMA staff services will be recovered as a proportional part of the site-specific costs. The exact hourly rate will be calculated at the end of FY 1993 when the total number of site-specific hours can be determined.

(b) *Determination of costs for FEMA contract personnel.* The following approach will be used to recover the bulk of the Emergency Management Planning and Assistance (EMPA),

contractor support, portion of the REP Program budget. This portion of EMPA funds is used for contractors who perform predominantly site-specific services. Actual site-specific costs obligated will be assessed to the licensees. Obligated generic costs will be assessed proportional to the percentage of the site-specific costs.

(c) *Determination of costs for other FEMA contract services.* The following approach will be used to recover the remaining EMPA funds of the REP Program budget. Obligations solely for generic program work that provides similar potential benefits to all licensees will be divided equally among the licensees on a per site basis.

§ 354.5 Costs for FEMA and FEMA-contract services.

Licensees shall be assessed for site-specific services provided by FEMA personnel based on an established hourly rate. FEMA contract services will be charged either on the basis of actual costs incurred or equally among all licensees as described in § 354.4.

§ 354.6 Description of site-specific and generic services.

Site-specific and generic services provided by FEMA and by FEMA contractors for which licensees shall be assessed fees include but are not limited to the following:

- (a) *Site-specific services.* (1) Evaluation of State and local plans and preparedness.
- (2) Scheduling of exercises.
- (3) Development of exercise objectives and scenarios.
- (4) Pre-exercise logistics.
- (5) Conduct of exercise and evaluation.
- (6) Preparing, reviewing and finalizing exercise reports, notice and conduct of public meetings.
- (7) Scheduling, conducting and evaluating remedial exercises, medical services drills, or other exercises and drills including participation in meetings and the preparation and review of reports.
- (8) Preparation of findings and determinations on the adequacy or approval of plans and preparedness.
- (9) Conduct of the formal 44 CFR part 350 review process.
- (10) Providing technical assistance to States and local governments.
- (11) Review of licensee submissions under 44 CFR Part 352.
- (12) Review of NRC licensee plan submissions under the NRC-FEMA Memorandum of Understanding on Planning and Preparedness in appendix A of this part.

(13) Participation in NRC adjudicatory proceedings and any other site-specific legal costs.

(14) Alert and notification system reviews.

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

(16) Disaster-initiated reviews and evaluations.

(17) Congressionally initiated reviews and evaluations.

(18) Licensee requests for audits of the fee program or responses to challenges for FEMA's administration of the fee program.

(b) *Generic services.* (1) Development of guidance, planning standards and policy.

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

(3) Coordination of REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, Nuclear Management and Resources Council, and the Edison Electric Institute.

(4) 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.

(5) Participation of REP staff as lecturers or other functions at EMI, conferences and workshops.

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

§ 354.7 Billing and payment of fees.

FEMA will forward bills to licensees based on the assessment methodology set forth in § 354.4 to recover at least 100% of the cost of services provided by FEMA through its REP Program. The assessments for each site and licensee, as stated above, will reflect both site-specific and generic costs for FEMA staff and contractors. Because of the need to use actual site-specific data in this methodology, FEMA will determine costs for FY 1993 services during the first quarter of FY 1994 and forward one bill to licensees for assessed FY 1993 costs. FEMA bills will be payable by each licensee within 45 days of receipt of invoices. Notwithstanding the above, FEMA reserves the right to assess licensees on an estimated basis at any time during the fiscal year.

§ 354.8 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.).

Appendix A to Part 354—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU follows.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergency response plans¹ and

preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies (Section 2-101) and represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs. (Section 2-104.)

On December 7, 1979, the President in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.
2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources staffing levels and qualifications, and equipment adequacy). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim

FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f) may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy); or (3) plans are not adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If in FEMA's view the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG-0654/FEMA-REP-1, Revision 1 and Supplement 1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State and local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate

¹ Assessments of offsite plans may be based on State and local government plans submitted to

respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982 (47 FR 10758).]

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.
2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.
4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. *NRC Licensing Reviews.* FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearings boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. *FEMA review of offsite plans and preparedness.* NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. *Preparation for and evaluation of joint exercises.* FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to

develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR part 350. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. When there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

D. *Emergency planning and preparedness guidance.* NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

E. *Support for document management system.* FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

F. *Ongoing NRC research and development programs.* Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each

provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

G. Public information and education programs. FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC

and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria as appropriate in their respective jurisdictions.

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect

unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 3, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

Dated: June 28, 1993.

James L. Witt,

Director.

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