

### § 350.13

### 44 CFR Ch. I (10–1–19 Edition)

of a State plan, any interested person may appeal the decision of the Deputy Administrator for the National Preparedness Directorate to the Administrator; however, such an appeal must be made solely upon the ground that the Deputy Administrator for the National Preparedness Directorate's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

#### § 350.13 Withdrawal of approval.

(a) If, at any time after granting approval of a State plan, the Deputy Administrator for the National Preparedness Directorate determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Administrator and the NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either:

(1) Corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Deputy Administrator for the National Preparedness Directorate shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the FEDERAL REGISTER and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal or approval. The basis upon which the Deputy Administrator for the National Preparedness Directorate makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREGO654/FEMA/REP-1, Rev. 1.

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Deputy Administrator for the National Preparedness Directorate shall negotiate a schedule and a timetable under which the State shall correct the deficiencies. If, on the agreed upon date, the deficiencies have been corrected, the Deputy Administrator for the National Preparedness Directorate shall withdraw the initial determination and the approval previously granted shall remain valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Administrator(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

(c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Deputy Administrator for the National Preparedness Directorate to the Administrator; however, such an appeal must be made solely upon the ground that the Deputy Administrator for the National Preparedness Directorate's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

#### § 350.14 Amendments to State plans.

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented

with the plan, would need to have been considered by the Deputy Administrator for the National Preparedness Directorate in making a decision that State or local plans and preparedness are:

(1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Capable of being implemented.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Administrator may determine that certain procedures, such as holding a public meeting or a complete exercise, would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.

(d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Administrator.

#### § 350.15 Appeal procedures.

(a) Any interested person may appeal a decision made under §§ 350.12 and 350.13 of this part, by submitting to the Administrator, FEMA, a written notice of appeal, within 30 days after the appearance in the FEDERAL REGISTER, of the notice of decision relating to the matter being appealed. The appeal must be addressed to the Administrator, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

(b) Upon receipt of an appeal, the Administrator or the Administrator's designee shall review the file, as submitted to the Deputy Administrator for the National Preparedness Directorate, by the Regional Administrator of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Adminis-

trator or the Administrator's designee shall decide whether or not the Associate Director's initial decision was supported by substantial evidence in the file and is consistent with FEMA policy.

(c) The decision of the Administrator or the Administrator's designee shall be published in the FEDERAL REGISTER as the final agency decision on the matter and shall not be reviewable within FEMA, except upon a showing that it was procured by fraud or misrepresentation. In addition to publication in the FEDERAL REGISTER, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

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AUTHORITY: 5 U.S.C. 552, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12241; Presidential Directive of Dec. 7, 1979.

SOURCE: 47 FR 10759, Mar. 11, 1982, unless otherwise noted.