

1,897.24 acres of public land for stock driveway purposes. The modification establishes a 20-year term. The lands would remain closed to surface entry, but have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: February 16, 1984.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Order dated December 5, 1941, as amended, which withdrew Stock Driveway No. 11, Montana No. 1, described below from disposal under the public land laws, is hereby modified to expire 20 years from the effective date of this order as to the following described land:

Principal Meridian

T. 12 S., R. 8 W.,

Sec. 22, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$;

Sec. 31, lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 32, S $\frac{1}{2}$;

Sec. 33, S $\frac{1}{2}$;

Sec. 34, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 1,897.24 acres in Beaverhead County.

2. The lands have been and remain open to location and entry under the mining laws and to applications and offers under the mineral leasing laws.

3. Pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), this withdrawal will be reviewed within 20 years from the effective date of this order and, if appropriate, at subsequent 20 year intervals to ensure that the lands are still being used for the purpose for which they were withdrawn.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Dated: February 9, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-4267 Filed 2-15-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6520

[OR-34465]

Revocation of Executive Order of March 29, 1866; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order which withdrew 47.30 acres of acquired land to establish the Cape Blanco Lighthouse Reservation. This acquired land is not subject to the surface land or mining laws; however, it has been and remains open to acquired lands mineral leasing. This is merely a record clearing action.

EFFECTIVE DATE: March 17, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of March 29, 1866, which withdrew land for use by the U.S. Coast Guard for the Cape Blanco Lighthouse Reservation, is hereby revoked:

Willamette Meridian

T. 32 S., R. 16 W.,

Sec. 2, lot 1.

The area described aggregates 47.30 acres in Curry County.

2. This acquired land is not subject to operation of the public land laws, including the mining laws. The land has been and remains open to acquired lands mineral leasing.

Inquiries concerning the land should be addressed to Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 9, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-4264 Filed 2-15-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Organization, Functions, and Delegations of Authority

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This document revises the existing FEMA regulation on organization, functions and delegations of authority and describes elements of the organization of FEMA, and the general course and method by which its functions are channeled and determined. This document revises delegations of authority by the Director.

The revisions result from recent realignments within FEMA

EFFECTIVE DATE: February 16, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0377.

SUPPLEMENTARY INFORMATION: This document reflects reassignment of the flood-plain management function from the Associate Director, State and Local Programs and Support to the Federal Insurance Administrator, the establishment of the Emergency Operations Directorate, and establishing Acquisition Management, Personnel, and Administrative Support as staff offices under the Executive Administrator.

This document relates to FEMA's organization and internal practices. Further, it is not a substantive rule, and it makes no substantial changes in existing arrangements. Hence, notice and public comment have been omitted and the rule has been made effective immediately upon publication in the Federal Register.

This rule has no effect on the economy, competition or similar matters, nor does it impact on small entities. Hence no regulatory impact analyses will be prepared under E.O. 12291 or the Regulatory Flexibility Act. Further, this document is an administrative action and thus is categorically excluded from the requirement for environmental assessments under Part 10 of this chapter. There are no collection of information requirements and thus section 3504(h) of the Paperwork Reduction Act is inapplicable.

List of Subjects in 44 CFR Part 2

Authority delegations (government agencies), Organization and functions (government agencies).

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, Part 2, Chapter 1, Title 44, Code of Federal Regulations, is amended as follows:

1. The Table of Contents of Part 2 of Title 44 is revised to read as follows:

Subpart A—Organization and Functions

General

Sec.

2.1 Purpose.

2.2 Organization of FEMA.

FEMA Offices

2.10 Office of the Director.

- Sec.
 2.11 Office of the Deputy Director.
 2.12 Office of the Executive Deputy Director.
 2.13 State and Local Programs and Support Directorate (SLPS).
 2.14 National Preparedness Programs Directorate (NPP).
 2.15 [Reserved]
 2.16 Training and Fire Programs Directorate/National Emergency Training Center (TFP).
 2.17 Federal Insurance Administration (FIA).
 2.18 Emergency Operations Directorate (OP).
 2.19 Office of the Inspector General (IG).
 2.20 Office of the General Counsel (GC).
 2.21 Office of Program Analysis and Evaluation (PA&E).
 2.22 Office of Executive Administration.
 2.23 Office of the Comptroller.
 2.24 Office of Special Programs.
 2.25 Office of Regional Operations.
 2.26 Regional Offices.

FEMA Locations

- 2.30 FEMA Headquarters.
 2.31 FEMA Regions.
 2.32 National Emergency Training Center.

Subpart B—Delegations

General

- 2.50 Purpose.
 2.51 Exercise of Authority.
 2.52 General limitations and reservations.
 2.53 Delegations not included.
 2.54 Redelegation of authority.
 2.56 Designation of subordinates to act.
 2.55 General delegations.

Delegations to Specific Officers

- 2.60 Deputy Director [Reserved].
 2.61 Associate Director, State and Local Programs and Support (SLPS).
 2.62 Executive Deputy Director [Reserved].
 2.63 Associate Director, National Preparedness Programs (NPP).
 2.64 Federal Insurance Administrator (FIA).
 2.65 Associate Director, Emergency Operations (OP).
 2.66 Associate Director, Training and Fire Programs (TFP).
 2.67 Director, Acquisition Management.
 2.68 Comptroller.
 2.69 General Counsel (GC).
 2.70 Inspector General (IG).
 2.71 Regional Directors.
 2.72 Director, Administrative Support.
 2.73 Director, Personnel.

Authority: 5 U.S.C. 552; Sec. 106, Reorganization Plan No. 3 of 1978; Executive Order 12127 of March 31, 1979; Executive Order 12148 of July 20, 1979, as amended.

§ 2.13 [Amended]

2. Section 2.13 is amended by removing the words "The floodplain management functions under the National Flood Insurance Act," from the first sentence.

3. Section 2.13(a) is amended by removing the last sentence.

4. Section 2.13(b) is amended by adding the following sentence at the end. "It is responsible for fire

suppression assistance in coordination with the United States Fire Administration."

§ 2.15 [Reserved]

5. Section 2.15 is removed and the number reserved.

§ 2.17 [Amended]

6. Section 2.17 introductory paragraph is amended by adding a new second sentence as follows:

* * * It also is responsible for floodplain management functions under the National Flood Insurance Act and FEMA functions under the Coastal Barrier Resources Act, except for functions relative to the Disaster Relief Act of 1974.

7. Section 2.17 is amended by adding new paragraphs (d) and (e) as follows:

(d) The Office of Loss Reduction is responsible for developing, administering, and coordinating FIA's overall floodplain management policy and implementing procedures among the Federal agencies, State and local governments (including establishing and maintaining community participation in the NFIP); it provides consultative services to other Federal agencies on Executive Order 11988 (Floodplain Management); it performs lead agency duties under the Unified National Program for Floodplain Management; and it administers the NFIP property acquisition program.

