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State and local radiological emergency personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

§ 351.27 The Department of Defense.

(a) Determine appropriate planning bases for Department of Defense (DOD) nuclear facilities and installations (e.g., missile bases, nuclear submarine facilities and weapon storage sites) including distances, time and radiological characteristics.

(b) Develop, with FEMA, representative scenarios from which DOD nuclear facility commanders and State and local governments may select for use in testing and exercising radiological emergency plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review and assessment of those portions of their radiological emergency plans related to DOD nuclear facilities and assist State officials with planning for response to accidents involving DOD controlled radioactive materials in transit.

(d) Provide representation to and support for the FRPCC and the RACs when appropriate.

§ 351.28 The Department of Commerce.

(a) Assist State and local governments in determining their requirements for meteorological and hydrological services for radiological emergencies and assist State and local governments in preparing to meet these requirements within the limits of available resources.

(b) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials in the use of

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meteorological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Management and Budget Circular A-62, serve as the coordinating agent for any multi-agency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

PART 352—COMMERCIAL NUCLEAR POWER PLANTS: EMERGENCY PREPAREDNESS PLANNING

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AUTHORITY: Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 *et seq.*)

Federal Emergency Management Agency, DHS

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Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; 31 U.S.C. 9701; Executive Order 12657; Executive Order 12148; Executive Order 12127 and Executive Order 12241.

SOURCE: 54 FR 31925, Aug. 2, 1989, unless otherwise noted.

§ 352.1 Definitions.

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

(a) *Deputy Administrator* means the Deputy Administrator, National Preparedness Directorate, FEMA or designee.

(b) *Administrator* means the Administrator, FEMA or designee.

(c) *EPZ* means Emergency Planning Zone.

(d) *FEMA* means the Federal Emergency Management Agency.

(e) *NRC* means the Nuclear Regulatory Commission.

(f) *Regional Administrator* means the Regional Administrator of FEMA or designee.

(g) *Local government* means boroughs, cities, counties, municipalities, parishes, towns, townships or other local jurisdictions within the plume and ingestion exposure pathway EPZs that have specific roles in emergency planning and preparedness.

(h) *Decline or fail* means a situation where State or local governments do not participate in preparing offsite emergency plans or have significant planning or preparedness inadequacies and have not demonstrated the commitment or capabilities to correct those inadequacies in a timely manner so as to satisfy NRC licensing requirements.

(i) *Governor* means the Governor of a State or his/her designee.

(j) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance. This certification is required to activate the Federal assistance under this part.

(k) *Responsible local official* means the highest elected official of an appropriate local government.

(l) *Technical assistance* means services provided by FEMA and other Federal agencies to facilitate offsite radiological emergency planning and preparedness such as: Provision of support for the preparation off site radiological

emergency response plans and procedures; FEMA coordination of services from other Federal agencies; provision and interpretation of Federal guidance; provision of Federal and contract personnel to offer advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(m) *Federal facilities and resources* means personnel, property (land, buildings, vehicles, equipment), and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(n) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(o) *Reimbursement* means the payment to FEMA/Federal agencies, jointly or severally, by a licensee and State and local governments for assistance and services provided in processing certifications and implementing Federal compensatory assistance under this part 352.

(p) *Host FEMA Regional Office* means the FEMA Regional Office that has primary jurisdiction by virtue of the nuclear power plant being located within its geographic boundaries.

(q) *Command and control* means making and issuing protective action decisions and directing offsite emergency response resources, agencies, and activities.

§ 352.2 Scope, purpose and applicability.

(a) This part applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency preparedness plans that are sufficient to satisfy NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance provided for in this part, an affected nuclear power plant applicant or licensee shall certify in writing to FEMA that the above situation exists.

(b) The purposes of this part are as follows: (1) To establish policies and

procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

Subpart A—Certifications and Determinations

§ 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

§ 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a certification to the host FEMA Regional Administrator that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail

for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, commitment of resources or timely correction of planning and preparedness failures.

[54 FR 31925, Aug. 2, 1989, as amended at 74 FR 15357, Apr. 3, 2008]

§ 352.5 FEMA action on licensee certification.

(a) Upon receiving a licensee certification, the host Regional Administrator shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Administrator shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Administrator shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Administrator shall publish a notice in the FEDERAL REGISTER that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Administrator outlining their position as to the facts stated in the letter of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this part.

(e) The host FEMA Regional Office shall provide, after consulting with

State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Deputy Administrator for the National Preparedness Directorate within 30 days of receipt of the licensee certification.

