

rules, or guidelines that pertain to the NISP shall be reviewed and updated by the originating agency, as circumstances require. If a change in national policy necessitates a change in agency implementing regulations, internal rules, or guidelines that pertain to the NISP, the agency shall promptly issue revisions.

(b) *Reviews by ISOO.* The Director, ISOO, shall review agency implementing regulations, internal rules, or guidelines, as necessary, to ensure consistency with NISP policies and procedures. Such reviews should normally occur during routine oversight visits, when there is indication of a problem that comes to the attention of the Director, ISOO, or after a change in national policy that impacts such regulations, rules, or guidelines. The Director, ISOO, shall provide findings from such reviews to the responsible department or agency.

#### **§ 2004.12 Reviews by ISOO [102(b)(4)].**

The Director, ISOO, shall fulfill his monitoring role based, in part, on information received from NISP Policy Advisory Committee (NISPPAC) members, from on-site reviews that ISOO conducts under the authority of EO 12829, as amended, and from complaints and suggestions from persons within or outside the Government. Findings shall be reported to the responsible department or agency.

### **Subpart B—Operations**

#### **§ 2004.20 National Industrial Security Program Operating Manual (NISPOM) [201(a)].**

(a) The NISPOM applies to release of classified information during all phases of the contracting process.

(b) As a general rule, procedures for safeguarding classified information by contractors and recommendations for changes shall be addressed through the NISPOM coordination process that shall be facilitated by the Executive Agent. The Executive Agent shall address NISPOM issues that surface from industry, Executive Branch departments and agencies, or the NISPPAC. When consensus cannot be achieved through the NISPOM coordination process, the issue shall be raised to the NSC for resolution.

#### **§ 2004.21 Protection of Classified Information [201(e)].**

Procedures for the safeguarding of classified information by contractors are promulgated in the NISPOM. DoD, as the Executive Agent, shall use standards applicable to agencies as the basis for the requirements, restrictions, and safeguards contained in the NISPOM;

however, the NISPOM requirements may be designed to accommodate as necessary the unique circumstances of industry. Any issue pertaining to deviation of industry requirements in the NISPOM from the standards applicable to agencies shall be addressed through the NISPOM coordination process.

#### **§ 2004.22 Operational Responsibilities [202(a)].**

(a) *Designation of Cognizant Security Authority (CSA).* The CSA for a contractor shall be determined by the preponderance of classified contract activity per agreement by the CSAs. The responsible CSA shall conduct oversight inspections of contractor security programs and provide other support services to contractors as necessary to ensure compliance with the NISPOM and that contractors are protecting classified information as required. DoD, as Executive Agent, shall serve as the CSA for all Executive Branch departments and agencies that are not a designated CSA. As such, DoD shall:

(1) Provide training to industry to ensure that industry understands the responsibilities associated with protecting classified information.

(2) Validate the need for contractor access to classified information, shall establish a system to request personnel security investigations for contractor personnel, and shall ensure adequate funding for investigations of those contractors under Department of Defense cognizance.

(3) Maintain a system of eligibility and access determinations of contractor personnel.

(b) *General Responsibilities.* Executive Branch departments and agencies that issue contracts requiring industry to have access to classified information and are not a designated CSA shall:

(1) Include the Security Requirements clause, 52.204-2, from the FAR in such contracts;

(2) Incorporate a Contract Security Classification Specification (DD 254) into the contracts in accordance with the FAR subpart 4.4;

(3) Sign agreements with the Department of Defense as the Executive Agent for industrial security services; and,

(4) Ensure applicable department and agency personnel having NISP implementation responsibilities are provided appropriate education and training.

#### **§ 2004.23 Cost Reports [203(d)].**

(a) The Executive Branch departments and agencies shall provide information each year to the Director, ISOO, on the

costs within the agency associated with implementation of the NISP for the previous year.

(b) The DoD as the Executive Agent shall develop a cost methodology in coordination with industry to collect the costs incurred by contractors of all Executive Branch departments and agencies to implement the NISP, and shall report those costs to the Director, ISOO, on an annual basis.

#### **§ 2004.24 Definitions.**

(a) “Cognizant Security Agencies (CSAs)” means the Executive Branch departments and agencies authorized in EO 12829, as amended, to establish industrial security programs: The Department of Defense, designated as the Executive Agent; the Department of Energy; the Nuclear Regulatory Commission; and the Central Intelligence Agency.