(e) The Office of Risk Assessment conducts studies to produce flood risk data and hazard maps for the Nation's flood-prone communities in support of actuarial insurance rating and floodplain management activities under the National Flood Insurance Program. This includes development of technical methodology and policy, resolution of appeals of risk designations, technical assistance in the use and interpretation of risk information and operation of dissemination systems for risk data and hazard mapping.

§ 2.18 [Amended]

8. The heading of § 2.18 is amended by adding the word "Directorate" at the end.

9. The first sentence of the introductory paragraph of § 2.18 is amended by removing the words "Emergency Operations" and adding "the Directorate" in place thereof.

10. The last sentence of the introductory paragraph of § 2.18 is amended by removing the words "a Director" and adding the words "an Associate Director" in place thereof.

11. The first sentence of § 2.18(d) is amended by removing the words "Office

of Program and Support" and adding "Office of Emergency Coordination and Support" in place thereof.

§ 2.19 [Amended]

12. Section 2.19 is amended by removing the word "Federal" in the third sentence.

§ 2.22 [Amended]

13. Section 2.22 is amended by adding paragraphs (b) (6), (7), and (8).

(b) * * *

(6) The Office of Personnel develops, implements, administers, and manages FEMA's personnel policies and programs, including position management and classification, recruitment, placement, salary administration, labor management relations, merit pay, special programs (NDER, DAE, Shelter Survey), performance appraisal, incentive awards, discipline, retirement, health insurance, training and career development, and in conjunction with the Equal Opportunity Office, equal employment opportunity.

(7) The Office of Administrative Support directs the administrative programs and systems necessary for effective management of the agency and provides the administrative services and support essential to day-to-day operations. Services and support include: space and property management; motor vehicle management; mail management; printing procurement; centralized publications management including storage/distribution; graphic arts and design for visual presentation materials; records and information systems management which encompasses the directives systems, reports and forms management, control of public information collection, and management of official records; and providing a variety of support services at FEMA Headquarters including supplies, materials, equipment and furnishings.

(8) The Office of Acquisition Management negotiates, awards, and administers contracts, grants, cooperative agreements, interagency agreements and purchase orders. This office is also responsible for developing and improving Agency acquisition policies and procedures, evaluating the effectiveness of all Agency procurement activities in headquarters and field levels, conducting procurement training courses for all Agency personnel involved in the procurement process, operating a procurement and assistance management information system which produces reports for Agency

management, OMB, Congress and the public, providing technical support for field procurement activities, and managing the Agency's preferential procurement program goals and achievements.

14. Section 2.55(b) is amended by revising it to read as follows:

§ 2.55 General delegations.

(b) The officers authorized to exercise authorities in paragraph (c) of this section are:

Federal Insurance Administrator
Associate Director, National Preparedness Programs
Associate Director, State and Local Programs and Support
Associate Director, Training and Fire Programs
Associate Director, Emergency Operations
Executive Administrator
Comptroller
Inspector General
General Counsel
Director, Office of Program Analysis and Evaluation
Directors, Staff Offices, Executive Administration
Regional Directors

§ 2.61 [Amended]

15. Section 2.61 is amended by removing and reserving paragraphs (h) and (i).

16. Section 2.61 is amended by revising paragraph (n) to read:

To carry out hazard mitigation functions, including studies and research assigned under Executive Order 12148.

17. Section 2.61 is amended by revising paragraph (m) to read:

To Apply the Coastal Barrier Resources Act to the Disaster Relief Act of 1974.

§ 2.64 [Amended]

18. Section 2.64 is amended by removing and reserving paragraph (b)(4).

19. Section 2.64 (c) and (d)(1) are amended by removing "National Flood Insurance Act of 1956" and adding "Federal Flood Insurance Act of 1956."

20. Section 2.64 (e) is amended by adding before the period at the end the following: "and with respect to the consultation under Executive Order 11988, 'Floodplain Management,' as amended."

21. Section 2.64 is amended by removing and reserving paragraph (d)(5).

22. Section 2.64 is amended by removing paragraphs (d)(7) through (14).

23. Section 2.64 is amended by revising paragraph (e) to read as follows:

(e)(1) The Federal Insurance Administrator is authorized to perform the functions necessary to make flood insurance unavailable pursuant to the Coastal Barrier Resources Act (Pub. L. 97-348). The Administrator is also authorized to define the terms 'new construction, substantial improvement and new flood insurance coverage' as used in the Coastal Barrier Resources Act, and to issue any regulations necessary to implement this § 2.64(e).

(2) The Administrator shall exercise the authority under the Coastal Barrier Resources Act to determine those areas which are included in the Department of the Interior's designation of the Coastal Barrier Resources System, transpose DOI's designations onto FEMA's floodplain maps, and perform all other actions necessary to interpret DOI's maps.

§ 2.65 [Amended]

24. The heading of § 2.65 is amended by adding the word "Associate" before the word "Director."

25. The introductory paragraph of § 2.65 is amended by adding the word "Associate" before the word "Director."

26. Section 2.67 is revised to read as follows:

§ 2.67 Director, Acquisition Management.

The Director, Acquisition Management is authorized to:

(a)(1) Exercise authority under section 104(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 delegated to the Director by section 2(f) of Executive Order 12316;

(2) Exercise authority of the Director concerning extra-ordinary contractual actions under paragraph 21 of Executive Order 10789.

(3) Exercise authority delegated to the Director by Executive Order 12352 and act as procurement executive.

(b)(1) Make purchases and contracts by advertising for equipment and supplies, administrative equipment, office supplies, professional services, transportation of persons and property, and nonpersonal services, and determine that the rejection of all bids is in the public interest;

(2) Negotiate purchases and contracts for equipment and supplies, professional

services, transportation of persons and property, and non-personal services without advertising; and make and issue determinations related thereto pursuant to section 302(c) (1)-(10), (14) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c) (1)-(10), (14) and (15)) and 40 U.S.C. 541-544 with respect to contracting for services of Architects Engineers;

(3) Enter into and administer interagency agreements under the Economy Act or any other such agreement involving obligation of funds;

(c) Notwithstanding any general delegation of statutory authority in this part to another officer of FEMA, if the authority delegated in the general statutory delegation contains procurement authority that authority is delegated solely to the Director, Acquisition Management, with authority to redelegate to any employee of FEMA. As used in this paragraph (c) the term "procurement" includes acquisition from a recipient including a State or local government, of property or services for the direct benefit or use of the Federal Government. This includes authority under section 201(h) of the Federal Civil Defense Act but excludes authority under section 1362 of the National Flood Insurance Act.

(d) Notwithstanding any general delegation of authority in this part to another officer of FEMA, other than the delegation to Regional Directors under § 2.71, if the authority delegated contains authority to award discretionary grants that authority is delegated to the Director, Acquisition Management, who is authorized to exercise the authority of the Director with respect thereto. The Director, Acquisition Management, may redelegate this authority to any employee of FEMA. Discretionary grants include those instruments which are awarded to a selected or limited number of recipients deemed best qualified based upon criteria designed for the conduct of a specific project. This can include governments. Discretionary grants do not include those awarded to recipients for which: (1) The recipient or class of recipient is mandated by legislation or regulation; (2) the amount of the instrument or the amount of the program is established by legislation and discretion in the award process is limited; or (3) there is no choice in the purpose of the award or whether to make the award. The delegation to the Regional Directors under § 2.71 to implement various programs is not affected by this delegation to the Director, Acquisition Management.

