concentrations of regulated substances to closure requirements)
.0202 Interim prohibition for deferred UST systems
.0203 Definitions

3. Section .0300 UST Systems: Design, Construction, Installation, and Notification

.0301 Performance standards for new UST systems
.0302 Upgrading of existing UST systems
.0303 Notification requirements

4. Section .0400 General Operating Requirements

.0401 Spill and overfill control
.0402 Operation and maintenance of corrosion protection
.0403 Compatibility
.0404 Repairs allowed
.0405 Reporting and recordkeeping

5. Section .0500 Release Detection

.0501 General requirements for all UST systems
.0502 Requirements for petroleum UST systems
.0503 Requirements for hazardous substance UST systems
.0504 Methods of release detection for tanks
.0505 Methods of release detection for piping
.0506 Release detection recordkeeping

6. Section .0600 Release Reporting, Investigation, and Confirmation

.0601 Reporting of suspected releases
.0602 Investigation due to off-site impacts
.0603 Release investigation and confirmation steps
.0604 Reporting and cleanup of spills and overfills

7. Section .0700 Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

.0701 General
.0702 Initial response
.0703 Initial abatement measures and site check
.0704 Initial site characterization
.0705 Free product removal
.0706 Investigations for soil and ground water cleanup
.0707 Corrective action plan
.0708 Public participation

8. Section .0800 Out-of-Service UST Systems and Closure

.0801 Temporary closure
.0802 Permanent closure and changes-in-service (Except insofar as it subjects USTs containing de minimis concentrations of regulated substances to closure requirements)
.0803 Assessing the site at closure or change-in-service
.0804 Applicability to previously closed UST systems
.0805 Closure records

North Carolina Administrative Code, Title 15A—Department of Environment and Natural Resources; Chapter 2, Subchapter 2O: Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks

1. Section .0100 General Considerations

.0101 General (Except insofar as .0101(c) provides inspection and enforcement authority.)
.0102 Copies of referenced Federal regulations
.0103 Substituted sections

2. Section .0200 Program Scope

.0201 Applicability
.0202 Compliance dates
.0203 Definitions (Except insofar as (b)(1) defines ''annual operating fee'')
.0204 Amount and scope of required financial responsibility

3. Section .0300 Assurance Mechanisms

.0301 Allowable mechanisms and combinations of mechanisms
.0302 Self insurance
.0303 Guarantee
.0304 Insurance and risk retention group coverage
.0305 Surety bond
.0306 Letter of credit
.0307 Standby trust fund
.0308 Insurance pools
.0309 Substitution of financial assurance mechanisms
.0310 Cancellation or nonrenewal by a provider of assurance

4. Section .0400 Responsibilities of Owners and Operators

.0401 Reporting by owner or operator
.0402 Record keeping (Except insofar as (b)(2) addresses annual operating fee requirements.)

5. Section .0500 Changes in Status

.0501 Drawing on financial assurance mechanisms
.0502 Release from the requirements
.0503 Incapacity of owner or operator or provider of assurance
.0504 Replenishment

North Carolina Administrative Code, Title 15A—Department of Environment and Natural Resources; Chapter 2, Subchapter 2P: Leaking Petroleum Underground Storage Tank Cleanup Funds

1. Section .0100 General Considerations

.0101 General (Except insofar as .0101(d) provides inspection and enforcement authority.)
.0102 Copies of rules incorporated by reference
.0103 False or misleading information

2. Section .0200 Program Scope

.0201 Applicability (Except insofar as .0201(a) and (b) relate to annual operating fees.)
.0202 Definitions (Except insofar as .0202 (b)(1) relates to annual operating fees.)

3. Section .0300 Annual Operating Fees

.0302 Notification

4. Section .0400 Reimbursement Procedure

.0401 Eligibility of owner or operator (Except insofar as .0401(b) relates to annual operating fees.)
.0402 Cleanup costs
.0403 Third party claims
.0404 Requests for reimbursement
.0405 Method of reimbursement
.0406 Reimbursement apportionment
.0407 Final action

[FR Doc. 01–14895 Filed 6–14–01; 8:45 am]
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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 3800

**[WO–320–1990–PB–24 1A]**

**RIN 1004–AD22**

## Mining Claims Under the General Mining Laws; Surface Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is issuing this final rule to amend at this time only one provision of its regulations for surface management of mining operations conducted under the Mining Laws. This final rule changes the date by which operators with plans of operation approved by BLM before January 20, 2001, must provide a financial guarantee—from July 19, 2001, to November 20, 2001, for operations that already have financial guarantees, and to September 13, 2001 for operations without any financial guarantee.

