

Dated: October 10, 1996.

David A. Ullrich,

Acting Regional Administrator.

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[FRL-5650-4]

RIN 2060-AG85

40 CFR Part 194

Decision to Certify Whether the Waste Isolation Pilot Plant Complies With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The Environmental Protection Agency (EPA) intends to certify whether or not the Waste Isolation Pilot Plant (WIPP) will comply with EPA's environmental radiation protection standards for the disposal of radioactive waste. The WIPP is being constructed by the Department of Energy (DOE) near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste. Pursuant to the 1992 WIPP Land Withdrawal Act, as amended, EPA must certify that the WIPP will comply with EPA's standards for disposal, and other statutory requirements must be met, before DOE may commence disposal of radioactive waste at the WIPP.

EPA will determine whether the WIPP will comply with EPA's standards for disposal based on the application submitted by the Secretary of Energy. DOE's compliance certification application was received by the EPA on October 29, 1996, and a copy may be found in EPA's public dockets (see Additional Docket Information at the end of this notice). The Administrator will make a determination as to the completeness of the application in the near future and will notify the Secretary, in writing, when the Agency deems the application "complete." EPA will evaluate the "complete" application in determining whether the WIPP will comply with the radiation protection standards for disposal. The Agency requests public comment on all aspects of the DOE's application.

DATES: Comments in response to today's document and on DOE's compliance application must be received by March 17, 1997. Public hearings will be held in New Mexico during the public comment period. A separate announcement will

be published in the Federal Register to provide public hearing information.

ADDRESSES: Comments and requests for public hearings should be submitted, in duplicate, to: Docket No. A-93-02, Air Docket, room M-1500 (LE-131), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. See additional docket information in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Mary Kruger or Betsy Forinash; telephone number: (202) 233-9310; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the Department of Energy (DOE) National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164, 93 Stat. 1259, 1265), "for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States." The WIPP is being constructed by the DOE near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste.

The 1992 WIPP Land Withdrawal Act (Pub. L. 102-579)¹ limits radioactive waste disposal in the WIPP to transuranic radioactive wastes generated by defense-related activities.

Transuranic waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The Act further stipulates that radioactive waste shall not be transuranic waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The transuranic radioactive waste proposed for disposal in the WIPP consists of materials such as rags, equipment, tools, protective gear, and sludges that have become contaminated during atomic energy defense activities. The radioactive component of transuranic waste consists of man-made elements created during

the process of nuclear fission, chiefly isotopes of plutonium.

The EPA is required by the WIPP Land Withdrawal Act to evaluate and certify whether the WIPP will comply with subparts B and C of 40 CFR part 191—known as the "disposal regulations." These regulations limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water.

The WIPP Land Withdrawal Act also calls for EPA to establish criteria implementing the disposal regulations at the WIPP. EPA published final criteria (40 CFR part 194) on February 9, 1996. See 61 FR 5224. Thus, EPA will implement its environmental radiation protection standards, 40 CFR part 191, by applying the WIPP compliance criteria, 40 CFR part 194, to the proposed disposal of transuranic radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to Federal Register documents published in 1985 (50 FR 38066-38089, Sep. 19, 1985) and 1993 (58 FR 66398-66416, Dec. 20, 1993). For more information about 40 CFR part 194, refer to Federal Register documents published in 1996 (61 FR 5224-5245, Feb. 9, 1996) and 1995 (60 FR 5766-5791, Jan. 30, 1995).