§ 2.68 [Amended]

27. Section 2.68 is amended by revising paragraph (8) to read:

Issue budget allocation advice to Associate Directors, Administrators, Office Directors or equivalent, and Regional Directors. Officials who receive budget allocations shall limit obligations to amounts permitted by budget allocations. Officials who incur obligations or make expenditures in excess of their budget allocations are subject to administrative disciplinary actions, as circumstances warrant.

28. Part 2 of Title 44 is amended by adding new §§ 2.72 and 2.73, as follows:

§ 2.72 Director of Administrative Support.

The Director, Administrative Support, is authorized to:

(a) Manage records and files within FEMA, including records creation, organization, maintenance, and disposal. Place advertisements in newspapers pursuant to 44 U.S.C. 3702;

(b) Assign and reassign real and personal property other than contributions loan property within FEMA. Exercise authority under section 201(j) of the Federal Civil Defense Act of 1950, as amended;

(c) Provide for accountability for property;

(d) Issue determinations of excess property other than contributions loan property and transfer of same as required;

(e) Make purchases and contracts for procurement of printing and binding services in accordance with the current government printing and binding regulations of the Joint Committee on Printing, and Title 44, United States Code.

§ 2.73 Director of Personnel.

Notwithstanding any general delegations of authority in this part to another officer of FEMA, if authority delegated in the general delegation contains personnel authorities, that authority is delegated to the Director of Personnel with authority to redelegate to any employee of FEMA. As used in the paragraph the term "personnel" includes development, implementation, administration and management of personnel policies and programs, including position management and classification, recruitment, placement, salary administration, labor management relations, merit pay, special program (NDER, DAE, Shelter Survey), performance appraisal, incentive awards, discipline, retirement, health insurance, training and career development, and in conjunction with

the Equal Opportunity Officer, equal employment opportunity.

Dated: February 10, 1984.

Louis O. Giuffrida,

Director, Federal Emergency Management Agency.

[FR Doc. 84-4168 Filed 2-15-84; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 151**Reimbursement for Costs of Firefighting on Federal Property**

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation updates an existing regulation to reflect organizational changes resulting from the transfer of functions under the Federal Fire Prevention and Control Act from the Department of Commerce to the Federal Emergency Management Agency (FEMA), as a result of Reorganization Plan No. 3 of 1978 and Executive Order 12127 of March 31, 1979.

EFFECTIVE DATE: This rule takes effect March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Chief, Policy Division, Office of the Comptroller, Federal Emergency Management Agency, Telephone: (202) 287-0630.

SUPPLEMENTARY INFORMATION: When issued in 1977, this regulation placed responsibilities for administration of Section 11 of the Federal Fire Prevention and Control Act in the Administrator of what became the United States Fire Administration. Reorganization Plan No. 3 of 1978 transferred the functions of the Administrator to the Director, Federal Emergency Management Agency (FEMA). The United States Fire Administration and the position of Administrator were transferred from the Department of Commerce to FEMA and are now part of the Training and Fire Programs Directorate of FEMA. The regulation needs to be amended to reflect these changes. Certain other changes were needed, such as a reference to the Court of Claims (now the U.S. Claims Court), and to 31 U.S.C. 231, now recodified.

Instead of assigning the functions to the Administrator, they have been retained in the Director, Federal Emergency Management Agency, for appropriate delegation (presently to the Comptroller). The proposed rule was issued on November 3, 1983, at 48 FR 50778. Comments were due no later than January 3, 1984. No comments were received by that date. However, the

regulation was reviewed by OMB under section 3504(h) of the Paperwork Reduction Act, and the collection of information requirements contained in § 151.11 approved.

FEMA has made certain changes to proposed § 151.11 to reduce records collection requirements by eliminating such requirements as evidence that the person submitting the claim is authorized to do so, copies of mutual aid agreements between the United States and the fire service, or evidence the Federal Government owns full title to the property. Other editorial changes were made.

This regulation deals with administrative matters and, hence, is categorically excluded from requirements for an environmental assessment under 44 CFR Part 10.

The rule is not a major rule as defined in Section 1(b) of Executive Order 12291 nor will it have a significant economic impact on a substantial number of small entities. Hence, regulatory impact analyses are unnecessary.

List of Subjects in 44 CFR Part 151

Claims, Government property.

Accordingly, Part 151 of Title 44, Code of Federal Regulations is revised to read as follows:

PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY**Subpart A—Purpose, Scope, Definitions**

Sec.	
151.01	Purpose.
151.02	Scope.
151.03	Definitions.

Subpart B—Submission, Determination, Appeal

151.11	Submission of claims.
151.12	Determination of amount authorized for payment.
151.13	Reconsideration of amount authorized for payment.
151.14	Adjudication.

Subpart C—Administration, Penalties

151.21	[Reserved]
151.22	Audits.
151.23	Penalties.

Authority: Secs. 11, and 21(b)(5), Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210, and 2218(b)(5)); Reorganization Plan No. 3 of 1978 (3 CFR Part 1978 Comp. p. 379) and Executive Order 12127, dated March 31, 1979 (3 CFR Part 1979 Comp. p. 376).

Subpart A—Purpose, Scope, Definitions**§ 151.01 Purpose.**

Section 11 of the Federal Fire Prevention and Control Act of 1974, provides that "each fire service that

engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Director of the Federal Emergency Management Agency for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire." This part, implements section 11 of the Act and governs the submission, determination, and appeal of claims under section 11.

§ 151.02 Scope.

Fire services, in any State, may file claims for reimbursement under section 11 and this part for the direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States. Section 11 requires that certain payments be deducted from those costs and that the Treasury Department will ordinarily pay the amount resulting from the application of that formula. Where the United States has entered into a contract (which is not a mutual aid agreement, defined in § 151.03) for the provision of fire protection, and it is the intent of the parties that reimbursement under section 11 is unavailable, this intent will normally govern. Where a mutual aid agreement is in effect between the claimant and an agency of the United States for the property upon which the fire occurred, reimbursement will be available in otherwise proper situations. However, any payments (including the value of services) rendered under the agreement during the term of the agreement (or the Federal fiscal year in which the fire occurred, if no term is discernible) shall be deducted from the costs claimed, pursuant to § 151.12.

§ 151.03 Definitions.

(a) "The Act" means the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*

(b) "Additional firefighting costs over and above normal operating costs" means reasonable and authorized (or ratified by a responsible Federal official) costs ordinarily associated with the function of firefighting as performed by a fire service. Such costs would normally arise out of response of personnel and apparatus to the site of the fire, search and rescue, exposure protection, fire containment, ventilation, salvage, extinguishment, overhaul, and preparation of the equipment for further use. This would also include costs associated with emergency medical services to the extent normally rendered by a fire service in connection with a fire. Not included are administrative

expenses, costs of employee benefits, insurance, disability, death, litigation or health care, and the costs associated with processing claims under Section 11 of the Act and this part.