The amendment is necessary because BLM field offices and the State governments with which we cooperate are not able to implement the financial guarantee requirements in the existing regulations to enable operators to comply by the deadline in those regulations. Changing the deadline will better enable BLM and the States to implement fully the financial guarantee requirements in the BLM surface management regulations. BLM intends to retain the financial guarantee (sometimes referred to as ''bonding'') provisions in these regulations that became effective on January 20, 2001. BLM will issue a final rule addressing other issues identified in its March 23, 2001, notice of proposed rulemaking at a later date.

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

**ADDRESSES:** You may send inquiries or suggestions to Director (320), 501LS, Bureau of Land Management, 1849 C St., NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Bob M. Anderson, Deputy Assistant Director for Minerals, Realty, and Resource Protection, at (202) 208–4201, or Michael H. Schwartz, Group Manager for Regulatory Affairs, at (202) 452–5198. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**



## I. Background

On November 21, 2000 (65 FR 69998), BLM published a final rule completely revising 43 CFR subpart 3809 (the 2000 regulations). Among its features, that final rule contained financial guarantee requirements for operators whose plans of operations BLM approved before the effective date of the rule, January 20, 2001. The rule contained regulations requiring such operators to provide financial guarantees that comply with the new regulations by July 19, 2001.

The 2000 regulations were issued following a complex procedural history. In the 1998 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, sec. 120(a)), Congress directed the National Academy of Sciences (''NAS'') to review the adequacy of existing regulations of hardrock mining on Federal lands in each State in which it occurs, without regard to BLM's proposed regulations. The law directed the National Research Council (''NRC''), within the NAS, to complete the study by July 31, 1999. In the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, § 3002, 113 Stat. 57, 89–90), Congress prohibited Interior from both completing its work on the February 9, 1999, proposed rule and issuing a final rule until Interior provided at least 120 days for public comment on the proposed rule, subsequent to the publication of the NRC study. The NRC completed and published its report, entitled *Hardrock Mining on Federal Lands* (''NRC study''), in late September 1999.

In addition, Congress enacted a series of provisions in Interior appropriations acts beginning in 1997 that pertain to the 3809 rules. The last one, in the FY 2001 Interior Appropriations bill, provides as follows:

> None of the funds in this Act or any other Act shall be used by the Secretary of the Interior to promulgate final rules to revise 43 CFR subpart 3809, except that the Secretary, following the public comment period required by section 3002 of Public Law 106–31, may issue final rules to amend 43 CFR Subpart 3809 which are not inconsistent with the recommendations contained in the National Research Council report entitled ''Hardrock Mining on Federal Lands'' so long as these regulations are also not inconsistent with existing statutory authorities. Nothing in this section shall be construed to expand the existing statutory authority of the Secretary.

FY 2001 Interior Appropriations Act, Pub. L. No. 106–291, § 156, 114 Stat. 922, 962–63 (Oct. 11, 2000).

After the 2000 rules were issued, four lawsuits were filed challenging those rules; three in the U.S. District Court for the District of Columbia, and one in the U.S. District Court for the District of Nevada. In one of those lawsuits, *National Mining Association* v. *Department of the Interior,* No. 1:00CV02998 (D.D.C., filed December 15, 2000), the plaintiffs sought to enjoin the effectiveness of all of the 2000 rules, except for the bonding provisions. On January 19, 2001, the judge denied the plaintiff's motion for a preliminary injunction. The litigation has been stayed until September 4, 2001, pending a decision on the proposal described in the next paragraph.

On March 23, 2001, BLM published a proposed rule, 66 FR 16162, to suspend, in whole or in part, the 2000 regulations. As stated in the proposal, the suspension would provide BLM the opportunity to review some of the requirements of the new rule in light of issues the plaintiffs raised in the legal challenges to the rules and concerns expressed by others, including the Governor of Nevada. BLM proposed to reinstate the previous rules (commonly referred to as the ''1980 regulations''). We also requested comment on whether we should retain some combination of the 2000 regulations and the 1980 regulations. The 45-day comment period on the proposal closed on May 7, 2001. BLM has received more than 25,000 comments. BLM is currently considering what action to take next on the proposal, and intends to issue a final rule in the next few months.