The DOE may not begin to emplace transuranic waste underground for disposal at the WIPP until EPA certifies that the WIPP will comply with the disposal regulations, and all other requirements of section 7(b) of the WIPP Land Withdrawal Act, as amended, have been satisfied. As required by section 8(d) of the amended WIPP Land Withdrawal Act, EPA's decision on whether the WIPP complies with the disposal regulations will be accomplished by rulemaking in accordance with the notice-and-comment requirements of the Administrative Procedure Act (5 U.S.C. 553). In addition to these general requirements, EPA developed specific provisions for public involvement in the WIPP compliance certification rulemaking. The public participation criteria found in § 194.61, § 194.62, § 194.63, and § 194.67 of the WIPP compliance criteria provide time periods for public comment, allow opportunities for public hearings, and otherwise enable public access to

¹ The 1992 WIPP Land Withdrawal Act was amended by the "Waste Isolation Pilot Plant Land Withdrawal Act Amendments," which were part of the National Defense Authorization Act for Fiscal Year 1997.

information specifically related to EPA's certification rulemaking.

With today's document, the Agency announces its intention to commence a public rulemaking to certify whether the WIPP facility complies with the disposal regulations. On October 29, 1996, DOE submitted an application for certification of compliance to EPA. A copy of the application is available for inspection in EPA's public dockets described below. The Agency's comments on draft versions of the compliance certification application are also available in public dockets. The EPA will evaluate the complete application in determining whether the WIPP complies with the radiation protection standards for disposal. In addition, EPA will consider public comment and other information relevant to WIPP's compliance. EPA requests comment on all aspects of the DOE's application.

EPA will make a determination in the near future as to the completeness of the application, as a preliminary step in its more extensive technical review of the application. The EPA may request additional information as necessary from DOE to ensure the completeness of the compliance application. EPA will provide DOE with written notification of its completeness determination. All correspondence between EPA and DOE regarding the completeness of the compliance application will be placed in the public dockets.

EPA will make a final decision certifying whether the WIPP facility meets the disposal regulations after several additional regulatory steps, including technical analysis of the application, issuing a notice of proposed rulemaking in the Federal Register, providing additional opportunity for public comment, holding public hearings in New Mexico, analyzing public comment, and issuing a final rule in the Federal Register that is accompanied by a document summarizing and addressing significant comments. This "response to comments" document will be available in the public dockets.

Additional Docket Information

The Agency is currently maintaining the following public information dockets: (1) Docket No. A-93-02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of

New Mexico located in Albuquerque, New Mexico, (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

List of Subjects in 40 CFR Part 194

Environmental protection, Administrative practice and procedure, Nuclear materials, Plutonium, Radiation protection, Radionuclides, Transuranics, Uranium, Waste treatment and disposal.

Dated: November 5, 1996.

Carol M. Browner,

Administrator.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2620

[WO-130-1820-00-24 1A]

RIN 1004-AC71

State Grants—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove the regulations at 43 CFR subpart 2627 addressing grants made to the State of Alaska. This subpart restates statutory requirements and explains how the State of Alaska files selection applications under the Alaska Statehood Act and the Act of January 21, 1929 (University Grant). BLM is proposing to remove 43 CFR 2627 because its provisions are outdated and not necessary for program implementation.

DATES: *Comments:* Commenters must submit comments by January 14, 1997. BLM will consider comments received

or postmarked on or before this date in the preparation of the final rule.

ADDRESSES: *Comments:* You may hand-deliver your comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You may transmit comments electronically via the Internet to: WOCComment@wo.blm.gov. Please include "attn: AC71" and your name and address in your message. If you do not receive a conformation from the system that we have received your Internet message, contact us directly.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, Regulatory Management Group, Bureau of Land Management, at (202) 452-5084.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background and Discussion of Rule
- III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Rule

BLM proposes to remove 43 CFR 2627 because its provisions are no longer necessary or useful, specifically:

1. A substantial portion of these regulations explain requirements the State must follow when filing applications for land under the Alaska Statehood Act. The time period for filing new applications under the Alaska Statehood Act expired on January 3, 1994;

2. A substantial portion of these regulations simply restate the provisions of the Alaska Statehood Act. Congress changed many provisions of the Alaska Statehood Act in Section 906(e) of the Alaska National Interest Lands Conservation Act, but the regulations were never revised to reflect those changes;