(c) "Director" means the Director of the Federal Emergency Management Agency, or his/her designee.

(d) "Claimant" means a fire service as defined in paragraph (g) of this section.

(e) "Direct expenses and losses" means expenses and losses which would not have been incurred had not the fire in question taken place. This includes salaries for specially employed personnel, overtime pay, the cost of supplies expended, and the depreciated value of equipment destroyed or damaged. It does not include such costs as the ordinary wages of firefighters, overhead costs, or depreciation (if based on other than hours of use during fires). Expenses as defined herein would normally be incurred after the first call or alarm and would normally cease upon the first of the following: return to station, report in-service and ready for further operations, or commence response to another incident.

(f) "Fire" means any instance of destructive or uncontrolled burning, including scorch burns and explosions of combustible dusts or solids, flammable liquids, and gases. The definition does not include the following except where they cause fire or occur as a consequence of fire: lightning or electrical discharge, explosion of steam boilers, hot water tanks, or other pressure vessels, explosions of ammunition or other detonating materials, overheating, mechanical failures, or breakdown of electrical equipment in power transmission facilities, and accidents involving ships, aircraft, or other vehicles. Not included in this definition are any costs associated with false alarms, regardless of cause.

(g) "Fire service" means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district.

(h) "Mutual aid agreement" means any reciprocal agreement whether written or oral between a Federal agency and the claimant fire service, or its parent jurisdiction, for the purpose of providing fire protection for the property of the United States upon which the fire which gave rise to the claim occurred and for other property for which the claimant normally provides fire protection. Such agreement must be primarily one of service rendered for service, or must be entered into under 42 U.S.C. 1856-1856d. Not included are all other agreements and contracts, particularly those in which the intent of the parties is that the United States pays for fire protection.

(i) "FEMA" means the Federal Emergency Management Agency.

(j) "Over and above normal operating expenses" means costs, losses and expenses which are not ordinarily and necessarily associated with the maintenance, administration, and day-to-day operations of a fire service and which would not have been incurred absent the fire out of which the claim arises.

(k) "Payments to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question" means any Federal monies, or the value of services, including those made available through categorical or block grants, contracts, mutual aid agreements, taxes, and payments in lieu of taxes which the United States has paid to the fire service or its parent jurisdiction for fire protection and firefighting services. Such payments will be determined on the basis of the term of the arrangement, or if no such term is discernible, on the basis of the Federal fiscal year in which the fire occurred.

(l) "Property which is under the jurisdiction of the United States" means real property and Federal improvements thereon and appurtenances thereto in which the United States holds legal fee simple title. This excludes Federal leasehold interests. This likewise excludes Federal personal property on land in which the United States does not hold fee simple title.

(m) "State" means any State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, The Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Subpart B—Submission, Determination, Appeal**§ 151.11 Submission of claims.**

Any fire service in any State which believes it has a claim(s) cognizable under section 11 shall submit its claim(s) in writing within 90 days of the occurrence of the fire(s) for which a claim(s) is made. If the fire is of such duration that the claimant desires to submit a claim before its conclusion, it may do so, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred. Claims shall be submitted to the Director, FEMA, Washington, D.C. 20472. Each claim shall include the following information:

(a) Name, address, jurisdiction and nature (volunteer, private, municipal, etc.) of claimant's fire service organization;

(b) Name, title, address and telephone number of individual authorized by the claimant fire service to make this claim in its behalf and his/her certification as to the accuracy of the information provided;

(c) Name and telephone number of Federal employee familiar with the facts of the event and the name and address of the Federal agency having jurisdiction over the property on which the fire occurred;

(d) Proof of authority to fight the fire (source of alarm, whether fire service was requested by responsible Federal official or whether such an official accepted the assistance when offered);

(e) Personnel and equipment committed to fighting of fire (type of equipment and number of items); and an itemized list of direct expenses (e.g., hours of equipment operation, fuel costs, consumables, overtime pay and wages for any specially hired personnel) and direct losses (e.g., damaged or destroyed equipment, to include purchase cost, estimate of the cost of repairs, statement of depreciated value immediately preceding and subsequent to the damage or destruction and the extent of insurance coverage) actually incurred in fighting the fire. A statement should be included explaining why each such expense or loss is considered by the claimant not be a normal operating cost, or to be in excess of normal operating costs;

(f) Copy of fire report which includes the location of the fire, a description of the property burned, the time of alarm, etc.;

(g) Such other information or documentation as the Director considers relevant to those considerations to be made in determining the amount

authorized for payment, as set forth in § 151.12 of these regulations;

(h) Source and amount of any payments received or to be received for the fiscal year in which the fire occurred, including taxes or payments in lieu of taxes and including all monies received or receivable from the United States through any program or agreement including categorical or block grants, and contracts, by the claimant fire service or its parent jurisdiction for the support of fire services on the property on which the fire occurred. If this information is available when the claim is submitted, it should accompany the claim. If it is not, the information should be submitted as soon as practicable, but no later than 15 days after the end of the Federal fiscal year in which the fire occurred.

(Approved by Office of Management and Budget under Control No. 3067-0141)

§ 151.12 Determination of amount authorized for payment.

(a) The Director shall determine the amount to be paid on a claim (subject to payment by the Department of the Treasury). The amount to be paid is the total of eligible expenses, costs and losses under paragraph (a)(1) of this section which exceeds the amount of payments under paragraph (a)(2) of this section. The Director shall establish the reimbursable amount by determining:

(1) The extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim, i.e., the "amount of costs"; and

(2) What payments, if any, including taxes or payments in lieu of taxes, the fire service or its parent jurisdiction has received from the United States for the support of fire services on the property on which the fire occurred. The reimbursable amount is the amount, if any, by which the amount of costs, determined under paragraph (a)(1) of this section exceeds the amount of payments determined under paragraph (a)(2) of this section. Where more than one claim is filed the aggregate reimbursable amount is the amount by which the total amount of costs, determined under paragraph (a)(1) of this section exceed the amount of Federal payments (in the case of a mutual aid agreement—its term or if none is determinable, the Federal fiscal year) determined under paragraph (a)(2) of this section.

(b) The Director will first determine the costs as contemplated in paragraph (a)(1) of this section. The Director will then notify the claimant as to that amount. The claimant must indicate

within 30 days its acceptance or rejection of that amount.

(1) If the determination is accepted by the claimant, this will be the final and conclusive determination of the amount of costs by the claimant in conjunction with the fire for which the claims are submitted.

(2) If the claimant rejects this amount, it must notify the Director, within 30 days, of its reasons for its rejection. Upon receipt of notification of rejection, the Director shall reconsider his determination and notify the claimant of the results of the reconsideration. The amount determined on reconsideration will constitute the costs to be used by the Director in determining the reimbursable amount.