(b) “Contractor” means any industrial, education, commercial, or other entity, to include licensees or grantees that has been granted access to classified information. Contractor does not include individuals engaged under personal services contracts.

Dated: March 31, 2006.

**J. William Leonard,**

*Director, Information Security Oversight Office.*

Approved: March 31, 2006.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. 06-3383 Filed 4-7-06; 8:45 am]

BILLING CODE 7515-01-P

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 20**

#### **RIN 2900-AM31**

#### **Board of Veterans' Appeals: Rules of Practice: Public Availability of Board Decisions**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending the Board of Veterans' Appeals (Board) Rules of Practice as relates to public availability of Board decisions, to set forth the current methods for archiving and retrieving Board decisions for public use. Due to advances in technology, Board decisions issued on or after January 1, 1992, are currently available in redacted form for public inspection and copying on Web sites that are accessible through the Internet. This is an improvement from the past practice

of archiving Board decisions in microfiche form with an accompanying index to facilitate public access to the decisions.

**DATES:** *Effective Date:* April 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-565-5978.

**SUPPLEMENTARY INFORMATION:** The Board is an administrative body that decides appeals from denials by agencies of original jurisdiction of claims for veterans' benefits, as well as occasional cases of original jurisdiction. The Freedom of Information Act (FOIA) requires federal agencies to make available for public inspection and copying final opinions made in the adjudication of cases. 38 U.S.C. 552(a)(2)(A).

The regulation in effect until April 10, 2006 provided a system for indexing Board decisions to facilitate access to the contents of the decisions. The index (BVA Index I-01-1) was published quarterly in microfiche form with an annual cumulation, and was made available to the public for review at VA offices around the country. However, technological advances in information management rendered this system obsolete. In fact, the Board has not indexed Board decisions in microfiche form for many years.

Currently, redacted Board decisions (*i.e.*, decisions in which all personal identifiers except the Board-assigned docket number are removed) issued on or after January 1, 1992, are accessible to the public for inspection and copying on the Internet at <http://www.index.va.gov/search/va/bva.html>, as well as some commercial Web sites. The former indexing system for Board decisions was upgraded and replaced by a comprehensive word-searching system, by which the public may identify particular decisions issued. Redacted Board decisions are also available for public inspection and copying in the Board's Research Center.

In light of these improvements, we are revising Rule 1301(b) (38 CFR 20.1301(b)) of the Board's Rules of Practice to reflect current practice and procedure, and to allow flexibility in implementing future advances in technology and information management when necessary. We are adding a new section, designated as 38 CFR 20.1301(b)(1), which sets forth a general description of how the Board will fulfill its responsibility under FOIA to make available for public inspection and copying final opinions made in the

adjudication of cases. Section 20.1301(b)(1) is crafted in general terms to encompass future advances in technology and information management, while setting forth the principles of popular accessibility and availability for public inspection and copying, as required by FOIA.

We are also revising some of the existing language in section 20.1301(b) to clarify that Board decisions issued prior to January 1, 1992, are archived and indexed in microfiche form. This section is designated as 38 CFR 20.1301(b)(2) and sets forth details regarding the indexing methods that are used to retrieve Board decisions issued prior to January 1, 1992. The regulation in effect until April 10, 2006 provided the address of a private company that previously prepared and maintained the BVA Index I-01-1. We removed this name and address and, as an alternative, direct the public to contact the Board's Research Center for further information on obtaining a copy of the index.

#### Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and, pursuant to 5 U.S.C. 553, is exempt from notice and comment and delayed effective date requirements.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual affect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement

recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is not a significant regulatory action under Executive Order 12866.

#### Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Numbers

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

#### List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Veterans.

Approved: March 9, 2006.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 20 as follows:

#### PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.1301, revise paragraph (b) to read as follows:

#### § 20.1301 Rule 1301. Disclosure of information.

\* \* \* \* \*

(b) *Public availability of Board decisions.* (1) *Decisions issued on or after January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Internet at <http://www.index.va.gov/search/va/bva.html>. All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be

identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.

(2) *Decisions issued prior to January 1, 1992.* Decisions rendered by the Board of Veterans' Appeals prior to January 1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which was published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. Information on obtaining a microfiche copy of the index is also available from the Board's Research Center. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as 82-07-0001. Decisions archived at a later date have a number such as BVA-90-12345. This number must be used when requesting a paper copy of that decision. These requests must be directed to the Research Center (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. (Authority: 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a))

[FR Doc. 06-3413 Filed 4-7-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[EPA-HQ-OAR-2004-0025; FRL-8055-1]

#### Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Recertification Decision

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final notice.