In advance of decisions involving the rest of the rulemaking, and for the reasons explained below, BLM is issuing this final rule now to address one issue—the timing of the financial guarantee requirements for operations for which BLM approved a plan of operations before January 20, 2001.

## II. Reasons for This Final Rule

### *General Financial Guarantee Comments and BLM Position*

The overwhelming majority of comments expressed support for the financial guarantee provisions in the 2000 rules. Many comments filed by individuals and environmental groups urged the retention of the 2000 regulations, including the financial guarantee provisions. There were, however, some dissenting views. A number of comments, some of which were filed by representatives of the mining industry and by states which contain hardrock mining operations covered by 43 CFR subpart 3809, urged reinstatement of the 1980 regulations. Many of these latter respondents recognized, however, that the BLM rules must comply with recent congressional enactments and not be inconsistent with the recommendations of the NRC study. Accordingly, most agreed that the final rule could reflect the so-called ''NRC Alternative,'' which was Alternative 5 in BLM's final environmental impact statement for the 2000 regulations. This alternative included provisions reflecting only the NRC study's recommended regulatory changes.

A number of small miners expressed concern over their financial ability to meet the requirements of the rule if they have to post a financial guarantee for notice level activities. Comments also suggested that, at least for notice level activities, BLM should establish a standard bond amount as suggested by the NRC study. In addition, the State of Alaska (see below) expressed concern about effect of the rules on its bond pool. We received one industry comment suggesting that BLM phase out existing corporate guarantees.

Addressing a regulatory gap, the NRC Study recommended that ''Financial assurance should be required for reclamation of disturbances to the environment caused by all mining activities beyond those classified as casual use, even if the area disturbed is less than 5 acres.'' (NRC Study, Recommendation 1, pp. 8, 93.) The principal import of this recommendation was to require financial assurances for ''notice-level'' activities, that is, those operations disturbing less than 5 acres of public lands on which reclamation has not been completed, for which the previous rules did not authorize the posting of financial assurances. The NRC study also included other discussions to achieve its stated objective of guaranteeing financial assurance, such as the establishment of standard bond amounts for certain types of activities on specific kinds of terrain. (NRC study, pp. 94–95.)

As a general matter, BLM intends to follow the NRC study recommendation, and has concluded that we should retain the financial guarantee provisions of the 2000 regulations to ensure that

sound financial guarantees will exist. With respect to the comments advocating that BLM eliminate the financial guarantee requirement for notice level activities, we cannot do so. This would be inconsistent with the NRC Study recommendation and therefore prohibited by the FY 2001 Interior and Related Agencies Appropriations Act.

BLM also continues to believe that the rules provide sufficient flexibility to establish standard bond amounts for particular activities on specific kinds of terrain. The preamble of the 2000 rule (See 65 FR 70066, column 2) explains that the ''final rule is broad enough to allow BLM field managers to establish and accept standard financial guarantee amounts.'' However, even if BLM field managers do this, financial guarantees must meet the likely cost of reclamation for the specific activity. As to the use of bond pools, the preamble to the 2000 rule (See 65 FR 70073) clearly supports the use of State bond pools if the BLM State Director determines the pool is sound. We continue to adhere to this position.

Although under the 1980 regulations, the bonding provision for plans of operations was discretionary with BLM, most operators having plans of operation that were approved under the previous rules did post financial guarantees with BLM or the state. Thus the 2000 regulations codified an existing practice for most plan-level operations, and, consistent with the NRC study, made the posting of a sufficient financial guarantee compulsory for disturbances caused by all mining activities beyond casual use.

*Current Implementation Issue*

The problem BLM currently faces is how to complete the transition from the previous financial guarantee requirements to the ones in the 2000 regulations for operations under plans that BLM approved before January 20, 2001. The 2000 rule at section 3809.505 establishes July 19, 2001, as the date by which mining operations with plans of operations approved before January 20, 2001, must come into compliance with the new financial assurance provisions of the 2000 regulations. Implementation of the provision by that date has proven to be difficult.