(c) Upon receipt of documentation from the claimant on the amount of payments the Federal Government has made for the support of fire services on the property in question, the Director will, following such verification or investigation as the Director may deem appropriate, calculate the full amount to be reimbursed under the Section 11 formula as set forth in § 151.12(a). This calculation of the reimbursable amount is based upon the costs determined pursuant to § 151.12(b) and the documentation of Federal payments that the claimant submitted.

(d) The Director's determination of the reimbursable amount will be sent to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination made under § 151.12 (a), (b), and (c), determine the amount authorized for payment, which shall be the amount actually available for payment from any monies in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred. This shall be a sum no greater, although it may be less, than the reimbursable amount determined by the Director, FEMA, with respect to the claim under § 151.12 (a), (b) and (c).

(e) Upon receipt of written notification from the claimant of its intention to accept the amount authorized as full settlement of the claim, accompanied by a properly executed document of release, the Director will forward the claim, a copy of the Director's determination and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount authorized.

(f) Subject to the discovery of additional material evidence, the Director may reconsider any

determination in this section, whether or not made as his final determination.

§ 151.13 Reconsideration of amount authorized for payment.

(a) If the claimant elects to protest the amount authorized for payment, after the applicable procedures of § 151.12 have been followed, it must within 30 days of receipt of notification of the amount authorized notify the Director in writing of its objections and set forth the reasons why the Director should reconsider the determination. The Director will upon notice of protest and receipt of additional evidence reconsider the determination of the amount of Federal payments under § 151.12(a)(2) but not the determination of the amount of costs under § 151.12(a)(1). The Director shall cause a reconsideration by the Secretary of the Treasury of the amount actually available and authorized for payment by the Treasury. The Director, upon receipt of the Secretary of the Treasury's reconsidered determination, will notify the claimant in writing of the amount authorized, upon reconsideration, for payment in full settlement of the claim.

(b) If the claimant elects to accept the amount authorized, upon reconsideration, for payment in full settlement of its claims, it must within 30 days (or a longer period of time acceptable to the Director) of its receipt of that determination notify the Director of its acceptance in writing accompanied by a properly executed document of release. Upon receipt of such notice and document of release, the Director will forward the claim, a copy of the Director's final determination, and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount of final authorization.

§ 151.14 Adjudication.

If the claimant, after written notice by the Director of the amount authorized for payment in full settlement of the claim and after all applicable procedures of § 151.12 and § 151.13 have been followed elects to dispute the amount authorized, it may then initiate action in the United States Claims Court, which shall have jurisdiction to adjudicate the claim and enter judgment in accordance with Section 11(d) of the Act.

Subpart C—Administration, Penalties

§ 151.21 [Reserved]

§ 151.22 Audits.

At the discretion of the Director, all claims submitted under Section 11 of the Act and all records of the claimant will

be subject to audit by the Director or his/her designee. In addition, the Comptroller General of the United States or his/her designee shall have access to all books and records of all claimants making claims under Section 11.

§ 151.23 Penalties.

Claimant's officials or others who provide information or documentation under this Part are subject to, among other laws, the criminal penalties of Title 18 of the United States Code, Section 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements and which provide for a fine of not more than \$10,000 or imprisonment for not more than five years, or both. For such a violation, the person is likewise subject to the civil penalties set out in 31 U.S.C. 3729 and 3730.

Dated: February 10, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-4170 Filed 2-15-84; 8:45 am]

BILLING CODE 6716-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 31230-249]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; clarification of fishing restrictions and boundary revision; request for comments.

SUMMARY: This notice clarifies and supersedes the *Federal Register* notice effective January 1, 1984, which restricted fishing for the *Sebastes* complex of rockfish managed under the Pacific Coast Groundfish Fishery Management Plan, and revises the boundary line established in that notice. This action is taken to promote better understanding of the fishing restrictions and to facilitate data collection, compliance, and enforcement.

DATES: This notice is effective from 0001 Pacific Standard Time, February 12, 1984, until modified, superseded, or rescinded. Comments will be accepted through March 2, 1984.

ADDRESSES: Dr. T. E. (Gene) Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 7600

Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

SUPPLEMENTARY INFORMATION:

Management measures to limit the levels of fishing for the *Sebastes* complex (all rockfish except Pacific ocean perch and widow, shortbelly, and *Sebastes* rockfishes) off Washington, Oregon, and California were published in the *Federal Register* on January 5, 1984 (49 FR 597). These measures set a harvest guideline in 10,100 metric tons (mt) for the *Sebastes* complex in the Vancouver-Columbia area (from the U.S.-Canada border to 43° N. latitude). To achieve the harvest guideline, only one landing of the *Sebastes* complex above 3,000 pounds, but not above 30,000 pounds, was allowed from each vessel per week in the Vancouver-Columbia area. South of this area, no harvest guideline was assigned and a 40,000-pound trip limit was imposed with no restriction on the number of landings.

Public comment received after these management measures became effective revealed confusion over how the trip limits were to be applied and questioned whether 43° N. latitude was an appropriate boundary between the two management areas. Because 43° N. latitude transects a major *Sebastes* fishing ground, fishermen often fish south but land north of this line. Furthermore, although 43° N. latitude is a boundary used by the International North Pacific Fisheries Commission (INPEC) for statistical purposes, resource data from the State of Oregon for the area north of the line includes data from the area south of 43° to Cape Blanco (42°50' N. latitude).

At its January 11, 1984, meeting in Portland, Oregon, the Pacific Fishery Management Council (Council) heard testimony from concerned fishermen and processors, enforcement agents, and fishery managers, and affirmed its intention of making the trip limits for the *Sebastes* complex effective and enforceable. The Council agreed that *Sebastes* taken or landed in the Vancouver-Columbia area should be regulated by the more restrictive 30,000-pound, once-a-week limit, whereas *Sebastes* taken and landed south of this area should be covered by the 40,000-pound limit.

The Council also was concerned about changing trip limits at 43° N. latitude and asked the Groundfish Task Force for guidance. In conference by telephone on January 24, 1984, the

Council agreed with the recommendation of the Groundfish Task Force (which met January 18, 1984, in Portland, Oregon) that the 30,000-pound, once-a-week trip limit should be extended ten miles south to Cape Blanco (42°50' N. latitude) to include the Coquille fishing area.

Council Recommendation

As a result of these two meetings, the Council recommended that the 30,000-pound, once-a-week restriction should apply to the *Sebastes* complex taken north of Cape Blanco, regardless of the place of landing, and also should apply to landings north of Cape Blanco, regardless of the place of taking. The 10,100-mt harvest guideline, extended south to Cape Blanco, would be maintained since landing between 42°50' and 43°00' N. latitude traditionally were included in the Columbia area. The 40,000-pound trip limit applies only to the *Sebastes* complex taken and landed south of Cape Blanco. As in the January 1 action, an unlimited number of landings of the *Sebastes* complex less than 3,000 pounds are allowed in all areas.

Secretarial Action

In order to promote better understanding of the fishing restrictions placed on the *Sebastes* complex and to encourage compliance and conform the regulatory boundary to the State of Oregon's statistical reporting practices, the Secretary of Commerce clarifies the management measures for the *Sebastes* complex announced at 49 FR 597 and modifies the boundary line as follows:

(1) *All areas.* There is no limit on the number of landings under 3,000 pounds (round weight) of the *Sebastes* complex allowed per week. Landings in greater

amounts are allowed only as provided below.