(f) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Administrator or Deputy Administrator for the National Preparedness Directorate, as appropriate.

§ 352.6 FEMA determination on the commitment of Federal facilities and resources.

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Administrator shall make a recommendation to the FEMA Deputy Administrator for the National Preparedness Directorate on whether the provision of these facilities and resources is warranted. The FEMA Deputy Administrator for the National Preparedness Directorate shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations

and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Deputy Administrator for the National Preparedness Directorate shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of subpart B of this part.

§ 352.7 Review and evaluation.

FEMA shall conduct its activities and make findings under this part in a manner consistent with 44 CFR part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

Subpart B—Federal Participation

§ 352.20 Purpose and scope.

This subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Executive Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to

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the licensee for developing its offsite emergency response plan after an affirmative determination on the licensee certification under subpart A (44 CFR 352.5(f));

(b) Describes the process for providing Federal facilities and resources to the licensee after a determination under subpart A (44 CFR 352.6(d)) that Federal resources are required;

(c) Describes the principal response functions which Federal agencies may be called upon to provide;

(d) Describes the process for allocating responsibilities among Federal agencies for planning site-specific emergency response functions; and

(e) Provides for the participation of Federal agencies, including the members of the FRPCC and the RACs.

§ 352.21 Participating Federal agencies.

(a) FEMA may call upon any Federal agency to participate in planning for the use of Federal facilities and resources in the licensee offsite emergency response plan.

(b) FEMA may call upon the following agencies, and others as needed, to provide Federal technical assistance and Federal facilities and resources:

- (1) Department of Commerce;
- (2) Department of Defense;
- (3) Department of Energy;
- (4) Department of Health and Human Services;
- (5) Department of Housing and Urban Development;
- (6) Department of the Interior;
- (7) Department of Transportation;
- (8) Environmental Protection Agency;
- (9) Federal Communications Commission;
- (10) General Services Administration;
- (11) National Communications System;
- (12) Nuclear Regulatory Commission;
- (13) United States Department of Agriculture; and
- (14) Department of Veterans Affairs.

(c) FEMA is the Federal agency primarily responsible for coordinating Federal assistance. FEMA may enter into Memorandums of Understanding (MOU) and other instruments with Federal agencies to provide technical assistance and to arrange for the com-

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mitment and utilization of Federal facilities and resources as necessary. FEMA also may use a MOU to delegate to another Federal agency, with the consent of that agency, any of the functions and duties assigned to FEMA. Following review and approval by OMB, FEMA will publish such documents in the FEDERAL REGISTER.

§ 352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).

Under 44 CFR part 351, the role of the FRPCC is to assist FEMA in providing policy direction for the program of technical assistance to State and local governments in their radiological emergency planning and preparedness activities. Under this subpart, the role of the FRPCC is to provide advice to FEMA regarding Federal assistance and Federal facilities and resources for implementing subparts A and B of this part. This assistance activity is extended to licensees. The FRPCC will assist FEMA in revising the Federal Radiological Emergency Response Plan (FRERP).

§ 352.23 Functions of a Regional Assistance Committee (RAC).

(a) Under 44 CFR part 351, the role of a RAC is to assist State and local government officials to develop their radiological emergency plans, to review the plans, and to observe exercises to evaluate the plans. Under subparts A and B of this part, these technical assistance activities are extended to the licensee.

(b) Prior to a determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the designated RAC for the specific site will assist the licensee, as necessary, in evaluating the need for Federal facilities and resources, in addition to providing technical assistance under § 352.23(a).

(c) In accomplishing the foregoing, the RAC will use the standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Rev. 1 and Supp. 1,¹ or approved alternative approaches, and

¹Copy available from FEMA Distribution Center, P.O. Box 70274 Washington, DC 20024

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RAC members shall render such technical assistance as appropriate to their agency mission and expertise.

(d) Following determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the RAC will assist FEMA in identifying agencies and specifying the Federal facilities and resources which the agencies are to provide.

§ 352.24 Provision of technical assistance and Federal facilities and resources.

(a) Under a determination under subpart A (44 CFR 352.5(f) and 352.4(e)) that a decline or fail situation exists, FEMA and other Federal agencies will provide technical assistance to the licensee. Such assistance may be provided during the pendency of an appeal under § 352.29.