The reasons for the problem vary. In many states, BLM implements bonding and financial guarantee requirements in cooperation with State agencies. In some States, BLM accepts State-approved bonds to satisfy these requirements. In at least 6 States, either BLM or the State or both will be unable to implement the financial guarantee requirement by the July 19, 2001, deadline. Reasons for this inability include an unrealistic deadline to start with, uncertainty over the fate of the 2000 rules caused by the pending lawsuits, and a multiplicity of State agencies with which BLM must coordinate. BLM cooperates with State governments through memoranda of understanding (MOUs). Many of these MOUs need updating to meet the requirements of the new regulations and, in some cases, States will need to revise their laws. Thus, on July 19, 2001, for reasons beyond their control, a number of operators would not be in compliance with the 2000 regulations unless BLM changes that date.

For example, in Alaska, the State legislature authorized a State bond pool covering bonds under the 1980 regulations. Most small scale operators in Alaska are unable to get bonds from any source other than the State bond pool. The MOU under which BLM accepts these State bond pool bonds expires July 17, 2001. Although the MOU could be renewed in its present form, it would not be in compliance with the 2000 regulations. The BLM Alaska State Office is not able to modify the MOU to make it consistent with the 2000 regulations by July 17 or July 19, 2001. The consequences of failing to make this deadline would be that miners in Alaska would be left without a source of bonds, potentially resulting in a general shutdown in the middle of the placer mining season.

In Arizona, there is no single State program with which BLM coordinates. Rather, many agencies exist with different standards and requirements. Further, no single acceptable State financial guarantee exists that is intended to cover entire mining operations from exploration to reclamation and termination. We need to review all mining financial guarantees in the State for compliance with the 2000 regulations, and notify operators of deficiencies. BLM does not expect to complete this review by July 19, 2001, despite its best efforts to do so.

To remedy this implementation problem, this final rule extends the effective date of the financial guarantee requirements in section 3809.505 of the 2000 regulations from July 19, 2001, to November 20, 2001, for operations with plans of operations that BLM approved before January 20, 2001, that have a financial guarantee in place. BLM is also extending the deadline for acquiring an initial financial guarantee. Those operators with ongoing activities who had plans of operations approved before January 20, 2001, but who did not have a financial guarantee, must provide a financial guarantee by September 13, 2001. This latter date establishes a shorter time period to comply with the financial guarantee requirements in the 2000 rule than BLM is giving those operators who already have an approved financial guarantee.

We are taking today's action separate and apart from the rest of the rulemaking because we want to ensure that BLM properly implements the transfer to the financial guarantee system contained in the 2000 rule. As stated above, unless further analysis of comments on our March 23, 2001, proposed rule discloses significant new information strongly supporting a change in the approach to financial guarantees, it is our intention to continue with the current framework for financial guarantees. Once we complete review and analysis of the many comments received in response to the March 23, 2001, proposal (66 FR 16162), we expect to issue a final rule addressing other matters related to the 2000 regulations.

## III. Procedural Matters

In its March 23, 2001, proposal, BLM stated that it intends to rely on the support documents prepared for the 2000 regulations for its final actions. We explain below how we have met the procedural requirements related to this final rule, and the extent to which those earlier documents support this final rule.

*Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget reviewed the 2000 regulations under Executive Order 12866. The **Federal Register** preamble to the final 2000 regulations discussed the impacts of those regulations. The incremental impact of today's action is minimal. Extending the deadline for implementing the financial assurance requirements for existing operations with plans approved before January 20, 2001, will not have an effect on the economy in excess of $100 million. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

*Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical language or jargon that interferes with their clarity? (3) Is the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

*National Environmental Policy Act*

This final rule amends regulations that constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has prepared a final environmental impact statement (EIS) for the 2000 regulations, which is on file and available to the public in the BLM Administrative Record at the Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, and on BLM's home page at www.blm.gov. The effect of this final rule is to postpone a deadline in the regulations that cannot be met. The impacts of this change are minimal and are covered by the final EIS for the 2000 regulations. Thus this final rule does not constitute a major Federal action that would have a significant effect upon the quality of the human environment.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This final rule is covered by the regulatory flexibility analysis of the 2000 regulations (see 65 FR 70103, and particularly the discussion of bonding beginning on page 70104). This rule merely extends the deadline for compliance, making compliance easier for small entities.