(2) *North of Cape Blanco* (from 42°50' N. latitude to the U.S.-Canada border).

(i) No more than 30,000 pounds (round weight) of the *Sebastes* complex may be retained per vessel at any time north of Cape Blanco.

(ii) One landing of not more than 30,000 pounds (round weight) of the *Sebastes* complex taken north of Cape Blanco is allowed per vessel per week, regardless of where the landing occurs.

(iii) One landing of not more than 30,000 pounds (round weight) of the *Sebastes* complex is allowed north of Cape Blanco per vessel per week, regardless of where the fish were taken.

(iv) The 1984 harvest guideline for the *Sebastes* complex north of Cape Blanco is 10,100 mt. This harvest guideline is not a quota.

(3) *South of Cape Blanco* (from 42°50' N. latitude to the U.S.-Mexico border).

Except as provided in paragraph (2):
(i) No more than 40,000 pounds (round weight) of the *Sebastes* complex may be retained per vessel at any time south of Cape Blanco.

(ii) No more than 40,000 pounds (round weight) of the *Sebastes* complex may be landed south of Cape Blanco per vessel per fishing trip.

(iii) There is no limit of the number of landings allowed per week of the *Sebastes* complex taken and landed south of Cape Blanco.

(4) A "week" is defined as seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday local time.

(5) The above restrictions apply to all fish of the *Sebastes* complex taken and retained in ocean waters offshore of, or landed in, Washington, Oregon, and

California, regardless of the place of taking.

(6) Landings of the *Sebastes* complex in the pink shrimp, spot, and ridge-back prawn fisheries are governed by regulations at 50 CFR 663.28.

These management measures will be reviewed at the Council's April 10-12, 1984, meeting in San Francisco, California.

Classification

The determination to impose these management measures was published at 49 FR 597 and prior comment was waived for good cause. The same waiver remains in effect for this notice which is a clarification of and technical revision to the earlier notice.

The need for clarification of the regulations and modification of the boundary line was discussed at the Council's January 11-12, 1984, meeting in Portland, Oregon, at which time the public was invited to comment. Public comment also was invited by notice in the *Federal Register* and was received at the January 19, 1984, meeting of the Groundfish Task Force. Further public comments will be accepted for 15 days after publication of this notice in the *Federal Register*.

(16 U.S.C. 1801 et seq.)

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: February 13, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator, for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-4310 Filed 2-13-84; 5:01 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 49, No. 33

Thursday, February 16, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

Disposal of High-Level Radioactive Wastes in the Unsaturated Zone

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its rules on the disposal of high-level radioactive wastes (HLW) in geologic repositories so that the technical criteria for geologic disposal in the saturated zone may be equally applicable to disposal within the unsaturated zone. The amendments are being proposed in response to public comments on the proposed technical criteria for geologic disposal in the saturated zone. Final technical criteria adopted by the Commission for disposal of HLW in the saturated zone were published in the *Federal Register* on June 21, 1983.

DATES: Comment period expires April 16, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Colleen Ostrowski, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, telephone (301) 427-4343.

SUPPLEMENTARY INFORMATION: Background

On February 25, 1981 the Nuclear Regulatory Commission (NRC) published a rule that established procedures for licensing the disposal of HLW in geologic repositories (46 FR 13971). NRC published proposed technical criteria to be used in the evaluation of license applications under those procedures on July 8, 1981 (46 FR 35280). In response to solicitation for public comments on the proposed technical criteria NRC received 93 comment letters. The Commission considered all public comments in developing the final technical criteria which were published on June 21, 1983 (48 FR 28194).

Several commenters on the proposed rule, including the U.S. Department of Energy (DOE), the U.S. Department of the Interior, and separately the U.S. Geological Survey (USGS), took issue with a statement made by the Commission at 46 FR 35281 which explained that the proposed technical criteria were developed specifically for disposal in saturated geologic media because DOE plans at that time called for HLW disposal at sufficient depth to be situated in the hydrogeologic region termed the saturated zone. The commenters considered disposal in the unsaturated zone¹ to be a viable alternative, and noted that since the technical criteria were generally applicable without regard to the possibility of saturation, their scope and applicability should not be unduly restricted. DOE, in its comments on this issue, suggested that since opportunities may arise for exploratory studies in unsaturated geologic media, the Commission should reexamine the rule and make whatever changes are necessary to ensure that the rule will apply to all geologic media. The U.S. Department of the Interior urged that the rule be modified because, under appropriate conditions, the unsaturated zone could provide one more natural barrier to the movement of radionuclides from the geologic repository to the water table.

The Commission has determined that disposal of HLW within the unsaturated zone is a realistic alternative to disposal within the saturated zone, provided that

the site and the geologic repository design are carefully selected, and are capable of meeting the performance objectives of 10 CFR Part 60. In reaching this determination, the Commission has examined the arguments presented by the public commenters as well as the analysis of the principal issues associated with unsaturated zone disposal described in the NRC staff technical support document (draft NREG-1046) prepared in conjunction with the proposed amendments. This document identifies the positive aspects and possible concerns associated with disposal in the unsaturated zone and explains why the Commission has developed the following proposed amendments. Other issues which were discussed by public commenters but which did not result in proposed changes to the final rule are also addressed in the technical support document. Upon publication, a copy of draft NUREG-1046 entitled "Disposal of High-Level Radioactive Wastes in the Unsaturated Zone: Technical Considerations" will be placed in the Public Document Room, 1717 H Street NW., Washington, DC 20555. Since this document is available to the general public,² only a summary discussion of these issues is presented below.

Issues Examined by the Commission

The depth to the regional water table varies throughout the United States. Potential geologic repository sites within unsaturated geologic media may be identified in arid to semi-arid geographic regions of the country because such regions generally are characterized by a deep regional water table and hence, a relatively thick unsaturated zone. The unsaturated zone in certain arid regions of the United States has been documented as extending to depths of approximately 600 meters below the ground surface. In contrast, the unsaturated zone in humid regions is often only a few meters thick, or entirely non-existent.

Perhaps the most positive aspect associated with disposal of HLW within the unsaturated zone is that the HLW would be emplaced in a relatively dry (i.e., low moisture content) geologic

¹ The definition of the term "unsaturated zone" is derived from U.S. Geological Survey Water Supply Paper 1988 (Washington, DC, 1972).

² Free single copies of Draft NUREG-1046 may be requested for public comment by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

medium. The Commission considers the relatively low moisture content of unsaturated sediment and rock as a positive aspect of HLW disposal in the unsaturated zone because the lack of available moisture could reduce leaching of the waste packages and thus, significantly reduce the likelihood of radionuclide transport by groundwater³ migration. Further, it is generally recognized that vertical groundwater flux in the unsaturated zone is very small. A credible pathway for the migration of water soluble contaminants from a geologic repository located in the unsaturated zone to the accessible environment would probably be vertically downward to the underlying regional water table, and subsequently through the saturated groundwater units to the regional discharge points.