(b) The applicable criteria for the use of Federal facilities and resources are set forth in subpart A (44 CFR 352.6(c)(1)(2)). Upon a determination under subpart A (44 CFR 352.6(d)) that Federal resources or facilities will be required, FEMA will consult with the FRPCC, the RAC, the individual Federal agencies, and the licensee, to determine the extent of Federal facilities and resources that the government could provide, and the most effective way to do so. After such consultation, FEMA will specifically request Federal agencies to provide those Federal facilities and resources. The Federal agencies, in turn, will respond to confirm the availability of such facilities and resources and provide estimates of their costs.

(c) FEMA will inform the licensee in writing of the Federal support which will be provided. This information will identify Federal agencies which are to be included in the plan, the extent and purpose of technical assistance to be provided and the Federal facilities and resources to be committed, and the limitations of their use. The information will also describe the requirements for reimbursement to the Federal Government for this support.

(d) FEMA will coordinate the Federal effort in implementing the determinations made under subpart A (44 CFR 352.5(f) and 352.6(d)) so that each Federal agency maintains the committed

technical assistance, facilities, and resources after the licensee offsite emergency response plan is completed. FEMA and other Federal agencies will participate in training, exercises, and drills, in support of the licensee offsite emergency response plan.

(e) In carrying out paragraphs (a) through (c) of this section, FEMA will keep affected State and local governments informed of actions taken.

[54 FR 31925, Aug. 2, 1989, as amended at 74 FR 15357, Apr. 3, 2009]

§ 352.25 Limitation on committing Federal facilities and resources for emergency preparedness.

(a) The commitment of Federal facilities and resources will be made through the authority of the affected Federal agencies.

(b) In implementing a determination under subpart A (44 CFR 352.6(d)), that Federal facilities and resources are necessary for emergency preparedness, FEMA shall take care not to supplant State and local resources. Federal facilities and resources shall be substituted for those of the State and local governments in the licensee offsite emergency response plan only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after consultation with the Governor(s) and responsible local officials in the affected area(s) regarding State and local participation.

(c) All Federal planning activities described in this subpart will be conducted under the assumption that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act, generally, in conformity with the licensee's offsite emergency response plan.

§ 352.26 Arrangements for Federal response in the licensee offsite emergency response plan.

Federal agencies may be called upon to assist the licensee in developing a licensee offsite emergency response plan in areas such as:

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(a) Arrangements for use of Federal facilities and resources for response functions such as:

(1) Prompt notification of the emergency to the public;

(2) Assisting in any necessary evacuation;

(3) Providing reception centers or shelters and related facilities and services for evacuees;

(4) Providing emergency medical services at Federal hospitals; and

(5) Ensuring the creation and maintenance of channels of communication from commercial nuclear power plant licensees to State and local governments and to surrounding members of the public.

(b) Arrangements for transferring response functions to State and local governments during the response in an actual emergency; and

(c) Arrangements which may be necessary for FEMA coordination of the response of other Federal agencies.

§ 352.27 Federal role in the emergency response.

In addition to the Federal component of the licensee offsite emergency response plan described in subpart B (§ 352.26), and after complying with E.O. 12657, Section 2(b)(2), which states that FEMA:

(2) Shall take care not to supplant State and local resources and that FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the non-participation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

FEMA shall provide for initial Federal response activities, including command and control of the offsite response, as may be needed. Any Federal response role, undertaken pursuant to this section, shall be transferred to State and local governments as soon as feasible after the onset of an actual emergency.

§ 352.28 Reimbursement.

In accordance with Executive Order 12657, Section 6(d), and to the extent permitted by law, FEMA will coordinate full reimbursement, either jointly

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or severally, to the agencies performing services or furnishing resources, from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

§ 352.29 Appeal process.

(a) Any interested party may appeal a determination made by the Deputy Administrator for the National Preparedness Directorate, under §§ 352.5 and 352.6 of this part, by submitting to the Administrator, FEMA, a written notice of appeal, within 30 days after issuance. The appeal is to be addressed to the Administrator, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The appeal letter shall state the specific reasons for the appeal and include documentation to support appellant arguments. The appeal is limited to matters of record under §§ 352.5 and 352.6.

(b) Within 30 days of receipt of this letter, the FEMA Administrator or designee will review the record and make a final determination on the matter.

(c) Copies of this determination shall be furnished to the Appellant, the State(s), affected local governments, and the NRC.

(d) For purposes of this section, the term *interested party* means only a licensee, a State or a local government, as defined in § 352.1(g).

PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

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APPENDIX A TO PART 353—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION

AUTHORITY: 31 U.S.C. 9701; E.O. 12657 of Nov. 18, 1988; 3 CFR, 1988 Comp., p. 611; 50