## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL-5142-4]

RIN 2060-AE30

Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance With Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

**AGENCY:** Environmental Protection

Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing criteria for certifying and determining whether the Department of Energy's Waste Isolation Pilot Plant (WIPP) complies with disposal standards set forth in 40 CFR part 191 (Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes). EPA is required to promulgate these criteria under the 1992 Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA). These criteria will be used by the Agency in ascertaining whether the WIPP disposal system complies with the disposal standards.

DATES: Comments on today's proposal must be received by May 1, 1995. Public hearings on today's proposal will be held in New Mexico. A separate annoucement will be published in the **Federal Register** to provide public hearing information.

ADDRESSES: Comments should be submitted, in duplicate, to: Docket No. A–92–56, Air Docket, room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. See additional docket information in the

## SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mary Kruger or Martin Offutt; telephone number (202) 233-9310; address: Criteria and Standards Division, Mail Code 6602J, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. An addendum to the supplementary information provided in today's notice is located in Docket No. A-92-56. For copies of this addendum and the Background Information Document and Economic Impact Analysis prepared for this proposed rule, contact Mary Kruger at the above phone number and address. SUPPLEMENTARY INFORMATION: As discussed below, the scope of today's

proposal is limited to proposed criteria for certifying and determining whether the Waste Isolation Pilot Plant (WIPP) in New Mexico complies with the disposal standards set forth in 40 CFR part 191. Accordingly, comments should be similarly limited in scope; e.g., comments should not address the Agency's recently promulgated radioactive waste disposal standards—40 CFR part 191 (58 FR 66398, December 20, 1993)—or whether WIPP should be used as a disposal facility.

The U.S. Department of Energy (ĎOE) is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a potential deep geologic repository for the disposal of defense transuranic (TRU) radioactive waste currently being stored on Federal reservations in Washington, Ohio, Idaho, New Mexico, Tennessee, South Carolina, Nevada and Colorado. TRU waste consists of materials containing one or more elements having atomic numbers greater than 92, in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste, with halflives greater than 20 years. Most TRU waste consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons, e.g., rags, equipment, tools, and organic and inorganic sludges. TRU waste is often mixed with hazardous chemical constituents.

Before beginning disposal of radioactive waste at the WIPP, DOE must demonstrate that the WIPP complies with the Environmental Protection Agency's (EPA) radioactive waste standards at 40 CFR part 191 (Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes).

On October 30, 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA) was enacted (Pub. L. 102-579). The WIPP LWA contains numerous provisions pertaining to EPA's role in overseeing DOE's activities at the WIPP, including requirements for the development and implementation of the 40 CFR part 191 disposal standards as they are applied to the WIPP. Specifically, section 8(a) of the WIPP LWA reinstated all of the remanded disposal standards except those aspects of the individual and ground-water protection requirements which the court found problematic in NRDC v. U.S. EPA. The WIPP LWA requires EPA to certify and determine whether or not the WIPP will comply with the Agency's final radioactive waste disposal standards.

"Certification" refers to any initial certification of compliance of DOE's application for the WIPP with subparts B and C of 40 CFR part 191 (see section 8(d) of the WIPP LWA).

"Determination" refers to any subsequent decisions by the Agency (required every 5 years by the WIPP LWA) of whether the WIPP continues to be in compliance with subparts B and C of 40 CFR part 191 (see section 8(f) of the WIPP LWA). In order to certify or determine compliance, the Agency will be issuing criteria for assessing compliance with the final disposal standards, as required by section 8(c) of the WIPP LWA. On February 11, 1993, as a first step in the development of compliance criteria, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) soliciting comments on issues associated with the development of compliance criteria. (58 FR 8029.) The next step in the evolution of these criteria is occurring today with the issuance of proposed compliance criteria.

## Objective and Implementation of Today's Proposed Criteria

Under authority of the WIPP LWA, the Agency is proposing criteria for certifying and determining whether the Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) will comply with the Agency's radioactive waste disposal standards set forth in 40 CFR part 191. The WIPP LWA specifies that underground emplacement of transuranic wastes for disposal at the WIPP may not commence unless and until EPA certifies that the WIPP facility will comply with 40 CFR part 191, subparts B and C. If the Agency certifies compliance, the WIPP LWA requires EPA to subsequently conduct periodic determinations of continued compliance throughout waste disposal operations at the WIPP. Criteria contained in today's notice address any initial certification of compliance as well as any subsequent determinations of continued compliance. When final compliance criteria are promulgated as Agency regulations, EPA will be responsible for assuring that the requirements are properly implemented.

Importantly, today's proposal is limited to consideration of the WIPP's compliance with the disposal regulations found in subparts B and C of 40 CFR part 191 (which include containment requirements, assurance requirements, individual protection requirements, and ground-water protection requirements). These compliance criteria do not address compliance with the management and storage regulations found in subpart A