The Commission has reviewed several other issues that are of general concern to disposal of HLW in geologic repositories, regardless of the hydrogeologic zone involved. Such issues include the effects of climatic changes on the regional hydrologic systems, the potential for human intrusion into the geologic repository, and the effects of geologic processes (e.g., tectonism) on the structural stability of the geologic repository. The Commission does not believe that any of these issues would negate the generic concept of HLW disposal within the unsaturated zone. However, since the relative importance of these issues will depend upon natural conditions existing at a particular site, each must be evaluated on a site-by-site basis.

Vapor transport of contaminants has been identified by the Commission's staff as a potential concern associated with HLW disposal in the unsaturated zone. In unsaturated geologic media, water is transported in both liquid and vapor phases. The relative contribution of transport via liquid and vapor phases, and their direction of movement with respect to a geologic repository will have a direct influence on the containment of contaminants. Vapor transport, particularly when a thermal gradient is imposed may provide a possible mechanism for radionuclide migration from a geologic repository. However, positive aspects associated

with vapor transport in the unsaturated zone may also be discerned since water vapor formed near the geologic repository may flow through air-filled openings and partially drained fractures, resulting in a drying of the surrounding host rock. This drying zone may extend hundreds of meters from the geologic repository, and thus may inhibit the movement of soluble contaminants. Therefore, the Commission views vapor transport as another issue which must be evaluated on a case-by-case basis to determine its effects (whether favorable or potentially adverse) on a particular site.

Other Comments Considered by NRC

The Commission has reviewed the following six issues related to HLW disposal within the unsaturated zone which were addressed in the public comments on the proposed rule, as well as in a recent USGS publication,⁴ and has determined that the final rule (48 FR 28194) accommodates these concerns. More detailed discussion of these issues is presented in draft NUREG-1046.

Minimum 300-Meters Depth for Waste Emplacement

One commenter on the proposed 10 CFR Part 60 technical criteria who advocated applying the rule equally to the saturated and unsaturated zones considered it necessary to change the siting criterion which sets a minimum depth of 300 meters for waste emplacement. However, the commenter incorrectly identified this provision (see § 60.122(b)) as a requirement, rather than as a favorable condition. The Commission notes that favorable conditions are those which may enhance waste isolation potential. Hence, a minimum depth of 300 meters for waste emplacement is considered a favorable condition because the deeper the HLW is emplaced, the less likely it is to be disturbed. Viewed in that light this depth is a favorable condition, irrespective of hydrogeologic zone. Since the unsaturated zone may extend to depths of up to 600 meters, the Commission considers this favorable condition to be a realistic one for both the saturated and unsaturated zones. Therefore, this provision of the rule has not been modified.

Requirements for Sealing Shafts and Boreholes

In USGS Circular 903 the view was expressed that, with respect to a

geologic repository within the unsaturated zone, sealing shafts and boreholes tightly to inhibit water movement may be undesirable. The reasoning behind this view is that although shafts and boreholes need to be carefully sealed in the saturated zone so that they do not become future conduits for radionuclide migration, they may have an entirely different relation to an unsaturated zone repository. Shafts and boreholes would increase the amount of water moving through a geologic repository located within the unsaturated zone only if they diverted a significant amount of runoff to the subsurface.

The Commission has reviewed both the arguments of the USGS and the provisions of the final rule relating to the design of seals for shafts and boreholes (§ 60.134). The provisions of § 60.134 appear to be generally applicable to seals of shafts and boreholes in both hydrogeologic zones. Therefore, the Commission does not consider it necessary to modify § 60.134 at this time.

Backfill Requirements

Another issue which has been identified both in public comments on the proposed technical criteria and in USGS Circular 903 pertains to the necessity of backfill in a geologic repository located within the unsaturated zone. The USGS expressed the view that the role of backfill in the unsaturated zone would be the opposite of that in the saturated zone. Backfill material that would inhibit the flow of water to, and radionuclide migration from, the waste packages may be highly desirable in the saturated zone. In the unsaturated zone, however, the designers of a geologic repository may wish to promote drainage. The opinion has been expressed that within the unsaturated zone backfill should allow groundwater to drain readily, rather than serve as a barrier to drainage. It was suggested in USGS Circular 903 that if backfill is necessary to preserve structural or waste package integrity, a relatively permeable material (e.g., cobble-sized rock) could be used to permit continued drainage.

The final rule published by the Commission on June 21, 1983 contained only the general functional statement that the engineered barrier system (including backfill) be designed to assist the geologic setting in meeting the performance objectives for the period following permanent closure (§ 60.133(h), 48 FR 28227). This provision, as promulgated, should be

³ The Commission recognizes that the term "groundwater" is generally applied by the technical community to water which occurs beneath the water table (i.e., phreatic water) while the term "vadose water" is more accurately applied to the soil water, gravitational water and capillary water which occur in the unsaturated zone (zone of aeration, vadose zone). However, for the sake of simplicity, groundwater is defined in the proposed amendments as all water which occurs below the Earth's surface.

⁴ Roseboom, E. H. Jr., 1983, Disposal of High-Level Nuclear Waste Above the Water Table in Arid Regions. U.S. Geological Survey Circular 903. Washington, DC, p. 21.

responsive to the concerns discussed above.

Waste Package Design Criteria

As defined at § 60.2, the term "waste package" means "the waste form and any containers, shielding, packing and other absorbent materials immediately surrounding an individual waste container" (48 FR 28219). The point has been raised that because of the different nature of the emplacement environment designs of waste package components for the saturated and unsaturated zones may be quite different. The Commission recognizes that several characteristics of the emplacement environment (e.g., oxidation conditions, lithostatic pressure, geochemistry, contact with groundwater, etc.) may vary significantly between the two hydrogeologic zones. This variation of emplacement environment may necessitate that DOE consider alternative designs for waste packages (including waste form, canisters, overpack, etc.) for geologic disposal in the unsaturated zone. The Commission has reviewed the performance objectives which pertain to the waste package (§ 60.111 and § 60.113), and believes that the provisions, as currently written, are equally applicable to waste packages emplaced within either the saturated or unsaturated zone. Similarly, the specific design criteria for the waste package and its components (§ 60.135, 48 FR 28227) have been determined to be generally applicable to both zones. Therefore, no changes have been made to the provisions of §§ 60.111, 60.113, or 60.135.

Ventilation

The issue of restricting the number of ventilation shafts associated with a geologic repository was addressed in USGS Circular 903. In the case of the saturated zone, the number of ventilation shafts may be kept at a minimum since the shafts could constitute potential pathways to the accessible environment. In USGS Circular 903 it is stated that in the case of the unsaturated zone additional shafts for ventilation would not compromise the geologic repository's performance because sealing shafts in the unsaturated zone is much simpler and of less consequence than in the saturated zone. Several potential benefits were cited by the USGS to support this view—e.g., reducing the problem of thermal load in the early phases of the geologic repository, removal of any water vapor during the operational period, drawing large amounts of desert air through the geologic repository to promote even

drier conditions and increasing worker safety by providing alternative sources of ventilation and escape routes.