Therefore, BLM has determined under the RFA that the incremental effects of this final rule would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The rule merely extends a deadline on a regulatory requirement that was already established after completion of an analysis BLM did to comply with SBREFA.

*Unfunded Mandates Reform Act*

This final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The rule merely extends a deadline for operators with approved plans of operations predating January 20, 2001. It imposes no requirements on State, local, or tribal entities. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule merely extends a deadline on a regulatory requirement that is already established. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

As part of the process establishing the 2000 regulations, which this final rule amends, BLM prepared a Federalism Assessment (see 65 FR 70109). The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It continues in effect the present procedural arrangements between BLM and the various western States in providing for financial guarantees for mining operations—the memorandum of understanding process. It merely provides additional time for both BLM and the States to prepare for implementation of new regulatory requirements for financial guarantees for mining operations. Therefore, in accordance with Executive Order 13132, BLM has determined that this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. Providing additional time for both BLM and the States to prepare for implementation of new regulatory requirements for financial guarantees for mining operations will not have an impact on Tribes.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule applies only to the date by which operators must comply with financial guarantee provisions of these regulations.

*Paperwork Reduction Act*

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*Author*

The principal author of this rule is Richard Deery, Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, Bureau of Land Management, and Joel Yudson, Office of the Solicitor, Department of the Interior.

**List of Subjects for 43 CFR part 3800**

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: June 1, 2001.

**Piet deWitt,**

*Acting Assistant Secretary of the Interior.*

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

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

### Subpart 3809—Surface Management

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

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

2. Revise § 3809.505 to read as follows:

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

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

[FR Doc. 01–15136 Filed 6–14–01; 8:45 am]

BILLING CODE 4310–84–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 354

**RIN 3067–AC87**

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

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the policies and administrative basis for FEMA to assess fees on Nuclear Regulatory Commission (NRC) licensees to recover the full amount of the funds that we obligate to provide services for offsite radiological emergency planning and preparedness beginning in Fiscal Year (FY) 2001.

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

**FOR FURTHER INFORMATION CONTACT:** Vanessa E. Quinn, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3664, (telephone fax) 202–646–3508, (email) *vanessa.quinn@fema.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout the preamble and the rule, the terms ''we'', ''our'' and ''us'' refer to FEMA.

### Background: A Chronology

• *1991.* On March 6, 1991, we published in the **Federal Register** (56 FR 9452–9459) a final rule, 44 CFR part 353, that established a structure for assessing and collecting user fees from NRC licensees. Under 44 CFR part 353, Radiological Emergency Preparedness (REP) services provided by FEMA personnel and FEMA contractors were reimbursable only if these services were site-specific in nature and directly contributed to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended. Although we published a new approach for the assessment and collection of fees from licensees for FY 1999 and beyond, part 353 remains in effect and will apply in any subsequent fiscal year for which the Congress does not authorize us to collect user fees for generic services.

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

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

• Public Law 103–124, September 23, 1993, 107 Stat. 1297, directed us to continue assessing and collecting fees to recover the full amount of the funds anticipated to be obligated for our REP Program for FY 1994. In addition, the Administration proposed to assess such fees for subsequent fiscal years.

• Using the methodology established by the interim final rule, 44 CFR part 354, we calculated the final hourly user fee rate for FEMA personnel during FY 1993 at $122.88. On December 13, 1993, we published a notice to this effect in the **Federal Register** (58 FR 65274). The notice explained that we would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993 and taking into consideration the comments received on interim final rule 44 CFR part 354.

• *1994.* We continued the methodology established by the interim final rule 44 CFR part 354 in effect for FY 1994 by notice in the **Federal Register** (59 FR 26350, published May 19, 1994).

• Using the methodology established by the interim final rule, we calculated the final hourly user fee rate for FEMA personnel during FY 1994 at $120.79. On November 28, 1994, we published a notice to this effect in the **Federal Register** (59 FR 60792–60793).

• On July 27, 1994, we published a proposed rule in the **Federal Register**, 59 FR 38306–38309, 44 CFR part 354. Predicated on Congress passing authorizing legislation, this rule proposed to establish fees for FY 1995 assessed at a flat rate based on fiscal year budgeted funds for REP Program services performed by FEMA personnel and by FEMA contractors whether or not those services directly supported NRC licensing requirements.

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

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