the WIPP will comply with the disposal regulations. The Agency is proposing this approach in order to afford the public an opportunity for early input into EPA's certification decision. The alternative might have been simply putting the application in the docket and receiving comments from the public through a more informal means. However, the Agency believes that this approach would not necessarily lead to as much public input relevant to its decision. Hence, the more formal approach is proposed.

Upon completion of a review of the application for certification of compliance, the Agency also proposes to publish in the **Federal Register** a Notice of Proposed Rulemaking announcing the Administrator's proposed decision on whether the WIPP facility will comply with the disposal regulations and soliciting comment on such proposal. The notice will provide a comment period of at least 120 days and will announce the opportunity for public hearings in New Mexico (including times and procedures for registering to testify).

The Agency will publish a Notice of Final Rule in the **Federal Register** announcing the Administrator's decision on certifying whether the WIPP facility will comply with the disposal regulations. Additionally, a document summarizing major comments and issues arising from comments received on the Notice of Proposed Rulemaking, as well as the Administrator's response to such comments and issues, will be prepared and made available for inspection in Agency dockets.

Similar to the process outlined above for applications for compliance certification (and for the same reasons), when EPA receives documentation of continued compliance as required under 8(f) of the WIPP LWA, the Agency will publish a notice in the Federal Register announcing the Administrator's intent to determine whether the WIPP facility continues to be in compliance with the disposal regulations. Copies of any documentation received will be made available for inspection in Agency dockets and comments will be solicited for at least 30 days after receipt. Once the Agency has considered all comments received, the Administrator will make a determination regarding WIPP's continued compliance and publish that decision in the Federal Register.

Questions for Comment

The Agency is requesting comment on today's proposed criteria for the certification and determination of the WIPP's compliance with the 40 CFR part 191 disposal standards and on the proposed approaches taken. EPA generally invites comment on whether today's proposal addresses all issues related to any EPA certification or determination of WIPP's compliance with the disposal regulations in 40 CFR part 191.

Effective Date

The effective date of these compliance criteria, once finalized, will be 30 calendar days after date of publication of the final rule in the **Federal Register**.

Regulatory Analyses

Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each Federal agency to consider the effects of their regulations on small entities and to examine alternatives that may reduce these effects. The nature of this action is to propose criteria for the certification of compliance of the WIPP with the Agency's radioactive waste disposal standards set forth in 40 CFR Part 191. Since the preparation of applications for compliance will only be conducted by DOE, and since any ensuing disposal and information gathering activities will only be carried out by DOE, the Agency certifies that this regulation will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The EPA has determined that this proposed rule contains no information requirements as defined by the Paperwork Reduction Act (42 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 194

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

Dated: January 11, 1995.

Carol M. Browner,

Administrator.

A new part 194 is hereby proposed to be added to title 40, Code of Federal Regulations, as follows:

PART 194—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

Subpart A—General Provisions

Sec.

- 194.1 Purpose, scope, and applicability.
- 194.2 Definitions.
- 194.3 Communications.
- 194.4 Conditions of compliance
- certification and determination. 194.5 Publications incorporated by
- reference.
- 194.6 Alternative provisions.

Subpart B—Compliance Certification and Determination Applications

- 194.11 Completeness and accuracy of compliance applications.
- 194.12 Submission of compliance applications.
- 194.13 Submission of reference materials.
- 194.14 Content of compliance certification
- application. 194.15 Content of compliance determination application(s).

Subpart C—Compliance Certification and Determination

General Requirements

- 194.21 Inspections.
- 194.22 Quality assurance.
- 194.23 Models and computer codes.
- 194.24 Waste characterization.
- 194.25 Future state assumptions.
- 194.26 Expert judgment.
- 194.27 Peer review.

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