**SUMMARY:** With this notice, the Environmental Protection Agency (EPA) recertifies that the U.S. Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) continues to comply with the "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic (TRU) Radioactive Waste."

EPA initially certified that WIPP met applicable regulatory requirements on May 18, 1998, and the first shipment of waste was received at WIPP on March 26, 1999.

Today's action represents the first instance of EPA's periodic evaluation of WIPP's continued compliance with the disposal regulations and WIPP Compliance Criteria. The compliance criteria implement and interpret the disposal regulations specifically for WIPP. As directed by Congress in the WIPP Land Withdrawal Act (LWA), this "recertification" will occur five years after the WIPP's initial receipt of TRU waste (March 26, 1999), and every five years thereafter until the end of the decommissioning phase. For each recertification—including the one being announced with today's action—DOE must submit documentation of the site's continuing compliance with the disposal regulations to EPA for review. In accordance with the WIPP Compliance Criteria, documentation of continued compliance was made available in EPA's dockets, and the public was provided at least a 30-day period in which to submit comments. In addition, all recertification decisions must be announced in the **Federal Register**, as this first recertification is today. According to the WIPP LWA, Section 8(f), these periodic recertification determinations are not subject to rulemaking or judicial review.

Today's action is not a reconsideration of the decision to open WIPP. Rather, recertification is a process that evaluates changes at WIPP to determine if the facility continues to meet all the requirements of EPA's disposal regulations. The recertification process ensures that WIPP's continued compliance is demonstrated using the most accurate, up-to-date information available.

Today's recertification decision is based on a thorough review of information submitted by DOE, independent technical analyses, and public comments. The Agency has determined that DOE continues to meet all applicable requirements of the WIPP Compliance Criteria, and with this notice, recertifies the WIPP facility. This recertification decision does not otherwise amend or affect EPA's radioactive waste disposal regulations or the WIPP Compliance Criteria.

**DATES:** The effective date for the recertification was March 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ray Lee or Sharon White, Radiation Protection Division, Center for Federal Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202-343-9601; fax number: 202-343-2305; e-mail address: [lee.raymond@epa.gov](mailto:lee.raymond@epa.gov) or [white.sharon@epa.gov](mailto:white.sharon@epa.gov). Copies of the Compliance Application Review Documents (CARDs) supporting today's action and all other recertification-related documentation can be found in the Agency's electronic docket (Docket ID No. EPA-HQ-OAR-2004-0025), hard-copy Air Docket A-98-49, or on its WIPP Web site (<http://www.epa.gov/radiation/wipp>).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. General Information
- II. What is WIPP?
  - A. 1998 Certification Decision
- III. With which regulations must WIPP comply?
  - A. Radioactive Waste Disposal Regulations & Compliance Criteria
  - B. Compliance With Other Environmental Laws and Regulations
- IV. What has EPA's role been at WIPP since the 1998 Certification Decision?
  - A. Continuing Compliance
  - B. Annual Change Reports
  - C. Monitoring the Conditions of Compliance
  - D. Inspections and Technical Exchanges
- V. What is EPA's Recertification Decision?
  - A. What information did the Agency examine to make its final decision?
  - B. Content of the Compliance Recertification Application (§§ 194.14 and 194.15)
  - C. Performance Assessment: Modeling and Containment Requirements (§§ 194.14, 194.15, 194.23, 194.31 through 194.34)
  - D. General Requirements
  - E. Assurance Requirements (§§ 194.41 through 194.46)
  - F. Individual and Groundwater Protection Requirements (§§ 194.51 through 194.55)
- VI. How has the public been involved in EPA's WIPP recertification activities?
  - A. Public Information
  - B. Stakeholder Meetings
  - C. Public Comments on Recertification
- VII. Where can I get more information about EPA's WIPP-related activities?
  - A. Supporting Documents for Recertification
  - B. WIPP Web Site, Listserv, Information Line, and Mailing List
  - C. Dockets
- VIII. What happens next for WIPP? What is EPA's role in future WIPP activities?

#### I. General Information

*A. How can I get copies of this document and other related information?*

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0025; FRL-8053-5. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at