The number of ventilation shafts included in any geologic repository will be decided by the designer—DOE. No provision of 10 CFR Part 60 expressly limits the number of ventilation shafts that a geologic repository may contain. What is important is that the surface facility ventilation systems comply with the design criteria in § 60.132(b) (48 FR 28226) and that the underground facility ventilation system be designed in accordance with § 60.133(g) (48 FR 28227). The Commission considers the design requirements for the ventilation systems set forth in §§ 60.132 and 60.133 to be applicable to both the saturated and unsaturated zones. As long as the ventilation system complies with provisions of §§ 60.111(a), 60.132, and 60.133 and does not compromise the integrity of the site to host a geologic repository, DOE will have broad flexibility in designing the system.

Exploratory Boreholes

Provisions relating to site characterization are set forth in the final rule at § 60.10 (48 FR 28219). Section 60.10(d)(2) requires that the number of exploratory boreholes and shafts be limited to the extent practical, consistent with obtaining the information needed for site characterization. The view was expressed in USGS Circular 903 that in the unsaturated zone, if the host rock already has a high vertical permeability, there is no reason to limit the number of drill holes. Thus, the USGS noted that if necessary, a proposed geologic repository could be explored like an ore body or coal bed, with drill holes every few hundred feet on a rectangular grid.

The Commission's view on the importance of not compromising the integrity of a site during the site characterization program of testing and exploration has been clearly stated at 44 FR 70409. However, if DOE should opt for a site exploration and characterization program which includes plans for drilling numerous boreholes then DOE would have the burden of showing the Commission that the ability of the site to isolate HLW has not been compromised during these activities.

Groundwater Travel Time in the Unsaturated Zone

The concept of groundwater travel time generally is applied in evaluations of saturated flow systems, where flow is continuous and temporal fluctuations in the potential of the systems are small. In contrast, water movement in the

unsaturated zone is generally discontinuous and strongly dependent upon initial conditions (e.g., magnitude and spatial and temporal distribution recharge events) and the conductive properties of the partially saturated geologic media, which vary with moisture content. Reliable calculations and predictions of groundwater travel times and velocities require knowledge of these conditions and properties. Within the unsaturated zone the movement of a given volume of water over a given distance depends very strongly upon the nature of the recharge events. Additionally, the material properties (e.g., moisture characteristic curves, porosity, irreducible saturation, etc.) and the initial conditions (e.g., saturation, capillary pressure, matric potential) may be extremely difficult to measure on a representative scale for unsaturated porous and fractured geologic media.

For these reasons, calculations of pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel through the unsaturated zone may have large associated uncertainties, and may be of questionable value in estimating the capability of the geologic setting to isolate HLW from the accessible environment.

The new definition of the term "groundwater" which the Commission is proposing would have the effect of expanding the scope of the performance objectives set forth in § 60.113 to disposal in either the saturated or unsaturated zone. Similarly, the proposed amendment to the Siting Criteria (§ 60.122(b)(7)) would have the effect of making pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment which substantially exceeds 1,000 years a favorable condition for HLW disposal within either the saturated or unsaturated zone.

The Commission's current thinking on this issue is that if DOE can demonstrate with reasonable assurance that travel time for groundwater movement through the unsaturated zone can be quantified, then DOE should be allowed to include such travel time when demonstrating compliance with § 60.113(a)(2). However, such calculations of groundwater travel times through the unsaturated zone could involve considerable uncertainty. Further, long groundwater travel time possibly may be inconsistent with the proposed amendment which identifies a host rock that provides for free drainage as a

favorable hydrogeologic condition for disposal of HLW within the unsaturated zone. It may be more appropriate for the Commission to specify another parameter upon which performance may be evaluated for a geologic setting in the unsaturated zone, or to utilize the approach set forth in § 60.113(b) which provides the Commission with the flexibility to specify variations in performance objectives on a case-by-case basis, as long as the overall system performance objective is satisfied. Therefore, to solicit input in these matters the Commission is particularly seeking public comment on the following questions:

1. How can groundwater travel time in the unsaturated zone be determined with reasonable assurance? Should the groundwater travel time performance objective be limited to groundwater movement within the saturated zone?

2. Does groundwater travel time represent an appropriate measure of performance for a site within the unsaturated zone, or would an alternative performance objective for the geologic setting, (e.g., maximum likely volumetric flow rate of groundwater through the geologic repository) be more appropriate?

Environmental Impact: Negative Declaration

Pursuant to Section 121(c) of the Nuclear Waste Policy Act of 1982, the promulgation of these criteria shall not require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such Act.

Paperwork Reduction Review

The proposed rule contains no new or amended recordkeeping, reporting or application requirements, or any other type of information collection requirements subject to the Paperwork Reduction Act (Pub. L. 96-511).

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule is the U.S. Department of Energy.

List of Subjects in 10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission is proposing the following amendments to 10 CFR Part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 1014).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273). §§ 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

1. Section 60.2 is amended by adding two new definitions in proper alphabetical sequence:

§ 60.2 Definitions.

"Groundwater" means all water which occurs below the Earth's surface.

"Unsaturated zone" means the zone between the land surface and the deepest water table. Generally, water in this zone is under less than atmospheric pressure, and some of the voids may contain air or other gases at atmospheric pressure. Beneath flooded areas or in perched water bodies the water pressure locally may be greater than atmospheric.

2. Section 60.122 is amended by revising paragraph (b)(2)(iii), designating paragraph (b)(2)(iv) as (b)(7), and adding new paragraphs (b)(8), (c) (22), (23) and (24) to read as follows:

§ 60.122 Siting criteria.

(b) ***

(2) *** (iii) Low vertical permeability

and low hydraulic potential between the host rock and the surrounding hydrogeologic units.

(7) Pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment that substantially exceeds 1,000 years.

(8) For disposal in the unsaturated zone, hydrogeologic conditions that provide—

(i) Low and nearly constant moisture flux in the host rock and in the overlaying and underlying hydrogeologic units;

(ii) A water table sufficiently below the underground facility such that fully saturated voids continuous with the water table do not encounter the underground facility;

(iii) A laterally extensive low-permeability hydrogeologic unit above the host rock that would inhibit the downward movement of water or divert downward moving water to a location beyond the limits of the underground facility;

(iv) A host rock that provides for free drainage; or

(v) A climatic regime in which the average annual historic precipitation is a small percentage of the average annual potential evapotranspiration.

(c) ***

(22) Potential for the water table to rise sufficiently so as to cause saturation of an underground facility located in the unsaturated zone.

(23) Potential for existing or future perched water bodies that may have the effect of saturating portions of the underground facility or providing a faster flow path for radionuclide movement from an underground facility located in the unsaturated zone to the accessible environment.

(24) Potential for vapor transport of radionuclides from the underground facility located in the unsaturated zone to the accessible environment.

Dated at Washington, D.C., this 13th day of February 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-4306 Filed 2-15-84; 8:45 am]

BILLING CODE 7590-01-M